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# The fight against terrorism

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## Cost of Non-Europe Report

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STUDY

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EPRS | European Parliamentary Research Service

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**European Added Value Unit**

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# The Cost of Non-Europe in the fight against terrorism

## Study

### Abstract

In the wake of recent attacks, surveys show that combating terrorism while respecting individual freedom, remains one of the key concerns of EU citizens. The EU helps to fight terrorism through supporting national measures and exchanges to prevent radicalisation and recruitment, stronger measures against terrorist financing and the possession and acquisition of weapons and explosives, and strengthening security at the Union's external borders. It also supports operational cooperation between national law enforcement authorities, as well as harmonising terrorism related provisions in criminal law and procedure. This includes active cooperation with third countries and international organisations.

This Cost of Non-Europe report identifies a number of gaps and barriers regarding accountability, oversight and the evidence provided to support policy and law-making, including counter-radicalisation programmes, the scope of action related to the disruption of terrorist financing, information sharing between Member States through various EU and national databases, the use of judicial cooperation tools and the capacities of EU agencies. EU action could address these effectiveness and fundamental rights protection gaps by developing an evidence-based EU criminal policy cycle involving the European Parliament and national parliaments. It is also argued that the effectiveness and fundamental rights compliance of counter-radicalisation programmes should be further monitored; the framework for countering terrorist financing needs to be further refined; and that finally, a European law enforcement culture should be fostered.

Further EU action in the area is imperative since, besides the impact on victims and their families, terrorism has a negative effect on the wellbeing of the population as a whole, affecting people's life satisfaction, happiness, health, and trust within communities. It is estimated that since 2004, terrorism has cost the EU about €185 billion in lost GDP and around €5.6 billion in lost lives, injuries and damages to infrastructure. It also harms trade, foreign direct investment, and tourism. At the same time, certain measures taken to combat terrorism have had a disproportionate impact on suspects and wider groups within society, in violation of fundamental rights, as well as being counterproductive.

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The annexed paper was produced by RAND at the request of EPRS.

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## Background and methodology

The notion of the 'Cost of Non-Europe' was introduced by Michel Albert and James Ball in a 1983 report commissioned by the European Parliament. It was also a central element of a 1988 study carried out for the European Commission by the Italian economist Paolo Cecchini on the cost of non-Europe in the single market.<sup>1</sup> This approach was revisited in a Cost of Non-Europe in the single market report of 2014.<sup>2</sup> In the latest Interinstitutional Agreement on Better Law-making, it was agreed that analysis of the potential 'European added value' of any proposed Union action, as well as an assessment of the 'cost of non-Europe' in the absence of action at Union level, should be fully taken into account when setting the legislative agenda.<sup>3</sup>

Cost of Non-Europe (CoNE) reports are designed to examine the possibilities for gains and/or the realisation of a 'public good' through common action at EU level in specific policy areas and sectors. They attempt to identify areas that are expected to benefit most from deeper EU integration, and for which the EU's added value is potentially significant.

On 4 October 2016, coordinators of the European Parliament Committee on Civil Liberties, Justice and Home Affairs (LIBE) requested that the European Added Value Unit within the European Parliamentary Research Service (EPRS) produce a report on the Cost of Non-Europe in the Area of Freedom, Security and Justice. In response to that request, the European Added Value Unit is preparing a report that will give an overview of the current state of play in the main policy areas covered by the Area of Freedom, Security and Justice (AFSJ) within the competence of the LIBE Committee. The report will map the current gaps and barriers and estimate their impacts in terms of both economic impacts and impacts on individuals in terms of protecting their fundamental rights and freedoms.<sup>4</sup> Finally, in accordance with the Treaties it will provide options for action at EU level to address the identified gaps and barriers together with an estimation of their potential costs and benefits.

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<sup>1</sup> Commission on the European Communities, Europe 1992, the Overall Challenge, SEC (1988) 524.

<sup>2</sup> Zsolt Pataki, [The Cost of Non-Europe in the Single Market, Cecchini Revisited, An overview of the potential economic gains from further completion of the European Single Market](#), EPRS, European Parliament, September 2014.

<sup>3</sup> [Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making](#), OJ L 123, 12 May 2016, p. 1-14.

<sup>4</sup> Cf Claude Moraes, [A Europe of Costs and Values in the Criminal Justice Area](#), EUCRIM 2016/2, p. 88. The author notes that 'Nowadays, in the context of global economic and humanitarian crises, many voices are questioning the role and the very existence of the Union. It is therefore time to look back on Professor Cecchini's report and reflect on the cost of non-Europe in the area of freedom, security and justice in order to calculate its economic value – not always an easy task – and the cost to citizens in terms of their fundamental rights and freedoms'.

The following areas will be covered in the report:

1. Asylum, migration, border control;
2. Police and judicial cooperation in the fight against crime and terrorism; and
3. Fundamental rights.

A number of relevant studies have already been published covering the added value of an EU mechanism to monitor and enforce democracy, the rule of law and fundamental rights in the Member States and within EU institutions;<sup>5</sup> the benefits of further EU action and cooperation to ensure free movement within the Schengen Area;<sup>6</sup> enhanced police and judicial cooperation in the fight against organised crime and corruption;<sup>7</sup> procedural rights and detention conditions;<sup>8</sup> as well as equality and the fight against racism and xenophobia.<sup>9</sup> A briefing summarising the interim results was produced in October 2017.<sup>10</sup>

This Cost of Non-Europe report specifically focuses on EU action and cooperation in the fight against terrorism.

It seeks to answer the following questions:

1. What is the current state of play, and what are the gaps and barriers in European cooperation and action, in the fight against terrorism, in accordance with the EU Treaties and within the competence of the LIBE Committee of the European Parliament?
2. What is the impact of the current gaps and barriers in action and cooperation at EU level?
3. What are the options for action at EU level that could address the gaps and barriers identified, and what are their potential costs and benefits?

This study concentrates on the policy and law-making process in the fight against terrorism, counter-radicalisation policies, disruption of terrorist financing, information sharing, judicial cooperation and cooperation with EU agencies. However, EU measures

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<sup>5</sup> W. van Ballegooij, T. Evas, [An EU mechanism on democracy, the rule of law and fundamental rights](#), EPRS, European Parliament, October 2016.

<sup>6</sup> W. van Ballegooij, [The Cost of Non-Schengen: Civil Liberties, Justice and Home Affairs aspects](#), EPRS, European Parliament, September 2016.

<sup>7</sup> W. van Ballegooij, T. Zandstra, [The Cost of Non-Europe in the area of Organised Crime and Corruption](#), EPRS, European Parliament, March 2016.

<sup>8</sup> W. van Ballegooij, [The Cost of Non-Europe in the area of Procedural Rights and Detention Conditions](#), EPRS, European Parliament, December 2017.

<sup>9</sup> W. van Ballegooij with J. Moxom, [The Cost of Non-Europe in the area of Equality and the Fight against Racism and Xenophobia](#), EPRS, European Parliament, March 2018.

<sup>10</sup> W. van Ballegooij, [Area of freedom, security and justice: untapped potential](#), EPRS, European Parliament, October 2017.

concerning victims of terrorism and terrorism suspects are not treated in depth, as they are covered by other studies recently commissioned by the European Parliament and produced by the European Parliamentary Research Service (EPRS), feeding into an implementation report on the Victims' Rights Directive.<sup>11</sup> It should also be noted that some defence and security expenditure is also intended to combat terrorism.<sup>12</sup>

In terms of methodology, this study relies mainly on desk research, which includes comparative studies on Member States' legal systems, and reports on their implementation of relevant EU law. EPRS also commissioned a research paper from RAND, which reviewed the gaps and barriers in EU action and cooperation in the fight against terrorism, assessed economic and non-economic impacts on individuals and society of terrorism and counterterrorism measures. The same research paper identified and analysed possible options for addressing the more prominent gaps and barriers. The RAND research paper is annexed to this Cost of Non-Europe report.

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<sup>11</sup> The [Victims Rights Directive 2012/29/EU, European Implementation Assessment](#), EPRS, European Parliament, December 2017; [How can the EU and the Member States better help the victims of terrorism?](#), Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, September 2017; [EU and Member States' policies and laws on persons suspected of terrorism-related crimes](#), Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, December 2017; Report on the implementation of Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime(2016/2328(INI)), European Parliament.

<sup>12</sup> W. Hiller, ed., [Mapping the Cost of Non-Europe, 2014-19 - Fourth edition](#), EPRS, European Parliament, December 2017, p. 170.

## Executive summary

In the wake of terrorist attacks in Europe, preventing radicalisation, protecting the general public against attacks, assisting the victims, effectively investigating, prosecuting the perpetrators, and upholding the values of democracy and freedom, remain among EU citizens' key concerns.<sup>13</sup>

European Union action in the fight against terrorism often further implements measures taken at the level of international organisations, such as the United Nations (UN) and the Council of Europe. The mandate for Union action is provided by Article 67 of the Treaty on the Functioning of the European Union (TFEU) to ensure a 'high level of security through measures to prevent and combat crime'. Such measures and actions should be taken in compliance with the Union's fundamental rights framework including the Charter of Fundamental Rights of the European Union. However, EU Member States retain responsibility for national security and operational counterterrorism efforts. The line between EU and national competence is therefore not always clear, underlining the importance of cooperation between the two governance levels.

The EU fights terrorism through:

- Supporting national measures and exchanges on best practices to combat radicalisation and recruitment through the Radicalisation Awareness Network;
- Measures to strengthen the fight against terrorist financing;
- Measures to control the acquisition and possession of weapons and explosives;
- Measures aimed at enhancing security at the Union's external borders, with the recent establishment of the European Border and Coast Guard, the introduction of systematic checks of EU citizens entering EU territory and a new system for entry and exit checks on non-EU nationals travelling to the EU;
- Supporting operational cooperation between national law enforcement authorities through:
  - EU agencies (notably Europol, the EU agency for law enforcement training (CEPOL) and Eurojust);
  - databases (including the Schengen Information System, Visa Information System, Prüm (DNA, licence plate numbers) and Passenger Name Records);
  - cooperation tools (Joint Investigation Teams, European Arrest Warrant, European Investigation Order); as well as
  - harmonising terrorism-related provisions in criminal law and procedure, including as regards assistance to victims of terrorism and their families as soon as they have been identified and throughout criminal proceedings; and
- Cooperation with third countries and international organisations through liaison officers at and from EU agencies, in accordance with specific agreements.

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<sup>13</sup> J. Nancy, [Major changes in European public opinion regarding the EU](#), Public Opinion Monitoring series, Directorate-General for Communication, European Parliament, November 2016.

A number of these measures are geared specifically toward the fight against terrorism, others have a wider scope that also includes the fight against other, and at times linked, serious crimes with a cross-border dimension, such as attacks against information systems, money laundering, and offences related to corruption.

European Commission reports (notably a recent comprehensive assessment of EU Security Policy);<sup>14</sup> the Counter-Terrorism Coordinator, Gilles de Kerchove;<sup>15</sup> European Parliament resolutions;<sup>16</sup> and EU agency contributions; as well as external evaluations of counterterrorism measures, such as a recent study commissioned by the European Parliament on the relevance, coherence and effectiveness of the Union's policies on counterterrorism;<sup>17</sup> nevertheless point to a number of outstanding gaps and barriers in EU cooperation and action in the fight against terrorism. These gaps concern:

- the accountability and oversight of – and the evidence-base for – policy- and law-making;
- the evidence base for – and fundamental rights compliance of – counter-radicalisation programmes;
- the scope of action related to the disruption of terrorist financing;
- information sharing between Member States through various EU and national databases, in part due to the complex architecture of these databases and the lack of their interconnection due to legal and technical limitations and a degree of unwillingness among national authorities to share information;
- the awareness and use made of judicial cooperation tools; and
- the use made of the (analytical) support and coordination possibilities by EU agencies.

Besides the impact on victims and their families, terrorism has a negative effect on the wellbeing of the population as a whole, affecting people's life satisfaction, happiness, health, trust within communities and in national political institutions. This Cost of Non-Europe report argues that since 2004, terrorism has cost the EU about €185 billion in lost Gross Domestic Product (GDP) and around €5.6 billion in lost lives, injuries, and damage to infrastructure. It is argued that terrorism also harms trade, foreign direct investment,

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<sup>14</sup> Comprehensive Assessment of EU Security Policy, [Part 1](#) and [Part 2](#), SWD(2017) 278 final, European Commission, July 2017.

<sup>15</sup> Website of the [Counter-Terrorism Coordinator](#).

<sup>16</sup> European Parliament resolution of 14 December 2011 on the EU Counterterrorism Policy: main achievements and future challenges, [P7\\_TA\(2011\)0577](#); European Parliament resolution of 11 February 2015 on anti-terrorism measures, [P8\\_TA\(2015\)0032](#); European Parliament resolution of 9 July 2015 on the European Agenda on Security, [P8\\_TA\(2015\)0269](#); European Parliament resolution of 25 November 2015 on the prevention of radicalisation and recruitment of European citizens by terrorist organisations, [P8\\_TA\(2015\)0410](#); European Parliament resolution of 16 February 2017 on improving the functioning of the European Union building on the potential of the Lisbon Treaty, [P8\\_TA-\(2017\)0049](#).

<sup>17</sup> W. Wensink et al., [The European Union's Policies on Counterterrorism: Relevance, Coherence and Effectiveness](#), Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, February 2017.

and tourism (with immediate but often short-lived consequences in this latter respect), as well as transport. Inversely, the defence sector has benefited.

In recent years, the EU counterterrorism budget has risen significantly, as illustrated by the €4 billion in commitments and €3 billion in payments allocated to the Commission's Security and Citizenship programme in 2016. Finally, it is argued that certain measures taken in the fight against terrorism have had a disproportionate impact on suspects and wider groups within society, in violation of fundamental rights, as well as being counterproductive.

This Cost of Non-Europe report argues that EU action could address effectiveness and fundamental rights protection gaps in counterterrorism policies by:

- developing an evidence-based EU criminal policy cycle involving the European Parliament and national parliaments. In this context, EU institutions should conduct complete ex-ante assessments and ex-post evaluations of counterterrorism measures, in line with their better regulation commitments;
- monitoring the effectiveness and fundamental rights compliance of counter-radicalisation programmes;
- further refining the framework for countering terrorist financing;
- fostering a European law enforcement culture, so that relevant information is shared and analysed, judicial cooperation tools are utilised, and seeking the support of EU agencies becomes a natural reflex. This also requires adequate training and funding at national level.

## 1. State of play, gaps and barriers in EU action and cooperation in the fight against terrorism

### Key findings

European Union action to combat terrorism often further implements measures taken at the level of international organisations, such as the UN and the Council of Europe, aiming at ensuring a 'high level of security'. However, Member States retain responsibility for national security and operational counterterrorism efforts, which should nevertheless comply with the Union's fundamental rights framework.

The EU fights terrorism through:

- support for national measures and exchanges on best practices to combat radicalisation and recruitment;
- stronger measures against terrorist financing;
- measures to control the acquisition and possession of weapons and explosives;
- measures aimed at enhancing security at the Union's external borders;
- support for operational cooperation between national law enforcement authorities through EU agencies, databases, and cooperation tools, as well as harmonising terrorism-related provisions in criminal law and procedure, including as regards assistance to victims of terrorism and their families; and
- cooperation with third countries and international organisations.

A number of outstanding gaps and barriers in EU cooperation and action in the fight against terrorism remain, notably regarding:

- accountability, oversight and evidence-based policy- and law-making;
- evidence base for – and fundamental rights compliance of – counter-radicalisation programmes;
- scope of action related to the disruption of terrorist financing;
- information sharing between Member States through various EU and national databases, in part due to the complex architecture of these databases and the lack of their interconnection due to legal and technical limitations, paired with the unwillingness of national authorities to share information;
- awareness and use made of judicial cooperation tools; and
- use made of the (analytical) support and coordination capabilities of EU agencies.

Terrorist attacks across the EU have led to security becoming one of EU citizens' key concerns, and the issue taking an increasingly prominent place in national and EU policy-making.<sup>18</sup> In most Member States, law enforcement activities have clearly focused

<sup>18</sup> See [Europeans in 2016: Perceptions and expectations, the fight against terrorism and radicalisation](#), Special Eurobarometer of the European Parliament, April 2016.

on jihadist<sup>19</sup> groups and individuals, as illustrated by 718 of 1 002 arrests for terrorist offences across the EU in 2016 related to jihadist violent extremism. According to Europol, in the same year, jihadist attacks accounted for almost all reported terrorism-related fatalities and most of the casualties.<sup>20</sup>

Whereas the terrorism threat as such is not new to the EU, it has evolved over recent decades.<sup>21</sup> The emergence of jihadism as a major security concern marks a shift from essentially non-religious terrorism, mostly restricted to specific Member States, which defined the security landscape of the EU for many decades, towards one that instrumentalises religion and often has a cross-border dimension.<sup>22</sup> However, other forms of terrorism also persist in Europe, including ethno-nationalist and separatist, left-wing and anarchist, right-wing and single-issue terrorism.<sup>23</sup> In fact, in 2016, individuals of separatist affiliation were responsible for the majority of failed, foiled and completed terrorist attacks across the EU.<sup>24</sup>

It is important to note that not all acts of political violence or hate crimes meet the requirements of the definition of terrorism<sup>25</sup> and can be qualified as such, because terrorist intent is not always easily established. Asylum seekers and migrants are among the victims of such acts and, according to the EU Fundamental Rights Agency (FRA), violence targeting these groups remains pervasive across the EU.<sup>26</sup> In 2015, in one Member State, there were over 1 000 arson attacks on refugee accommodation, a trend that continued in 2016, with such incidents taking place every three days. Whereas it is not clear how many perpetrators were affiliated or inspired by extreme right-wing

<sup>19</sup> 'Jihadist terrorism' is a term used by Europol in its TE-SAT reports to describe 'the terror inflicted by groups and individuals who, based on "selectively sampled holy texts, mythologised historical examples, conspiracy theories, prejudice and circular argument", along with anti-western sentiments, anti-Semitism and homophobia, commit crimes against the general population, including fellow Muslims, in the name of Islam'. It has replaced other terms previously used by Europol, such as 'religiously-inspired terrorism' and 'Islamist terrorism'.

<sup>20</sup> The [European Union Terrorism Situation and Trend Report \(TE-SAT\) 2017](#), Europol, p. 10.

<sup>21</sup> Nor is its current scale unprecedented. A recent study indicates that over the past 46 years, the overall frequency, number and potency (the total number of individuals killed or injured) of terrorist attacks has declined in the 10 EU Member States examined. The study, which covers the 1970-2016 period, draws on the Global Terrorism Database, an open-source database including information on terrorist events around the world from 1970 to 2016. It shows that, out of the 15 484 terrorist attacks recorded in 10 EU Member States between 1970 and 2016, 83 % were conducted prior to 2000. See [EU and Member States' policies and laws on persons suspected of terrorism-related crimes](#), Policy Department for Citizens' Rights and Constitutional Affairs, December 2017, pp 25-29.

<sup>22</sup> Ibid. p. 27.

<sup>23</sup> The European Parliament has stressed in this regard that the prevention of radicalisation and recruitment of European citizens by terrorist organisations should not be limited to Islamic radicalisation, but should also consider other threats. See European Parliament [resolution](#) of 25 November 2015 on the prevention of radicalisation and recruitment of European citizens by terrorist organisations (2015/2063(INI)).

<sup>24</sup> [TE-SAT report 2017](#), Annex 1, Europol, p. 49.

<sup>25</sup> [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, OJ L 88, 31 March 2017, p. 6-21., articles 3-12; [Council Framework Decision 2008/913/JHA](#) of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law, OJ L 328, 6 December 2008, p. 55-58, articles 1,2 and 4.

<sup>26</sup> Cf. W. van Ballegooij with J. Moxom, [The Cost of Non-Europe in the area of Equality and the Fight against Racism and Xenophobia](#), EPRS, European Parliament, March 2018.

ideology, the danger of emerging right-wing terroristic structures is reportedly growing.<sup>27</sup> Meanwhile, attacks carried out by left-wing violent extremists have also been on the rise since 2014.<sup>28</sup>

Member States have addressed the evolving terrorism threat, gradually forging a collective response to terrorism at EU level. Historically, EU action has been largely crisis-driven and thus characterised by intensive activities in the direct aftermath of terrorist attacks, followed by periods of limited involvement. This, combined with the successive treaty reforms, led to creating a complex and fragmented legal and policy framework. The EU and the Member States share competence over the field and EU structures co-exist with parallel bilateral and informal structures (discussed further in section 1.2.).

### **1.1. International standards**

The EU is not the only forum of international cooperation on counterterrorism. Instruments adopted by international organisations and bodies – and implemented by the EU, have largely impacted the EU response to terrorism. The United Nations (UN); the Financial Action Task Force (FATF), an informal body set up by the G7; and the Council of Europe; stand out as the principal fora for international cooperation in the field.

Nineteen universal instruments addressing terrorism have been elaborated within the UN framework,<sup>29</sup> and in 2006, the United Nations Global Counterterrorism Strategy was agreed to guide UN Members' efforts in this field.<sup>30</sup> The UN has set standards on preventing and combating terrorism, including criminal law measures and tools to address terrorist financing. UN measures not only act through international conventions, such as the 1999 International Convention for the Suppression of the Financing of Terrorism, but also through resolutions adopted by the UN Security Council (UNSC), based on Chapter VII of the UN Charter.<sup>31</sup> Resolution 2178 (2014), which specifically addressed the issue of foreign fighters, was one such instrument that obliges UN Members to adopt criminal law measures.<sup>32</sup> The resolution called on UN Members to make travel or attempt to travel abroad for terrorist purposes, or in order to

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<sup>27</sup> [Current migration situation in the EU: hate crime](#), European Union Agency for Fundamental Rights, November 2016, p. 7.

<sup>28</sup> [TE-SAT report 2017](#), Europol, p. 42.

<sup>29</sup> [International Legal Instruments](#), United Nations Office of Counterterrorism, 17 May 2018.

<sup>30</sup> [Global Counterterrorism Strategy](#), United Nations, 2006.

<sup>31</sup> [International Convention for the Suppression of the Financing of Terrorism](#); [United Nations Charter, Chapter VII](#): Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression, 1945.

<sup>32</sup> [Resolution 2178 \(2014\)](#) was initially inspired by international good practices on foreign fighters issued by the Global Counterterrorism Forum, of which the EU is a founding member. Following the Paris attacks of November 2015, the UN Security Council adopted [Resolution 2249\(2015\)](#), urging 'Member States to intensify their efforts to stem the flow of foreign terrorist fighters to Iraq and Syria and to prevent and suppress the financing of terrorism'. It also called for a further update of the 1267 Committee sanctions list (see footnote 34), to counter the threat posed by ISIL/Da'esh.

provide or receive terrorist training, a criminal offence. In the EU, the resolution was implemented by the 2017 Directive on combating terrorism.<sup>33</sup>

A series of UNSC resolutions provided for freezing assets and imposing travel bans and arms embargos on persons and entities designated by the UNSC.<sup>34</sup> In addition, UN Members were requested to take all necessary domestic measures to criminalise support of terrorism and to establish their own sanctions systems. The EU has acted accordingly, implementing UNSC sanctions and setting up its own autonomous regime of counterterrorist restrictive measures.<sup>35</sup> The EU instruments have been challenged in courts as illustrated by the *Kadi* case law<sup>36</sup> of the Court of Justice of the EU (CJEU) which addressed the legality of asset freezing measures implementing the UNSC resolutions. The Court concluded that respect for fundamental rights (such as the right of the defence) lies at the very foundation of the EU legal order and their protection should be guaranteed irrespective of the EU's international obligations.<sup>37</sup>

The UN asset freezing measures are one element of international efforts to address terrorist financing which started in the 1980s and developed exponentially after 9/11.<sup>38</sup> One of the effects of the political momentum following the World Trade Center attacks was the extension of the international anti-money laundering (AML) regime to terrorist financing.

The FATF is arguably the leading international standard-setter in this field. This inter-governmental body issues AML recommendations, which also cover terrorist financing. They have been revised several times, including the 2015 revision that incorporated UNSC Resolution 2178 addressing the financing of travel to conflict zones. Although not legally binding, the FATF recommendations are recognised and implemented by many countries around the world. In the EU they have been implemented through successive AML directives.<sup>39</sup>

<sup>33</sup> S. Voronova, [Combating terrorism](#), EU Legislation in Progress, EPRS, September 2017.

<sup>34</sup> The list was first introduced in 1999, initially focusing on Taliban-controlled Afghanistan, ([resolution 1267 \(1999\)](#)) and then including a broader range of individuals and entities connected to Al-Qaida ([resolution 1333\(2000\)](#)). The UNSC [resolution 2253 \(2015\)](#) renamed the list as the 'ISIL (Da'esh) and Al-Qaida Sanctions List', in order to add individuals and entities supporting ISIL/Da'esh.

<sup>35</sup> C. Cirlig, [Counter-terrorist sanctions regimes, Legal framework and challenges at UN and EU levels](#), EPRS, European Parliament, October 2016.

<sup>36</sup> The *Kadi I* (Joined Cases C-402/05 P and C-415/05), *Kadi II* (T-85/09, *Kadi v European Commission* of 30 September 2010) and *Kadi III* (Joined Cases C-584/10 P, C-593/10 P and C-595/10 of 18 July 2013) judgments.

<sup>37</sup> D. Bigo, S. Carrera, N. Hernanz and A. Scherrer, [National Security and Secret Evidence in Legislation and before the Courts: Exploring the Challenges](#), CEPS, January 2015, pp. 36-39.

<sup>38</sup> M. Wesselink, [Evaluation of EU measures to combat terrorism financing](#), Policy Department for Citizen Rights and Constitutional Affairs, European Parliament, 2014, p. 9. Terrorism financing has been addressed as part of 'follow-the-money' strategies, as financial investigations, i.e. enquiries into financial affairs related to criminal conduct, have come to be recognised as crucial to identifying criminal networks, tracing the proceeds of crime subject to confiscation and developing evidence which can be used in criminal proceedings. See A. Scherrer, [Law enforcement access to financial data](#), Implementation Appraisal, EPRS, European Parliament, April 2018 and P. Bakowski, [Combating money laundering EU law in an international context](#), EPRS, European Parliament, October 2012.

<sup>39</sup> The EU plays a double role with regard to these standards, as it participates in their inception owing to the Commission's membership in FATF, and also implements them through EU law.

In Europe, legal standards on law enforcement and human rights aspects of counterterrorism have been developed through both legislative and non-legislative activities of the Council of Europe (CoE).<sup>40</sup> Notably, the CoE has adopted several major international conventions in this field.

One of these is the 2005 Convention on the Prevention of Terrorism, which defines several specific terrorist offences. An Additional Protocol to this convention, addressing the phenomenon of foreign terrorist fighters was adopted in 2015.<sup>41</sup> The Convention and the Protocol criminalise a range of activities similar to those dealt with in the UNSC resolutions, providing yet another legal basis in international law for EU counterterrorism action. The EU signed these instruments in 2015 and is in the process of adoption.<sup>42</sup>

The 2001 Convention on Cybercrime (known as the Budapest Convention)<sup>43</sup> is another CoE instrument, not focused specifically on terrorism, but nevertheless relevant to counterterrorism efforts. The offences defined by the Convention may be carried out to facilitate and support terrorism, including financially, or as preparatory acts. Moreover, the Convention's mutual legal assistance tools can be used in terrorism-related investigations and prosecutions.<sup>44</sup> Discussions are now underway at both the CoE and the EU levels concerning cross-border access to electronic evidence, which is relevant for combating cybercrime and terrorism. The problem is to be addressed, on the one hand, by the currently negotiated 2nd Additional Protocol to the CoE Budapest Convention and, on the other hand, by proposed EU legislation regulating such access.<sup>45</sup>

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<sup>40</sup> Non-legislative activities include the 2002 [Guidelines of the Committee of Ministers of the Council of Europe on human rights and the fight against terrorism](#), the 2005 [Guidelines on the Protection of Victims of Terrorist Acts](#), and [The fight against violent extremism and radicalisation leading to terrorism – action plan](#) of 2015; see [legislationonline.org](#), consulted on 17 May 2018. Moreover, the CoE has set up the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL), a permanent monitoring body assessing compliance with the main international (not only CoE) standards in countering money laundering and terrorism financing.

<sup>41</sup> [Convention on the Prevention of Terrorism](#), 2005; [Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism](#), 2015; See also [The fight against violent extremism and radicalisation leading to terrorism - action plan](#), 2015.

<sup>42</sup> [Proposal for a Council decision on the conclusion, on behalf of the European Union, of the Council of Europe Convention on the Prevention of Terrorism](#) (procedure file 2017/0265(NLE)) and [Proposal for a Council Decision on the conclusion, on behalf of the European Union, of the Additional Protocol supplementing the Council of Europe Convention on the Prevention of Terrorism](#) (2017/0266(NLE)). In April 2018, the Parliament gave its consent to the conclusion of the Convention and the Additional Protocol.

<sup>43</sup> [Convention on Cybercrime](#), Council of Europe, 2001. See also [Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems](#), Council of Europe, 2003 (see in particular Articles 4 and 6).

<sup>44</sup> [T-CY Guidance Note #11: Aspects of Terrorism covered by the Budapest Convention](#), Cybercrime Convention Committee (T-CY), November 2016.

<sup>45</sup> [Terms of Reference for the Preparation of a Draft 2nd Additional Protocol to the Budapest Convention on Cybercrime](#), Cybercrime Convention Committee (T-CY); A [proposal](#) for Regulation on cross-border access to e-Evidence and a [proposal](#) for Directive on appointing a Legal Representative; See also S. Voronova, [Improving cross-border access to electronic evidence in criminal matters](#), Legislative Train Schedule, European Parliament, 2018.

The provisions of the European Convention on Human Rights (ECHR) are also relevant to counterterrorism. The Convention established the European Court of Human Rights (ECtHR), to which individuals who have exhausted domestic remedies may have recourse against their own state regarding claims of violations of Convention rights (described in more detail in the Cost of non-Europe report on procedural rights and detention conditions).<sup>46</sup> The ECtHR has developed a substantial body of jurisprudence related to counterterrorism measures concerning breaches of specific articles of the Convention.<sup>47</sup> Several Member States have been accused and convicted of torture, due to their complicity in the United States' Central Intelligence Agency's (CIA) extraordinary rendition and secret detention of terrorism suspects programme.<sup>48</sup> For several years, this programme has been under concurrent investigation by the Parliamentary Assembly of the CoE and the European Parliament with a view to ensuring accountability for the human rights violations committed, redress for the victims, and establishment of safeguards to prevent future abuses.<sup>49</sup>

## **1.2. EU action and cooperation**

### **1.2.1. Counterterrorism in post-Lisbon environment**

As described above, when addressing terrorism, the EU operates in a legal and policy context determined by a range of international bodies. In addition, the boundaries of EU action are defined by the fact that the Member States remain primarily responsible for maintaining national security. The EU Treaties include express guarantees in this respect. Under Article 4 TEU, the EU is obliged to respect the essential State functions that include 'safeguarding national security'. Article 72 TFEU further specifies that the provisions on the Area of Freedom, Security and Justice (AFSJ) do not affect the exercise of national responsibilities regarding 'the maintenance of law and order and the safeguarding of internal security'. Nevertheless, the Union is also obliged to 'endeavour to ensure a high level of security' through measures described in Article 67(3) TFEU.

It is true that under the Treaty of Lisbon, the AFSJ is an area of shared competences, which means that Member States may legislate only to the extent that the EU has not exercised its competences. In the AFSJ, however, the principle of attributed competences is applied rigorously: the areas of EU action are specifically defined and the Treaty even lists the specific instruments that may be used. The EU therefore has no generic

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<sup>46</sup> W. van Ballegooij, [The Cost of Non-Europe in the area of Procedural Rights and Detention Conditions](#), EPRS, European Parliament, December 2017.

<sup>47</sup> [Terrorism and the European Convention on Human Rights](#), European Court of Human Rights, February 2018.

<sup>48</sup> Judgments *Al Nashiri and Husayn (Abu Zubaydah) v Poland*, *Nasr and Ghali v Italy*, *Al Nashiri v Romania*, and *Abu Zubaydah v Lithuania*.

<sup>49</sup> [Timeline: the Council of Europe's investigations into CIA secret prisons in Europe](#), Parliamentary Assembly of the Council of Europe; [Resolution](#) on follow-up to the European Parliament resolution of 11 February 2015 on the US Senate report on the use of torture by the CIA; D. Bigo et al., [A quest for accountability? EU and Member State inquiries into the CIA Rendition and Secret Detention Programme](#), Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, September 2015.

competence to harmonise national legislation in order to achieve a certain goal as is the case e.g. for the internal market.<sup>50</sup>

The above institutional context cannot be ignored when assessing EU counterterrorism efforts. Moreover, any such assessment needs to take due account of the possibilities and obligations resulting from the Lisbon Treaty and the outcome of 'better law-making' reforms.

The abolition of the pillar structure, the enhanced legislative powers of the European Parliament and enforcement powers of the Commission, as well as the extended jurisdiction of the Court of Justice of the EU (CJEU), are among the major innovations introduced by the Lisbon Treaty, which consolidated and reinforced the AFSJ.<sup>51</sup> In addition, the Treaty considerably strengthened the protection of fundamental rights in the EU, as the Charter of Fundamental Rights became binding for the EU institutions and Member States implementing EU law. The meaning and scope of the rights defined by the Charter are the same as corresponding rights laid down by the ECHR, with a possibility for the EU to provide a more extensive protection. Moreover, as required by the Lisbon Treaty,<sup>52</sup> the EU is now in the process of acceding to the ECHR, delayed, however, by the CJEU rejection of the draft agreement on the accession as incompatible with the Treaties.<sup>53</sup>

One could argue that the 'Europeanisation' of justice and home affairs is a recent development: the Lisbon Treaty was adopted in 2009 and the transitional period for third pillar measures came to an end only in December 2014. It is also true that the AFSJ provisions are not the only legal basis for EU counterterrorism, as those are scattered

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<sup>50</sup> No equivalent to Article 114 TFEU exists, and where there are similar provisions, they tend to concern a particular area and operate by way of unanimity. See Stephen David Coutts, [The Lisbon Treaty and the Area of Freedom, Security and Justice as an area of legal integration](#), Croatian Yearbook of European Law and Policy, vol. 7, 2011, pp 97-99.

<sup>51</sup> The Treaty provisions relevant to counterterrorism now cover: judicial cooperation in criminal matters (including harmonisation of criminal laws); police cooperation; policies on border checks, asylum and immigration, as well as preventing and combating terrorism by means of regulations on administrative measures regarding capital movements and payments, including the freezing of funds, owned or held by natural or legal persons, groups or non-State entities (Article 75 TFEU).

<sup>52</sup> The Lisbon Treaty imposed a legal obligation on the EU to accede to the ECHR, formulated in Article 6(2) TEU which states that '(t)he Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such accession shall not affect the Union's competences as defined in the Treaties'.

<sup>53</sup> The CJEU held, among other things, that EU accession based on the draft agreement could undermine the principle of mutual trust, highly relevant in the AFSJ context. According to the CJEU, under this principle Member States may not demand a higher level of national protection of fundamental rights from other Member States than that provided by EU law. The ECHR would in turn require that the Member State implementing EU law (e.g. executing a European Arrest Warrant) check that other Member States have actually observed fundamental rights. This, in the CJEU view, is contrary to the obligation of mutual trust and is thus liable to undermine the autonomy of EU law. Some commentators, however criticised the Court's position in this respect, see e.g. S. Peers, [The CJEU and the EU's accession to the ECHR: a clear and present danger to human rights protection](#), December 2014. The author considers the CJEU's approach as contrary to Article 67(1) TFEU under which 'the Union shall constitute an area of freedom, security and justice with respect for fundamental rights ...'. See also R. Maňko, [EU accession to the European Convention on Human Rights \(ECHR\)](#), EPRS, European Parliament, July 2017.

across the whole range of areas, including the internal market and common security and defence policy (CSDP).<sup>54</sup> However, terrorism is first and foremost a crime that needs to be addressed by law enforcement authorities within the context of the EU's democratic societies based on the rule of law and in compliance with fundamental rights obligations. It therefore seems evident that the AFSJ objectives and underlying principles are an inescapable point of reference when judging the coherence and legitimacy of EU counterterrorism action. Notably, most counterterrorism measures do impact some of the Charter rights, and therefore need to be assessed against the Charter. The CJEU jurisprudence on the fundamental rights implications of instruments addressing terrorism (or crime in general) attests to the bolstering of the position of fundamental rights in the post-Lisbon legal framework (see section 1.3.1. below).

As the AFSJ is a shared competence, EU cooperation and action must comply with the subsidiarity principle (Article 5 TEU), which includes considerations of its added value. Closely related to this is the consideration of proportionality, requiring the intensity of EU intervention to be commensurate with the aim pursued. Article 52 (1) of the Charter provides another dimension to this principle, as it requires that limitations of rights may only be made if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others (beyond the general requirement for the limitation to be established by law and respect the essence of the right concerned).

Through their commitment to better law-making, the EU institutions seek to ensure more relevant, coherent, effective and efficient action at EU level, including in the area of counterterrorism. The main tools are stakeholder consultations and impact assessments accompanying Commission proposals, as well as evaluations of the transposition and implementation of EU measures.<sup>55</sup> In that context, one of the elements to be assessed is the compliance of counterterrorism measures with fundamental rights. It is argued in this respect that the protection of fundamental rights should be a key criterion for evaluation when planning and implementing counterterrorism policy.<sup>56</sup>

### **1.2.2. EU policy and legislative framework on counterterrorism**

Whereas in 2005, the EU adopted a specific counterterrorism strategy,<sup>57</sup> counterterrorism remains part of a broader EU security architecture. Policy-making in this area has

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<sup>54</sup> The EU anti-money-laundering legislation being one example.

<sup>55</sup> The EU [better regulation guidelines](#) state that better regulation means ensuring that 'political decisions are prepared in an open, transparent manner, informed by the best available evidence and backed by the comprehensive involvement of stakeholders'. In the same vein, the 2016 [Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making](#) stresses the need for high-quality legislation and well-informed policy-making, which normally includes impact assessments, stakeholder consultation and an ex-post evaluation of existing legislation. The Agreement also requires that the Commission explain in its proposals' explanatory memoranda how the proposed measures are compatible with fundamental rights.

<sup>56</sup> [EU Counter terrorism policy](#), European Economic and Social Committee opinion, May 2011.

<sup>57</sup> The [European Union counterterrorism strategy](#), Council of the European Union, 2005.

therefore also been influenced by other overarching strategies. One of them – the 2015 European agenda on security<sup>58</sup> – identifies terrorism as one of the three priority areas for EU security, together with organised crime and cybercrime. In the context of the agenda's implementation, the idea has emerged that 'the EU and its Member States need to move beyond the concept of cooperating to protect national internal security to the idea of protecting the collective security of the Union as a whole'.<sup>59</sup> In this vein, the Commission has regularly reported on the progress made towards a genuine and effective 'Security Union'.

In addition, sub-strategies deal with specific aspects of counterterrorism, such as the 'strategy for combating radicalisation and recruitment to terrorism', adopted in 2005 and updated in 2008 and 2014.<sup>60</sup> The coexistence of numerous strategies is a challenge for the coherence of this policy field.<sup>61</sup>

The 2005 counterterrorism strategy is based on four 'pillars' consisting respectively of:

- preventing people from turning to terrorism by tackling the factors or root causes which can lead to radicalisation and recruitment (Prevent);
- protecting citizens and infrastructure and reducing vulnerability to attack (Protect);
- pursuing terrorists across borders, cutting off their support bases and financing (Pursue); and
- managing and minimising the consequences of terrorist attacks and assisting victims (Respond).

Numerous instruments have been adopted under the four pillars of the strategy, for which the EU has used a plethora of available legal bases, the coexistence of which is an important feature of the EU counterterrorism legal framework. A number of these measures are geared specifically toward combating terrorism, others have a wider scope, including the fight against other, and at times linked, phenomena, such as organised crime and corruption.<sup>62</sup> The EU counterterrorism action has therefore come to include the following activities and instruments aimed at preventing, protecting against, pursuing and responding to terrorism:

- support for national measures and exchanges on best practices to combat radicalisation and recruitment, mainly through the Radicalisation Awareness Network (RAN);<sup>63</sup>

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<sup>58</sup> [European agenda on security](#), European Commission, 2015.

<sup>59</sup> Communication on [delivering on the European agenda on security to fight against terrorism and pave the way towards an effective and genuine Security Union](#), European Commission, COM(2016) 230 final, 2016.

<sup>60</sup> [Revised EU strategy for combating radicalisation and recruitment to terrorism](#), Council of the European Union, 2014.

<sup>61</sup> Wensink et al., 2017, pp 45-48.

<sup>62</sup> See W. van Ballegooij and T. Zandstra, [The Cost of non-Europe in the area of Organised Crime and Corruption](#), EPRS, European Parliament, March 2017.

<sup>63</sup> Cf. website on [the RAN](#), Directorate General for Migration and Home Affairs, European Commission.

- measures to strengthen the fight against terrorist financing including through instruments aimed at preventing money-laundering, such as the EU anti-money-laundering (AML) directives and other instruments, including those proposed by the Commission in December 2016;<sup>64</sup>
- measures to control the acquisition and possession of weapons and explosives;<sup>65</sup>
- instruments aimed at enhancing security at the Union's external borders, including the introduction of systematic checks of EU citizens entering EU territory against relevant databases and a new system for entry and exit checks of non-EU nationals travelling to the EU, as well as the recently established European Border and Coast Guard;<sup>66</sup>
- support for operational cooperation between national law enforcement authorities through EU agencies, including Europol<sup>67</sup> (notably the European Counter Terrorism Centre (ECTC) created in January 2016, pooling the Agency's counterterrorism capabilities), the EU agency for law enforcement training (CEPOL)<sup>68</sup> and Eurojust;<sup>69</sup>
- action to improve the use of a variety of the existing EU information systems, such as the Schengen Information System (SIS) and Visa Information System (VIS),<sup>70</sup> Prüm (DNA, licence plate numbers),<sup>71</sup> as well as the system of collecting and processing passenger name records (PNR),<sup>72</sup> data for law enforcement purposes;
- Strengthening investigations and prosecutions of terrorist offences, including through joint investigation teams (JITs),<sup>73</sup> the exchange of criminal records (ECRIS),<sup>74</sup> the coordination of the issuing of arrest warrants (EAW)<sup>75</sup> and evidence gathering

<sup>64</sup> e.g. proposals regarding the [harmonisation of criminal sanctions for money laundering, controls on cash entering or leaving the Union](#), and the [mutual recognition of criminal asset freezing and confiscation orders](#).

<sup>65</sup> [Directive \(EU\) 2017/853](#) of the European Parliament and of the Council of 17 May 2017 amending Council Directive 91/477/EEC on control of the acquisition and possession of weapons, OJ L 137, 24 May 2017, p. 22-39.

<sup>66</sup> Further discussed in the Cost of Non-Europe reports on the areas of asylum and border control and visa policy, EPRS, European Parliament, forthcoming.

<sup>67</sup> [Regulation \(EU\) 2016/794](#) of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA, OJ L 135, 24 May 2016, p. 53-114.

<sup>68</sup> Regulation (EU) 2015/2219 of the European Parliament and of the Council of 25 November 2015 on the European Union Agency for Law Enforcement Training (CEPOL) and replacing and repealing Council Decision 2005/681/JHA, OJ L 319, 4 December 2015, p. 1-20.

<sup>69</sup> Consolidated version of the [Eurojust decision](#).

<sup>70</sup> [Schengen, Borders & Visas](#), Directorate General for Migration and Home Affairs, European Commission.

<sup>71</sup> Council Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime, OJ L 210, 6 August 2008, p. 1-11.

<sup>72</sup> Directive (EU) 2016/681 of the European Parliament and of the Council of 27 April 2016 on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime, OJ L 119, 4 May 2016, p. 132-149.

<sup>73</sup> Council Framework Decision of 13 June 2002 on joint investigation teams, OJ L 162, 20 June 2002, p. 1-3.

<sup>74</sup> Council Framework Decision 2009/315/JHA of 26 February 2009 on the organisation and content of the exchange of information extracted from the criminal record between Member States, OJ L 93, 7.4.2009, p. 23-32

<sup>75</sup> Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States - Statements made by certain Member States on the adoption of the Framework Decision, OJ L 190, 18 July 2002, p. 1-20.

(European Investigation Order (EIO))<sup>76</sup> and the support of the European Judicial Network;<sup>77</sup>

- Instruments harmonising terrorism-related provisions in criminal law, such as the newly adopted Directive on Combating Terrorism,<sup>78</sup> and criminal procedure, including as regards assistance to victims of terrorism and their families;<sup>79</sup> and
- Cooperation with third countries and international organisations for example through liaison officers at and from EU agencies and in accordance with international agreements such as the EU-US PNR<sup>80</sup> and EU-US Terrorist Finance Tracking Programme (TFTP) agreements.<sup>81</sup>

### 1.3. Barriers and gaps identified in the effective fight against terrorism

Key gaps and barriers in EU cooperation and action in the fight against terrorism remain in:

- the accountability, oversight and evidence-based policy and law-making;
- the evidence base for – and fundamental rights compliance of – counter-radicalisation programmes;
- the scope of action related to the disruption of terrorist financing;
- Information sharing between Member States through various EU and national databases;
- the awareness and use made of judicial cooperation tools; and
- the use made of the (analytical) support and coordination capabilities by EU agencies.

<sup>76</sup> Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters, OJ L 130, 1 May 2014, p. 1–36.

<sup>77</sup> Council Decision 2008/976/JHA of 16 December 2008 on the European Judicial Network, OJ L 348/130, 24 December 2008.

<sup>78</sup> 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, OJ L 88, 31 March 2017, p. 6–21.

<sup>79</sup> Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, OJ L 315, 14 November 2012, p. 57–73; [The Victims Rights Directive 2012/29/EU, European Implementation Assessment](#), EPRS, European Parliament, December 2017; [How can the EU and the Member States better help the victims of terrorism?](#), Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, September 2017; Report on the implementation of Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime (2016/2328(INI)), European Parliament.

<sup>80</sup> Agreement between the United States of America and the European Union on the use and transfer of passenger name records to the United States Department of Homeland Security, OJ L 215, 11 August 2012, p. 5–14

<sup>81</sup> Agreement between the European Union and the United States of America on the processing and transfer of Financial Messaging Data from the European Union to the United States for the purposes of the Terrorist Finance Tracking Program, O.J. L 195/5 of 27 July 2010.

### 1.3.1. Gaps in accountability, oversight and evidence-based policy and law-making

As already concluded in the report on the Cost of Non-Europe in the area of Organised Crime and Corruption, EU criminal policy preparation is still very much in the hands of the Member States, which raises issues in terms of prioritisation, effectiveness, proportionality and accountability.<sup>82</sup>

The analysis of counterterrorism instruments in place suggests that policy and law-making in this field do not take due account of the principles of better law-making. First, there are limited opportunities for consultation in policy making, as illustrated by only 3 out of 88 counterterrorism legislative initiatives since 2001 being subjected to public consultation. The same goes for ex-ante impact assessments: only one quarter of the legally binding measures in the area adopted since 2001 had been subject to such assessments.<sup>83</sup> The Directive on Combating Terrorism is one striking example of a far-reaching proposal with no impact assessment.<sup>84</sup> The lack of coordinated threat assessments that would feed into long-term strategies is yet another gap in the evidence base of counterterrorism policies.<sup>85</sup>

Furthermore, the transposition, implementation and enforcement of EU measures in the fight against terrorism has so far not been comprehensively evaluated, notably as regards their relevance, coherence, effectiveness, efficiency and compliance with fundamental rights. The Commission did however conduct a comprehensive assessment of EU security policy, which may be viewed as a positive first step.<sup>86</sup>

Compliance with fundamental rights seems particularly problematic. The fact that the Court of Justice has invalidated several EU legal instruments (see the box below) in this field suggests that the EU institutions have persistently failed to take due account of fundamental rights in the process of counterterrorism law- and policy-making.<sup>87</sup> This is a highly topical problem as the EU has continuously debated instruments with potentially serious impact on fundamental rights.<sup>88</sup> Whilst Commission legislative

<sup>82</sup> W. van Ballegooij and T. Zandstra, The [Cost of non-Europe in the area of Organised Crime and Corruption](#), EPRS, European Parliament, March 2017.

<sup>83</sup> W. Wensink et al. 2017. pp 50-51.

<sup>84</sup> The justification for the absence of impact assessment was: 'Given the urgent need to improve the EU framework to increase security in the light of recent terrorist attacks including by incorporating international obligations and standards, this proposal is exceptionally presented without an impact assessment', COM(2015) 625 final, December 2015.

<sup>85</sup> W. Wensink et al. 2017.

<sup>86</sup> Comprehensive Assessment of EU Security Policy, [Part 1](#) and [Part 2](#), SWD(2017) 278 final, European Commission, July 2017.

<sup>87</sup> For a more detailed description of the relevant jurisprudence, see G. González Fuste, [A Security Union in Full Respect of fundamental rights: but how effectively respectful?](#), in S. Carrera and V. Mitsilegas (eds.), *Constitutionalising the Security Union: effectiveness, rule of law and rights in countering terrorism and crime*, CEPS, 2017. The author makes a case for a 'really comprehensive' assessment of the EU internal security that would address the question of whether the measures in place and those in the pipeline are compliant with fundamental rights requirements and involve a detailed and in-depth review of the manner in which compliance is guaranteed.

<sup>88</sup> e.g. proposals on the interoperability of EU information systems.

proposals tend to include standard statements on fundamental rights compliance, they are often not accompanied by detailed assessments of this kind of impact. More generally, a view seems to continue to persist in some EU circles that fundamental rights are an element to be balanced against security, rather than the two being complementary and mutually reinforcing.

**CJEU case law on counter terrorism and fundamental rights**

In its jurisprudence, the CJEU has identified numerous infringements of fundamental rights by counterterrorism measures in force. Examples include the above-mentioned *Kadi* case law, *Digital Rights Ireland* and *Tele2 Sverige* rulings, which declared indiscriminate retention of communications data to be incompatible with EU law,<sup>89</sup> as well as the 2015 *Schrems* ruling invalidating the Commission's adequacy decision on flows of personal data from the EU to the USA.<sup>90</sup>

More recently, in July 2017, the Court declared<sup>91</sup> the proposed EU-Canada Agreement on the transfer and processing of passenger name records incompatible with the Treaties. In particular, the Court stated that certain provisions of the Agreement – such as those on the continued storage of the PNR data of all air passengers after their departure from Canada – were not limited to what is strictly necessary for the purposes of combating terrorism and serious transnational crime.

The EU oversight and accountability mechanisms do not seem to guarantee the systematic protection of fundamental rights in EU counterterrorism action. At present, the European Parliament and other bodies, such as the EU Agency for Fundamental Rights (FRA) do not have sufficient means to influence the way counterterrorism policy is shaped and implemented. The Parliament exercises oversight of AFSJ agencies, such as Eurojust and Europol, hindered, however, by the lack of access to information on their operational activities. In this regard, it is too early to assess the benefits of the recently established Joint Parliamentary Scrutiny Committee set up by the Europol regulation.<sup>92</sup> In general, the Parliament's access to classified information is limited and there are no uniform procedures for EU institutions and agencies to share such information with the

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<sup>89</sup> The Court's *Digital Rights Ireland* ruling (Joined Cases C-293/12 and C-594/12.) that annulled Directive 2006/24/EC (the Data Retention Directive) sent shockwaves throughout law enforcement communities across the EU. The Court considered that the directive 'entails a wide-ranging and particularly serious interference with the fundamental rights to the respect for private life and to the protection of personal data, without that interference being limited to what is strictly necessary'. In another 2016 ruling (*Tele2 Sverige*, joined cases C-203/15 *Tele2 Sverige AB v Post-och telestyrelsen* and C-698/15 *SSHD v Tom Watson & Others*), the CJEU further specified that EU law 'must be interpreted as precluding national legislation which, for the purpose of fighting crime, provides for general and indiscriminate retention of all traffic and location data of all subscribers and registered users relating to all means of electronic communication'.

<sup>90</sup> [Case C-362/14 Maximilian Schrems v Data Protection Commissioner](#), CJEU, 6 October 2015.

<sup>91</sup> [Opinion 1/15 of the Court](#) (Grand Chamber), CJEU, 26 July 2017.

<sup>92</sup> [Regulation \(EU\) 2016/794](#), articles 51-52.

Parliament.<sup>93</sup> Moreover, the Parliament does not have an intelligence committee similar to those within national parliaments.

One way for the Parliament to exercise its oversight functions is by making use of its right of inquiry. However, the investigative powers of the committees of inquiry fall short of the powers of their counterparts in national parliaments with quasi-judicial investigative tools at their disposal. The activities of the EP Committees of inquiry are in fact limited to examination of alleged contraventions and maladministration in the implementation of EU law. This does not include evidence-gathering on general subjects and inquiries into actions by third-country authorities, a limitation remedied by a possibility to set up a 'special committee' for any parliamentary inquiry. Member States and EU institutions and bodies can, and indeed have, refused to collaborate with EP inquiry and special committees on grounds of secrecy or public or national security, as evidenced by the obstacles faced by the Temporary Committee on the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners. Parliament has no recourse to sanctions in the case that authorities and persons refuse to appear before a committee or to give access to relevant documents.<sup>94</sup>

### **1.3.2. Gaps in the evidence base for anti-radicalisation programmes**

Problems in addressing radicalisation pertain to the lack of evidence base for programmes addressing the issue, as well as various obstacles encountered in coordinating activities undertaken at the national level.

In public debate and even policy-making, the phenomenon and process of people embracing opinions, views and ideas that could lead to terrorism are often conflated with having or developing certain orthodox religious and/or what are deemed extreme political views.<sup>95</sup> Radicalisation research, supposed to inform such debates, has received a lot of attention and funding including through EU programmes. Nevertheless, despite its exponential growth in recent years, we still know very little about the actual causes, processes and mechanisms of radicalisation.

It is now common knowledge that the concept of 'radicalisation' hides extremely complex and dynamic phenomena and therefore cannot be solved with an 'easy policy

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<sup>93</sup> Parliament's access to classified information is regulated by Annex II of the 2010 Framework Agreement on relations between the European Parliament and the European Commission, as well as 2002 and 2014 Interinstitutional Agreements with the Council. Members may be granted access to classified information up to the level of EU-CONFIDENTIAL. See [Parliamentary oversight of security and intelligence agencies in the European Union](#), Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, 2011, pp. 67-80.

<sup>94</sup> E.-M. Poptcheva, [Parliament's committees of inquiry and special committees](#), EPRS, European Parliament, July 2016. See in particular pp. 5-6 and 12.

<sup>95</sup> Further discussed in A. Orav, [Religious fundamentalism and radicalisation](#), EPRS, European Parliament, March 2015.

fix'.<sup>96</sup> However, some fundamental questions – such as to what extent radicalisation processes have common features irrespective of the ideology behind them – remain unanswered.<sup>97</sup>

The academic literature on the subject tends to be based on the analysis of single cases with tangible evidence clearly missing.<sup>98</sup> Difficulties in building up such an evidence base are partly due to the lack of conceptual clarity in addressing the issue. It is argued in this respect that differentiating between 'deradicalisation' (a change in perception) and disengagement (a behavioural change) is crucial and has a major impact on how programmes addressing radicalisation are conceived.<sup>99</sup> Whereas a lot of attention has been devoted to the process of becoming radicalised,<sup>100</sup> these two distinct processes may not have been sufficiently analysed.

The structures developed by the EU involve a number of stakeholders and networks. Exchanges through these channels attest to the EU's important role as coordinator, support provider and facilitator. Yet, the dissemination of best practices is not accompanied by mechanisms or reporting obligations that would make it possible to monitor the follow-up and implementation of the policy objectives pursued. As a result, we do not have a precise picture of what is being done at the national level and with what effect.<sup>101</sup> Moreover, according to the Commission, a structured approach is lacking in the coordination of the many programmes, projects and stakeholder groups.<sup>102</sup> Radicalisation experts tend to work in silos, dealing with specific areas (e.g. radicalisation in prison), whereas a cross-cutting response related to the root causes of radicalisation may well be more effective.<sup>103</sup>

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<sup>96</sup> S. Carrera, E. Guild and V. Mitsilegas, [Reflections on the Terrorist Attacks in Barcelona: Constructing a principled and trust-based EU approach to countering terrorism](#), CEPS Policy Insight No. 2017-32, August 2017.

<sup>97</sup> D. Pisoui and R. Ahmed, [Radicalisation Research – Gap Analysis](#), Austrian Institute for International Affairs, published by RAN, December 2016, p 5.

<sup>98</sup> Ibid. pp. 2-3.

<sup>99</sup> J. Horgan, Deradicalization or Disengagement? A Process in Need of Clarity and a Counterterrorism Initiative in Need of Evaluation, *Perspectives on Terrorism*, Vol 2, No 4, 2008; R. Litwak, [Walking Away: Disengagement and De-Radicalization From Terrorism](#), *International Security Studies*, November 2009; See also 'The return of foreign fighters on EU soil, ex post evaluation', EPRS, European Parliament, forthcoming, May 2018.

<sup>100</sup> According to J. Horgan and M. Sageman, two leading experts on radicalisation, the role of radicalisation of individuals as the 'root cause' of terrorism has been largely overestimated. See A. P. Schmid, *The End of Radicalisation?* ICCT, July 2013 and A. P. Schmid, *Radicalisation, De-Radicalisation, Counter-Radicalisation: A Conceptual Discussion and Literature Review*, ICCT Research Paper, March 2013. Schmid proposes to explore radicalisation not only on the micro-level of 'vulnerable individuals', as is often the case, but also on the meso-level of the 'radical milieu' and the macro-level of 'radicalising public opinion and political parties'.

<sup>101</sup> The lack of evaluation contributes to the persisting evidence gap, as noted by the High-Level Commission Expert Group on Radicalisation which stressed, in its December 2017 [interim report](#), the need for more empirical research and the improved pooling and accessibility of relevant research findings as well as a more systematic evaluation of prevent policies and interventions to strengthen the evidence base of EU and Member States actions'.

<sup>102</sup> Comprehensive Assessment of EU Security Policy, [Part 1](#), SWD(2017) 278 final, European Commission, July 2017 p. 22

<sup>103</sup> The annexed research paper by RAND, pp 33-34.

When defining counter-radicalisation policies, one can draw from previous experiences regarding the impact on fundamental rights, including freedom of speech, as well as broader societal impacts of the policies adopted. Programmes that create partnerships between law enforcement and a range of community-based actors, such as teachers and health professionals are a case in point. Such programmes were criticised for an underlying covert purpose of gathering intelligence on the communities in question and having led, as a result, to damaging trust in their relationship with the state.<sup>104</sup> In this vein, it has been suggested that the current approach of the Radicalisation Awareness Network putting communities at the centre of counter-radicalisation is not without risks.<sup>105</sup>

### 1.3.3. Barriers to disrupting terrorist financing

In line with its international obligations, the EU has addressed terrorist financing on the one hand through terrorist asset freezing measures and, on the other hand, through instruments monitoring financial flows, such as the AML legislation and the EU-US Terrorist Finance Tracking Programme (TFTP). The controversies regarding the former have been addressed by CJEU case law described above.

There are also some issues regarding the impact of the system set up by the successive EU AML directives, largely based on the FATF recommendations. The system consists of three elements: the criminalisation of money-laundering and terrorist financing; the prevention of money-laundering through the imposition of a series of duties on the private sector; and the focus on financial intelligence through setting up what are known as the financial intelligence units (FIUs), in charge of receiving and analysing reports from the private sector.<sup>106</sup>

First, the suitability of the AML framework for combating terrorist financing has been questioned ever since the idea of linking the two was initially advanced at the international level. This is due to inherent differences in the nature of money-laundering and terrorist financing activities.<sup>107</sup> Second, the ever-expanding catalogue of 'predicate offences' (offences in relation to which money-laundering is criminalised) raises concerns as regards the principle of legality, the data protection principle of purpose

<sup>104</sup> [Preventing and Countering Youth Radicalisation in the EU](#), Policy Department for Citizens' Rights and Constitutional Affairs, 2014; Open Society Justice Initiative, [Eroding trust, the UKs prevent counter-extremism strategy in health and education](#), 2016.

<sup>105</sup> D. Davila Gordillo and F. Ragazzi, The Radicalisation Awareness Network: Producing the EU counter-radicalisation discourse, in S. Carrera and V. Mitsilegas (eds.), [Constitutionalizing the Security Union](#), CEPS, 2017, pp 54-63.

<sup>106</sup> V. Mitsilegas and N. Vavoula, [The evolving EU-AML regime: Challenges for Fundamental Rights and the Rule of Law](#), Maastricht Journal of European and Comparative Law, April 2016.

<sup>107</sup> [Evaluation of EU measures to combat terrorism financing](#), Policy Department for Citizens' Rights and Constitutional Affairs, 2014, p. 22.

limitation and potential over-criminalisation.<sup>108</sup> Third, a shift of responsibility to detecting suspicious transactions from the public sector to the private entails transferring a substantial administrative and financial burden to the latter. At the same time, a risk-based approach to be applied by financial institutions may lead to arbitrary decisions (and possibly customer profiling). This approach is therefore problematic in terms of legal certainty, transparency and accountability.<sup>109</sup>

Specific problems have arisen with regard to the activities of the EU Financial Intelligence Units (FIUs). The successive AML directives have barely addressed institutional and organisational aspects of their activities. This has resulted in highly diversified arrangements for these units that can be largely classified as 'administrative', 'law enforcement', 'judicial' or 'hybrid'.<sup>110</sup> The EU FIUs therefore have varying mandates and carry out different activities, which may be contrary to their objectives as defined by the AML directives.<sup>111</sup> In this context, the cooperation between FIUs from various Member States raises serious concerns as to the protection of fundamental rights, in particular regarding data protection.<sup>112</sup> The varying status of FIUs may also blur the line between information gathered for intelligence and evidence purposes. Cross-border cooperation is hampered by the fact that in some countries FIUs encounter significant difficulties in accessing information and in exchanging this information with their foreign counterparts.<sup>113</sup>

A tendency of private financial entities to under- or over-report suspicious transactions is yet another problem for FIUs. Whilst this may be partly due to inadequate training and feedback provided to such entities,<sup>114</sup> under- and over-reporting can also be explained by other factors, such as financial institutions' reputational concerns.<sup>115</sup>

The EU-US TFTP Agreement is another pillar of the EU counterterrorism financing framework. The programme began as a covert form of data gathering from the SWIFT payment system, undertaken by the USA in the aftermath of the 9/11 attacks. In 2010,

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<sup>108</sup> Ibid. p. 267; The European Data Protection Supervisor's [Opinion 1/2017](#) concerning the newly adopted 'fifth' AML Directive; A. Scherrer, [Law enforcement access to financial data](#), Implementation Appraisal, EPRS, European Parliament, April 2018.

<sup>109</sup> Ibid. pp. 22-24.

<sup>110</sup> A. Scherrer, [Fighting tax crimes – Cooperation between Financial Intelligence Units](#), Ex-Post Impact Assessment, EPRS, March 2017, p. 38-39.

<sup>111</sup> [Mapping exercise and gap analysis on FIUs' powers and obstacles for obtaining and exchanging information](#), EU FIUs' Platform, 2016, p. 25.

<sup>112</sup> V. Mitsilegas and N. Vavoula, op. cit. pp. 289-292.

<sup>113</sup> EU FIUs' Platform, p. 7.

<sup>114</sup> The annexed research paper by RAND, p. 66. See also [The Economic and Legal Effectiveness of Anti-Money Laundering and Combating Terrorist Financing Policy](#), Project funded by the European Commission, JLS/2009/ISEC/AG/087, Final Report, February 2013.

<sup>115</sup> A. Scherrer, [Fighting tax crimes – Cooperation between Financial Intelligence Units](#), Ex-Post Impact Assessment, EPRS, European Parliament, March 2017, p. 16.

an agreement was concluded between the EU and the USA on the processing and transfer of data for the purposes of the TFTP.<sup>116</sup>

The TFTP presents a distinct set of challenges. First, it is extremely difficult to evaluate the programme's effectiveness, including its role in preventing terrorist attacks. This is due both to the inherent difficulty of proving a negative and to the lack of publicly available information on the TFTP.<sup>117</sup> Whereas some information on the number of TFTP 'reports' and 'leads' is available,<sup>118</sup> the precise meaning of the term 'lead,' as well as the manner of generating leads remain unclear.<sup>119</sup> Whereas the arguments regarding the system's preventive role have been used to maintain its existence, most of the known cases of the use of TFTP data concerned post-attack investigations.

Second, the TFTP Agreement does not cover payments related to the Single Euro Payments Area (SEPA). The Commission has presented this as a gap in terms of EU law enforcement capability to establish financial linkages to trace and map terrorist networks within the EU, exacerbated by the fact that recent attacks were often committed by persons residing in EU countries and moving funds within the EU.<sup>120</sup>

Third, the TFTP has raised privacy concerns, voiced repeatedly by the European Parliament and other actors.<sup>121</sup>

Overall, the EU framework for countering terrorist financing generates substantial costs both in economic terms (the 2013 ECOLEF study estimated the cost at about €2 billion, the duties of the private sector being the biggest cost component of AML/CTF policy, followed by the supervision of these 'obliged entities'),<sup>122</sup> and with respect to fundamental rights including privacy. This underscores the need to evaluate the policy's

<sup>116</sup> [Agreement](#) between the European Union and the United States of America on the processing and transfer of Financial Messaging Data from the European Union to the United States for the purposes of the Terrorist Finance Tracking Program.

<sup>117</sup> The annexed research paper by RAND. See also M. De Goede and M. Wesseling, [Secrecy and Security in Transatlantic Terrorism Finance Tracking](#), Journal of European Integration, vol. 39, issue 3, pp 253-269

<sup>118</sup> Joint Report from the Commission and the U.S. Treasury Department regarding the value of TFTP Provided Data pursuant to Article 6 (6) of the Agreement between the European Union and the United States of America on the processing and transfer of Financial Messaging Data from the European Union to the United States for the purposes of the Terrorist Finance Tracking Program, COM(2013) 843 final, Brussels, 27 November 2013. See also Information sharing in the counterterrorism context: Use of Europol and Eurojust (EU LIMITE), EU Counter-Terrorism Coordinator, May 2016, p. 5.

<sup>119</sup> [Evaluation of EU measures to combat terrorism financing](#), Policy Department for Citizens' Rights and Constitutional Affairs, , 2014, pp. 24-27.

<sup>120</sup> [A possible European system complementing the existing EU-US TFTP agreement](#), Roadmap, European Commission, October 2016, p. 1.

<sup>121</sup> The disclosure of the US programme to intercept SWIFT messages was met with a vigorous response, not least from the European Parliament. The Parliament reiterated its concerns, rejecting the first version of the EU-US TFTP agreement, and only consented to a revised version when additional safeguards were included. However, following the 'Snowden' revelations regarding the NSA surveillance programme, the Parliament called for the agreement to be suspended.

<sup>122</sup> [The Economic and Legal Effectiveness of Anti-Money Laundering and Combating Terrorist Financing Policy](#), ECOLEF Project, funded by the European Commission, JLS/2009/ISEC/AG/087, Final Report, February 2013.

effectiveness, not least in the context of the evolution of the terrorism threat. Current terrorist activity, increasingly perpetrated by 'lone wolf' actors and small cells, tends to involve small sums that would not necessarily be considered suspicious under the existing framework that consists of the analysis of a large volume of suspicious transactions.<sup>123</sup> This raises questions regarding the adequacy of the system to address the evolution of terrorism, as well as about the interplay between financial and human intelligence in countering terrorist financing.<sup>124</sup>

#### **1.3.4. Lack of operational cooperation between law enforcement authorities**

The amount of intelligence (or, more generally, information) exchanged by national authorities has reportedly increased in recent years. However, calls to boost information exchange in the EU remain commonplace. It is argued in this regard that the EU databases are not being used to their full potential and that the investigations of major terrorist attacks in the EU have revealed situations whereby information that should have been shared between national authorities was not.<sup>125</sup> Whilst it is debatable whether the focus should not be on 'better', rather than 'more', information sharing,<sup>126</sup> numerous gaps and barriers undoubtedly exist in this area of Member States' cooperation.

First, considerable variation exists between Member States in terms of both uploading and searching for data in EU databases, which can only be partly explained by differences in their information needs. A small number of Member States are responsible for a large share of content and searches. For example, in 2016, three Member States (Italy, Germany and France) placed more than a half the total number of alerts in the Schengen Information System (SIS), and only four accounted for over a half of all access to the system.<sup>127</sup> It could be argued that such uneven use may lead to a negative perception – of countries making use of the data shared by others, while providing little information themselves.

Several elements could explain the reluctance of some national authorities to share information with their foreign counterparts, with a lack of mutual trust a most likely

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<sup>123</sup> Cf Exchange of views on judicial cooperation in the fight against terrorism financing with R. Malagnini, Federal Magistrate, Prosecutor's Office, Belgium (TERR/8/12600).

<sup>124</sup> T. Keatinge and F. Keen, [Lone-Actor and Small Cell Terrorist Attacks: A New Front in Counter-Terrorist Finance?](#), Rusi, January 2017; M. Levitt [Low Cost, High Impact: Combating the Financing of Lone-Wolf and Small-Scale Terrorist Attacks](#), September 2017; [Emerging Terrorist Financing Risks](#), FATF, October 2015.

<sup>125</sup> The annexed research paper by RAND quotes the EU Counter-Terrorism Coordinator reporting 'significant gaps' in terms of data on foreign terrorist fighters uploaded into the Europol Information System and the Focal Point Travellers database. It also refers to anecdotal evidence on the lack of information sharing concerning the perpetrator of the 2014 Brussels Jewish museum attack in 2014. Similar situations may have also preceded the 2015 Paris attacks, with the activities of Belgian and Dutch police concerning Salah Abdeslam allegedly unknown to French authorities and Europol. Cf. O. Bureš, [Intelligence sharing and the fight against terrorism in the EU: lessons learned from Europol](#), May 2016.

<sup>126</sup> S. Carrera, E. Guild and V. Mitsilegas, [Reflections on the Terrorist Attacks in Barcelona, Constructing a principled and trust-based EU approach to countering terrorism](#), CEPS, August 2017; D. Bigo et. al., [The EU and its Counterterrorism Policies after the Paris Attacks](#), CEPS, November 2015.

<sup>127</sup> [EU-LISA 2017](#).

factor. Secrecy is an intrinsic element of policing and intelligence work and the relevant authorities have a natural tendency to keep information for themselves, wary of the consequences of a potential leak. It therefore seems intuitive that information is best shared in a restricted group of actors with a greater level of mutual trust. For this reason, increased information sharing across the EU may have the perverse effect of decreasing the quality of information shared.

Other gaps and barriers identified in the literature include:

- inefficient collaboration among agencies within the Member States;
- differences in the scope to which information sharing is allowed by national legal systems;
- the lack of knowledge of EU information exchange mechanisms; and
- gaps in the use of information systems at both the national and EU agency level.<sup>128</sup>

The EU debate on information sharing has recently focused on the architecture and functioning of the EU information systems. In the Commission's view, information provided by these systems is not always complete, accurate and reliable, which makes it difficult to detect multiple identities or to combat identity fraud. Moreover, the end-users do not always have fast and systematic access to all the information they need to perform their tasks.<sup>129</sup>

The annexed research paper identifies various gaps related to the functionality, coverage and interoperability of EU information systems. Constraints in terms of functionality include the fragmented architecture of data management for border control and security and limited search capabilities of individual systems. With respect to coverage, it is argued that some data that could be useful for counter terrorism are not currently recorded in any system. In addition, the lack of interoperability between the systems in question, i.e. their ability to exchange data and enable the sharing of information, is perceived as a cross-cutting concern. The existence of 'blind spots', where individuals are recorded in various databases under different aliases is often cited as a related problem.

As regards judicial cooperation, the EU offers a range of tools useful to the fight against terrorism. As discussed more extensively in section 2 of the report on the Cost of Non-Europe in the area of Procedural Rights and Detention Conditions, the Framework Decision on the European Arrest Warrant enables the swift surrender of suspects and sentenced persons, including in a number of high profile cases following terrorist attacks in EU Member States. This system, based on the concept of mutual recognition, operates even if the substantive and procedural criminal laws continue to vary between the

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<sup>128</sup> The annexed research paper by RAND pp 46-48.; W. Wensink et al. [The European Union's Policies on Counterterrorism: Relevance, Coherence and Effectiveness](#), Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, February 2017, pp 76-78; [Intelligence sharing and the fight against terrorism in the EU: lessons learned from Europol](#), O. Bureš, European View (2016) 15, pp. 57-66, May 2016.

<sup>129</sup> Commission impact assessment.

Member States. However, in some cases, these differences, as well as disproportionate use of the European Arrest Warrant and lack of compliance with fundamental rights in practice – notably in the area of detention conditions – continue to obstruct judicial cooperation. The jurisprudence of the ECtHR, the CJEU and national constitutional courts have, to a certain degree, addressed this problem.<sup>130</sup>

The European Investigation Order (EIO) enables evidence to be obtained and transferred swiftly. It also contains important safeguards, including a validation procedure, proportionality test and fundamental rights exception to be applied by judicial authorities.<sup>131</sup> However, common standards for investigative measures and the admissibility of evidence are still lacking.<sup>132</sup> Furthermore, non-execution of an EIO remains possible if its execution 'would harm essential national security interests, jeopardise the source of the information or involve the use of classified information relating to specific intelligence activities,' which might hamper cooperation. As already referred to in section 1.1., in April 2018, the Commission submitted a proposal for cross-border access to electronic evidence.

Joint Investigation Teams (JITs) are a crucial tool for cross-border cooperation in terms of investigation but also for exchange of information on specific cases. Although used more often recently, including in counterterrorism investigations,<sup>133</sup> JITs have faced operational and legal obstacles related to their legal bases and their transposition by Member States, lack of familiarity with the organisational structure and proceedings in the other Member State, and lack of trust between participants.

Terrorism is one of the categories of crime for which the dual criminality requirement is lifted in the EU's mutual recognition instruments.<sup>134</sup> This means that the executing judicial authority is no longer allowed to verify whether the type of conduct for which surrender is requested would have been a crime under its laws. This however requires Member States to trust that the definitions are equivalent between legal systems. The EU can only establish minimum rules on the definition of criminal offences and sanctions.<sup>135</sup> Consequently, the Directive on Terrorism<sup>136</sup> does not prevent Member States adopting

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<sup>130</sup> [Procedural Rights and Detention Conditions: Cost of Non-Europe Report](#), W. van Ballegooij, EPRS, European Parliament, December 2017.

<sup>131</sup> [Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters](#), OJ L 130, 1 May 2014, p. 1–36, articles 2, 6 and 11(f) respectively; W. van Ballegooij, *The Nature of mutual recognition in European law, re-examining the notion from an individual rights perspective with a view to its further development in the criminal justice area*, Intersentia, Antwerp, 2015, pp. 222–236.

<sup>132</sup> [Common standards for investigative measures and the admissibility of evidence](#) see Commission [Green paper on obtaining evidence in criminal proceedings from one Member States to another and securing its admissibility](#), COM (2009) 624 final, of 11 November 2009.

<sup>133</sup> [EU developments in counterterrorism](#), Eurojust News, August 2015,

<sup>134</sup> e.g. Framework decision on the European Arrest Warrant and surrender procedures in the Member States, O.J. 2002, L 190/1 of 13 June 2002, article 2(2).

<sup>135</sup> See Article 83 TFEU.

<sup>136</sup> 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, OJ L 88, 31 March 2017, p. 6–21.

or maintaining criminal definitions which cover other (intentional) acts.<sup>137</sup> It also explicitly refers to a number of fundamental rights principles based on which Member States may limit criminal liability.<sup>138</sup> This means that certain differences between Member States' legal systems will also remain regarding this aspect, which might lead to obstacles in cooperation and fundamental rights concerns.<sup>139</sup>

As a counterpart to judicial cooperation, the Union has adopted a number of directives providing common minimum standards regarding procedural rights.<sup>140</sup> These include provisions requiring, for instance, that the mere fact that someone is suspected of a terrorism-related crime will be insufficient reason to deny access to a lawyer.<sup>141</sup> However, not all Member States comply with this standard and/or avoid criminal proceedings altogether in favour of administrative measures.<sup>142</sup> This may equally undermine mutual trust among judicial authorities.

### 1.3.5. Lack of cooperation with EU agencies

According to Europol, information sharing on counterterrorism across the Member States, as well as through and with Europol, had reached an all-time high by the end of 2016.<sup>143</sup> These capacities were streamlined and enhanced by the creation, within Europol, of the European Counter Terrorism Centre (ECTC), operational since January 2016. This operations centre and hub of expertise, pooling Europol's counterterrorism capabilities<sup>144</sup> has already provided operational support to ongoing investigations. Setting up the 'Task Force Fraternité' in the aftermath of the Paris and Brussels attacks is one example of such support.<sup>145</sup>

<sup>137</sup> For a selected overview see [EU and Member States' policies and laws on persons suspected of terrorism-related crimes](#), Policy Department for Citizens' Rights and Constitutional Affairs, December 2017-PE. 596.832, chapter 4.1. (Criminalisation of terrorism-related offences).

<sup>138</sup> 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, OJ L 88, 31 March 2017, p. 6–21, article 23.

<sup>139</sup> For more detail on the Directive on Terrorism see S. Voronova, [Combating Terrorism](#), EPRS, European Parliament, September 2017.

<sup>140</sup> In accordance with a 'roadmap' contained in Council document 14552/1/09 of 21 October 2009; W. van Ballegooij, [The Cost of Non-Europe in the area of Procedural Rights and Detention Conditions](#), EPRS, European Parliament, December 2017, chapter 1.2.2.

<sup>141</sup> [Directive 2013/48/EU](#) of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty OJ L 294, 6 November 2013, p. 1–12, article 3 paragraph 6;

<sup>142</sup> [EU and Member States' policies and laws on persons suspected of terrorism-related crimes](#), Policy Department for Citizens' Rights and Constitutional Affairs, December 2017, chapter 4.2. (the rights granted to suspects of terrorism-related crimes).

<sup>143</sup> [Information sharing on counter terrorism in the EU has reached an all-time high](#), press release, Europol, 30 January 2017.

<sup>144</sup> These include providing operational support to investigations upon request by Member States, addressing online terrorist propaganda and extremism (through the EU Internet Referral Unit), tackling illegal arms trafficking and sharing intelligence; see [European Counter Terrorism Centre](#), Europol website, 20 April 2018.

<sup>145</sup> [Europol's European Counter Terrorism Centre strengthens the EU's response to terror](#), press release, Europol, January 2016.

Whilst the recently created ECTC appears to have begun to prove its worth,<sup>146</sup> Member States differ in their overall assessment of Europol. Some, including those having received support from the agency following terrorist attacks, report substantial operational benefits. Others, however, tend to believe that the risk posed to sensitive operations outweighs what they perceive as limited operational gains.<sup>147</sup>

The considerations presented in the previous section regarding gaps in and barriers to information exchange are valid also with regard to Europol. It is important to note in this respect that the EU structures are not the only fora for information exchange between Member States, which tend to use bilateral channels and participate in various informal multilateral networks (such as the Counter-Terrorism Group (CTG), an informal grouping of intelligence agencies from 30 European states linked to the Club de Berne and the Police Working Group on Terrorism (PWGT)). It is considered that certain characteristics of these informal bottom-up structures make them more suitable for tackling governance problems and achieving common goals than more hierarchical and formal structures, such as those of the EU. These characteristics include a pragmatic approach, flexibility, relative independence from national administrations, and an ability to include a broad range of participants on an equal footing.<sup>148</sup>

Efforts have been made to increase cooperation between Europol and the CTG. In this regard, the Commission has called for facilitation of 'an information exchange hub based on the interaction between the law enforcement community and the intelligence community, within the framework of the CTG and the ECTC, in accordance with relevant EU and national rules and arrangements'. The CTG was strengthened in 2016 by introducing a common platform for information exchange between security services.<sup>149</sup>

However, numerous challenges remain to cooperation between the two bodies. First, the information exchanged within the CTG is often classified as 'secret' or above. Meanwhile, the Secure Information Exchange Network Application (SIENA) system used by Europol was upgraded in 2016 to only 'confidential' level. Second, both cultural and legal obstacles exist, related to sharing information between police and intelligence services, which makes such cooperation problematic even within national boundaries. These two distinct milieus, with divergent policy interests have been reluctant to share information.

Meanwhile, the synergies between Europol and the PWGT have also been studied. Again, in contrast to Europol, the PWGT communication network allows for information classified as 'EU Secret' to be exchanged.

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<sup>146</sup> Comprehensive Assessment of EU Security Policy, [Part 1](#) and [Part 2](#), SWD(2017) 278 final, European Commission, July 2017.

<sup>147</sup> Counter-Terrorism Coordinator, 2016.

<sup>148</sup> O. Bureš, 2016, p. 63.

<sup>149</sup> W. Wensink et. al. p. 77-78.

As discussed further in chapter 4 of the annexed research paper, Eurojust is another EU agency playing an important role in supporting criminal investigations and prosecutions of terrorism cases, both between Member States and with third countries.<sup>150</sup> Beyond providing a forum and facilitating judicial cooperation, Eurojust also offers strategic analytical capabilities, for instance regarding the approach towards foreign fighters from a criminal justice perspective.<sup>151</sup> Eurojust's casework in the area of terrorism increased in 2016, as did the number of occasions on which terrorism-related information was transferred to Eurojust. However, there are also indications that Eurojust's capabilities were not used in situations where this could have been the case. This might be related to remaining gaps in knowledge and awareness of Eurojust among practitioners.

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<sup>150</sup> This includes hosting coordination meetings to allow national prosecutors to share operational experiences and to facilitate judicial cooperation. Furthermore Eurojust produces a Terrorism Convictions Monitor for judges and prosecutors, which provides an overview of terrorism-related convictions and acquittals throughout the EU, legal updates and judicial analysis as well as classified reports to share lessons learned from criminal investigations and prosecutions of terrorism cases. Moreover, Eurojust supports the setting up of JITs. It also participates in JITs, including the setting up of a JIT or supporting member states to set up one and may be called upon to coordinate the issuing of EIOs and EAWs.

<sup>151</sup> Cf. The return of foreign fighters on EU soil, ex-post evaluation, Ex-post Evaluation Unit, EPRS, European Parliament, forthcoming, May 2018.

## 2. Impacts of terrorism and counterterrorism measures

### Key findings

- Besides the impact on victims and their families, terrorism has a negative effect on the wellbeing of the population as a whole, affecting people's life satisfaction, happiness, health, and trust within communities and national political institutions.
- Since 2004, terrorism has cost the EU about €5.6 billion in lost lives, injuries, and damage to infrastructure and around €185 billion in lost GDP.
- Existing literature argues that it also harms trade, foreign direct investment, tourism (with immediate but often short-lived consequences), and transport (including by plane). Inversely the defence sector would have benefited.
- The EU counterterrorism budget rose significantly in 2016, with €4 billion in commitments and €3 billion in payments for security and citizenship. It is not, however, straightforward to calculate Member State spending on counterterrorism, as most countries do not reveal their security spending due to national security concerns, which particularly applies to the field of intelligence.
- At the same time, certain measures taken in the fight against terrorism have had a disproportionate impact on suspects and wider groups within society, in violation of fundamental rights, as well as being counterproductive.

The barriers and gaps identified in fighting against terrorism, and discussed in chapter 1, have consequences in terms of economic impact and impact at the individual level in protecting fundamental rights and freedoms. In the following sections, the impacts resulting from terrorism and counterterrorism measures are described. Whenever possible, impacts have been measured, quantified in monetary terms or percentages. When quantification was neither possible nor relevant, impacts are presented in qualitative terms. The overview below synthesises the more detailed assessment provided in the annexed research paper.

For the purpose of this part of the study, the definition of terrorism used by the Global Terrorism Database (GTD) was used.<sup>152</sup> The GTD defines a terrorist attack as 'the threatened or actual use of illegal force and violence by a non-state actor to attain a political, economic, religious, or social goal through fear, coercion, or intimidation'.

As described in table 1 and for analytical purposes, four different impacts of terrorism have been identified. Namely:

- death and injuries (human capital),
- infrastructure (physical capital),
- psychological impact (e.g. wellbeing, trust and happiness) and,
- impact on economic growth.

<sup>152</sup> [Global Terrorism Database](#), RAND (2018), chapter 2.

The impacts of counterterrorism measures are mainly assessed in relation to public spending and fundamental rights

**Table 1 – Impacts of terrorism and counterterrorism measures**

Impact	Type	Cost (€m)	Sources
<b>Terrorism</b>	<i>Human</i>	2004-2016: <b>4 721.7</b> 2013-2016: <b>2 557.7</b>	Institute for Economics and Peace (IEP) Global Terrorism Database (GTD)
	<i>Physical capital</i>	2004-2016: <b>897.6</b> 2013-2016: <b>103.0</b>	Institute for Economics and Peace (IEP) Global Terrorism Database (GTD)
	<i>Psychological</i>	lower life satisfaction lower happiness lower interpersonal trust lower trust in national political institutions	World Values Survey (WVS) European Social Survey (ESS)
	<i>Economic</i>	2004-2016: <b>179 811.9</b> 2013-2016: <b>87 800.4</b>	Penn World Tables (PWT)
<b>Counterterrorism</b>	<i>Public expenditures</i>	2015: <b>8 720.9</b>	Eurostat government expenditure by function (COFOG)
	<i>Fundamental rights</i>	violation of fundamental rights, notably the prohibition of torture, liberty, fair trial, the rights to privacy and data protection, and non-discrimination	European Court of Human Rights Court of Justice of the European Union, national courts Fundamental Rights Agency NGO reports

Source: RAND 2018 (adapted by EPRS).

## 2.1. Impacts of terrorism

### *Human and Physical capital impact*

Over the last decade, large-scale attacks in Europe have involved a significant number of fatalities and casualties. For instance, the 2004 Madrid train bombings cost 192 lives and injured more than 2 000 people, and the 2005 London bombings killed 52 civilians and injured 784. More recently, the 2015 Paris and 2016 Nice attacks in France together killed more than 200 and injured more than 800 civilians, and the 2016 Brussels bombings cost 32 lives and injured more than 300 people.

Besides the direct costs borne by the victims, such as medical or repair costs, indirect costs such as lost productivity, lost earnings and psychological trauma must also be taken into account. Generally, keeping in mind the arguments against putting an economic value on a human life in terms of ethics and feasibility, in the economic

literature the economic loss of a human life is expressed as the average income per worker, multiplied by the average life expectancy.

In addition to human costs, terror attacks can result in widespread physical damage by destroying physical capital, such as buildings or important transport and commercial infrastructure. The total costs related to fatalities and injuries caused by terrorism in the EU since 2004 is estimated to be about €4.7 billion and the estimated property damage at about €898 million. More than half the cost of fatalities and injuries occurred since 2013 (about €2.5 billion). A more detailed overview of the human and physical cost of terrorism is provided in table 2.

**Table 2 – Estimated human and physical capital cost of terrorism in the EU-28**

Member state	Total: 2004–2016 (€m)			Total: 2013–2016 (€m)		
	Cost of fatalities	Cost of injuries	Property damage	Cost of fatalities	Cost of injuries	Property damage
Austria	7.5	1.1	2.4	0.0	0.2	1.0
Belgium	304.1	27.8	0.3	296.5	27.7	0.0
Bulgaria	23.3	1.2	3.9	0.0	0.0	1.8
Croatia	0.0	0.1	1.0	0.0	0.1	0.0
Cyprus	0.0	0.0	76.8	0.0	0.0	1.8
Czech Republic	10.8	1.8	1.6	10.8	0.1	1.6
Denmark	16.1	0.9	0.6	16.1	0.5	0.6
Estonia	4.5	0.0	0.3	0.0	0.0	0.3
Finland	0.0	0.2	3.9	0.0	0.1	3.7
France	1802.9	85.6	45.1	1722.4	81.5	7.6
Germany	251.4	18.2	17.8	209.8	15.8	16.9
Greece	40.5	3.5	80.0	13.4	0.9	18.6
Hungary	7.6	0.1	1.9	0.0	0.1	1.1
Ireland	19.9	0.8	2.9	11.0	0.6	2.2
Italy	19.2	2.2	2.9	6.1	0.8	1.4
Latvia	0.0	0.0	0.0	0.0	0.0	0.0
Lithuania	0.0	0.0	0.0	0.0	0.0	0.0
Luxembourg	0.0	0.0	0.0	0.0	0.0	0.0
Malta	0.0	0.0	0.3	0.0	0.0	0.3
Netherlands	73.2	1.9	2.2	8.1	0.3	1.5
Poland	0.0	0.1	0.0	0.0	0.1	0.0
Portugal	0.0	0.0	0.4	0.0	0.0	0.0
Romania	0.0	0.0	0.0	0.0	0.0	0.0
Slovak Republic	0.0	0.1	0.0	0.0	0.1	0.0
Slovenia	0.0	0.0	0.0	0.0	0.0	0.0
Spain	1178.9	163.7	581.1	0.0	0.4	1.9
Sweden	39.3	0.9	12.6	31.4	0.6	9.6
United Kingdom	523.8	88.5	59.6	92.9	9.2	31.2
<b>EU-28</b>	<b>4323.2</b>	<b>398.5</b>	<b>897.6</b>	<b>2418.5</b>	<b>139.2</b>	<b>103.0</b>

Source: RAND 2018.

### *Psychological impacts*

Besides the victims directly caused by terror attacks, the diffusion of terror, including through social media channels, magnifies the psychological impact among the wider public. This triggers feelings of fear and uncertainty and affects people's behaviour and health.

The available evidence is based on an econometric regression model using two large survey datasets,<sup>153</sup> measuring the impact of terrorism on the overall wellbeing of citizens. The empirical findings confirm that terrorism can have detrimental effects on people's overall wellbeing, in line with the results of previous research that examined other regions or a specific subset of European countries.<sup>154</sup> However, it is worth keeping in mind that these effects tend to be rather short-lived and usually only apply within the year of the incident – in the case of the Boston Marathon bombing, it is argued that the effect only persisted for a week.<sup>155</sup>

Likewise, counterterrorism measures could have a negative effect on individual's life satisfaction, such as the heightened security checks at airports and borders. However, differentiating and isolating the effect of the attack on the one hand and, the possible detrimental effects of the corresponding policy responses on the economy and peoples' wellbeing on the other is not straightforward. It is argued that terror reduces not only average life satisfaction and happiness, but also leads to lower levels of trust<sup>156</sup> between individuals, communities, as well as in political institutions and the legal system.

In summary, psychological factors, including effects on life satisfaction, happiness or trust, can ultimately impact on the behaviour of different actors in an economy, even in the case of individuals who have not been directly involved in a terrorist attack. Consumption patterns and labour productivity may be affected, and where fear leads to mental health problems, then medical treatment may also be required.

### *Economic impacts*

As previous research suggests, there is a potential relationship between terror risk and economic growth. However, while the effect of terrorist incidents on economic output has been investigated before, including for a sub-sample of Western European countries,<sup>157</sup> a recent and comprehensive analysis covering the EU-28 has not been carried out. The annexed research paper aims to bridge that gap, as well as to identify the corresponding pathways through which terrorism affects growth. In addition, the attached paper reviews the impact on specific sectors. Finally, greater detail on how

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<sup>153</sup> European Social Survey and World Values Survey.

<sup>154</sup> Z. Naor, [Untimely death, the value of certain lifetime and macroeconomic dynamics](#), Defence and Peace Economics, August 2006.

<sup>155</sup> A.E. Clark, O. Doyle & E. Stancanelli, [The impact of terrorism on well-being: Evidence from the Boston Marathon bombing](#), UCD Geary Institute for Public Policy, 2017.

<sup>156</sup> S. Blomberg, G. Hess & D. Tan, Terrorism and the economics of trust, *Journal of Peace Research*, 2011.

<sup>157</sup> K. Gaibullov & T. Sandler, [Growth consequences of terrorism in Western Europe](#), *Kyklos* 61(3), 411–24, 2008.

terrorism affects economic integration in the form of trade and foreign direct investment (FDI) flows are also provided.

*On economic growth*

Terrorist attacks may destroy factors of production. Crucial capital such as transport infrastructure may be destroyed, and individuals of working age killed or injured. These labour and capital inputs are crucial to producing goods and services, their loss therefore affects Gross Domestic Product (GDP).

Terror also tends to divert public resources away from economic production to national security. Unsurprisingly, the share of government expenditure grows when terror attacks occur, as public spending on defence and security increases in response. In order to spend more on security, countries either raise taxes or shift their budget spending to potentially less growth-enhancing defence and security expenditures, which may harm long-term growth. However, no empirical evidence for such a relation with economic growth is found, nor does the literature provide a clear answer.

Terrorist attacks slightly increase consumption. Although there is no clear indication of the mechanisms behind this increase, it is believed that terrorist attacks may heighten awareness of individual mortality. The psychological impact may trigger an impulse in individuals to save less and consume more in the present time.<sup>158</sup>

Terrorism also induces a higher level of fear and uncertainty affecting society more widely. This uncertainty distorts consumers' choices regarding investment, savings and consumption. Inflow of resources from other countries may also be diverted to countries that are considered safer. This impacts foreign direct investments, as discussed in the section on economic integration. The annexed research paper agrees with other studies,<sup>159</sup> that terrorism has a tangible but relatively small and short-term negative effect on growth across EU Member States.

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<sup>158</sup> U. Dholakia, [How Terrorist Attacks Influence Consumer Behaviors](#), Psychology Today, December 2015.

<sup>159</sup> S. Blomberg, S. Brock, G. Hess & A. Orphanides, [The macroeconomic consequences of terrorism](#), Journal of Monetary Economics 51(5), 1007–32, 2004; W. Enders & E. Olson, [Measuring the economic costs of terrorism](#), The Oxford Handbook of the Economics of Peace and Conflict, 2012.

**Table 3 – Estimated GDP cost of terrorism in the EU-28**

Member State	2004-2016		2013-2016	
	€m	per capita	€m	per capita
Austria	863.0	103.0	166.7	19.9
Belgium	7 829.4	721.1	7 627.2	702.5
Bulgaria	216.2	29.1	29.9	4.0
Croatia	43.9	10.3	9.9	2.3
Cyprus	862.8	1 071.1	726.8	902.3
Czech Republic	380.6	36.6	176.5	17.0
Denmark	676.8	122.3	551.4	99.6
Estonia	33.9	25.4	22.6	17.0
Finland	481.3	89.9	428.3	80.0
France	43 009.9	665.6	36 089.9	558.5
Germany	19 170.4	234.9	15 567.4	190.7
Greece	10 398.2	945.2	3 403.6	309.4
Hungary	111.2	11.1	28.1	2.8
Ireland	4 339.8	974.0	3 027.0	679.4
Italy	2 212.5	37.4	883.0	14.9
Latvia	0.0	0.0	0.0	0.0
Lithuania	0.0	0.0	0.0	0.0
Luxembourg	0.0	0.0	0.0	0.0
Malta	26.2	63.2	26.2	63.2
Netherlands	1 700.7	102.5	506.7	30.6
Poland	19.1	0.5	19.1	0.5
Portugal	32.7	3.1	0.0	0.0
Romania	8.1	0.4	0.0	0.0
Slovakia	15.2	2.8	15.2	2.8
Slovenia	0.0	0.0	0.0	0.0
Spain	40 798.0	894.9	313.3	6.9
Sweden	2 869.1	306.7	2 397.2	256.2
United Kingdom	43 712.9	699.1	15 784.3	252.4
<b>EU-28</b>	<b>179 811.9</b>	<b>358.25</b>	<b>87 800.4</b>	<b>174.93</b>

Source: RAND 2018.<sup>160</sup>*On economic integration*

By harming trade and levels of foreign direct investment (FDI), terrorism also has a negative effect on economic integration. Previous research has identified that terrorism is detrimental to FDI at a country-level, but the effects may be more relevant for countries with a persistent and large-scale terrorism and conflict problem. In a country suffering from terror, the increased uncertainty reduces the expected returns on investment. This is important, since multinational companies tend to have a wide panel of countries in which they can choose to implant their subsidiary firms should they wish to move away

<sup>160</sup> The technical details of the estimations can be found in Appendix B of the RAND study found in Annex I.

from terrorism threats. As a result, higher levels of terrorist risks are associated with lower levels of (net) FDI positions.

The effects of terrorism on trade depends heavily on the specific product or sector. As an example, the effect on the trade of primary products is rather small, while the effect on trade in manufacturing goods tends to be substantive. Trade is affected most by disrupted trade flows due to heightened security measures at borders and transport hubs. This includes, an increase in frictional costs, e.g. delays, and increased insurance charges.<sup>161</sup>

#### *On specific sectors*

Terrorism can have economic impacts across different sectors, depending on the type and nature of the attack. Some studies have examined the impact of terrorism on specific sectors such as tourism, transport or insurance. With regard to tourism, it is acknowledged that terrorism can divert tourists away from affected countries towards other destinations, especially when tourists have been the target of terrorists. Overall, however, the impact of terrorism on tourism tends to be immediate and short-lived.

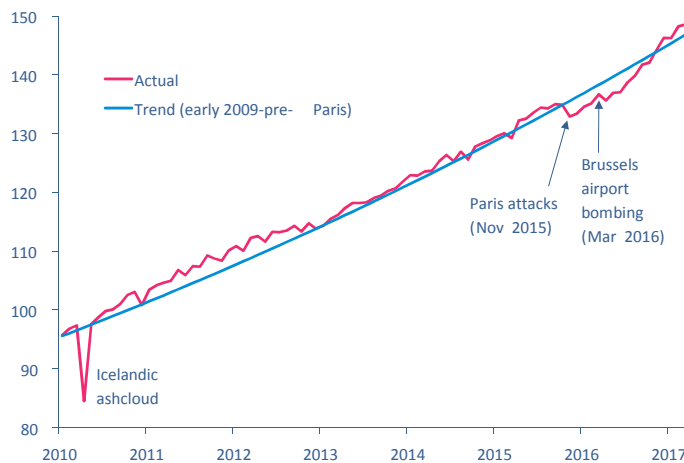
The annexed research paper uses monthly tourist data between 1990 and 2016 for all EU-28 Member States and found a drop in nights stayed in the month of the terrorism activity. However, this effect slowly fades and is no longer prevalent after about three months.

Large scale terrorist attacks, such as those that happened on 11 September 2001 in the United States, may also damage the aviation industry. For instance, the International Air Transport Association (IATA)<sup>162</sup> found that terrorist attacks in Western Europe in late 2015 and early 2016 reduced European airlines' international passenger traffic by 1.6 %, resulting in a loss revenue of approximately US\$2.5 billion in 2016 (approximately €2.25 billion).

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<sup>161</sup> F. Schneider, T. Brueck & D. Meierriecks, [The economics of counterterrorism: a survey](#), Journal of Economic Surveys, February 2014.

<sup>162</sup> IATA, [Estimating the impact of recent terrorist attacks in Western Europe](#), May 2017.

**Figure 1 – International passenger traffic flown by European airlines**

Source: IATA Economics.

The insurance sector can absorb the shocks provoked by small terrorist attacks, but bigger attacks weaken the sector. Simultaneous claims involving billions of euros and subsequently reduced insurance companies' capital base due to the negative impact on the stock markets deteriorate the financial position of insurance firms. To balance these effects, premiums are likely to be raised, hitting other industries such as shipping and transport.

#### **The Federal Reserve after 9/11**

To offset the macroeconomic consequences of one of the severest terrorist attacks, the Federal Reserve System (FED) increased short-term lending from US\$24 billion to US\$61 billion after the attacks on 9/11. On 17 September 2001, the FED decided to cut the short-term interest rates by 0.5 % to further support financial stability.

Besides the monetary policy tools, a strong fiscal stimulus package of US\$40 billion, the US Congress approved emergency anti-terrorism package, augmented aggregate demand. One month after the attack, Operation Enduring Freedom, and war in Afghanistan, began, further boosting American aggregate demand.

In contrast, European Member States do not possess the monetary and fiscal policy tools to stimulate growth to the same extent as the USA.<sup>163</sup> In particular, smaller sized economies do not have the budgetary power to offset the effects of terror attacks.<sup>164</sup>

European monetary policy comes under the authority of the European Central Bank (ECB), which has the single objective of safeguarding the value of the euro, regardless

<sup>163</sup> [Towards a genuine Economic and Monetary Union](#), European Added Value Unit, European Parliament, October 2012.

<sup>164</sup> W. Enders & E. Olson, [Measuring the Economic Costs of Terrorism](#), Oxford Handbook of the Economics of Peace and Conflict, 2012.

of the impact of terrorism on Member States' economies.<sup>165</sup> Member States remain responsible for fiscal policy, but they need to comply with European budgetary rules such as the Stability and Growth Pact. Although in some cases expenditures regarding counterterrorism are regarded as 'unusual', the fiscal capacity for macroeconomic stabilisation remains small.<sup>166</sup>

In contrast to these negative repercussions, those sectors providing security technologies and services, namely the defence and security industries, benefit from investments into security technologies. The military response to the attacks of 9/11 reversed the declining trend in military expenditure and as a result, global military spending increased by 18 % between 2002 and 2003, mainly driven by the USA, Japan, the UK, France and China. However, the rise in military expenses after 9/11 was, except for the USA, not sustained.

In contrast, the security industry experienced sustainable growth, without a major upsurge in spending after 9/11.<sup>167</sup> However, terror is not the sole driver of this persistent growth. An increasing trend in organised crime, perceptions of increased personal insecurity, and the characteristics of the global economic system, increase the necessity for protection and might also contribute to the upward trend.

## 2.2. Impacts of counterterrorism measures

### *On public expenditure*

Since 2001, counterterrorism spending by Western countries has increased substantially. It is estimated that total EU spending on counterterrorism measures increased from approximately €5.7 million in 2002 to about €93.5 million in 2009. In addition, EU spending in the AFSJ increased by 163 % between 2006 and 2011. In light of increased terror threats in Europe, for 2016 the EU budgeted about €4 billion in commitments and €3 billion in payments for security and citizenship issues.<sup>168</sup>

It is important to note that the EU budget represents only a small fraction of total Member States' expenditure on the fight against terrorism. In the context of the Stability and Growth Pact, the European Commission can treat fiscal expenditures directly related to counterterrorism under the 'unusual event' clause,<sup>169</sup> allowing Member States to diverge from the adjustment path towards the medium-term budgetary objective. As an example, the Commission assessed Belgium as eligible for an allowance of 0.04 % of

<sup>165</sup> M. Draghi, [Introductory statement to the press conference \(with Q&A\)](#), July 2016, 'Our response lies in achieving our mandate, in achieving our objective. Our response lies in ensuring what we call price stability, but in fact amounts to growth and job creation. Our response lies in making sure the labour markets continue to improve. And that's our domain. That's our job.'

<sup>166</sup> Joint BUDG/ECON Workshop, [A fiscal capacity to strengthen and enlarge the Euro Area](#), European Parliament, March 2018.

<sup>167</sup> T. Brück, F. Schneider, M. Karaisl, [The Economics of Terrorism and Counterterrorism: A Survey](#), DIW Berlin, European Commission, June 2007.

<sup>168</sup> G. Sgueo, [Counterterrorism funding in the EU budget](#), EPRS, European Parliament, April 2016.

<sup>169</sup> As defined in Articles 5.1 and 6.3 of [Regulation \(EC\) No 1466/97](#).

GDP in relation to costs considered to have a clear and direct link to security.<sup>170</sup> Consequently, Member States can curtail the detrimental economic effects of a shift in budget spending towards greater military expenditure.<sup>171</sup>

Unfortunately calculating Member State spending on counterterrorism is not straightforward, as most countries do not reveal their security spending due to national security concerns, which particularly applies in the field of intelligence.<sup>172</sup> In addition, public spending on counterterrorism may often be found under different expenditure allocations such as 'public order and safety' or 'defence', which makes a calculation of overall spending quite difficult.

Nevertheless, in the annexed research paper, RAND has made an attempt to estimate Member States' spending on counterterrorism, and concluded that EU Member States spend around €8 720.9 million.

This figure is based on the assumption that the spending on counterterrorism in each country is related to the spending on counterterrorism in the United States, namely 0.1 % of US GDP. Since the US spending on defence and security tends to be higher than most EU Member States, calculations have taken this difference into account. Due to the assumptions made, the figure represents a rough estimate of the annual national expenditures on counterterrorism measures.

The existing literature looks at whether a negative shock such as a terrorist event is associated with an increase in public security spending. This could subsequently lead to lower long-term growth because large budgets for defence and homeland security may crowd out crucial growth-enhancing investment. However, a large body of literature<sup>173</sup> <sup>174</sup> does not identify a straightforward and conclusive relationship between an increased spending in public security and economic growth.

#### *Estimated total cost*

The overall cost of terrorism to human and physical capital, as well as the lost economic output across the 28 EU Member States between 2004 and 2016 is summarised in table 4 below. In total, EU-28 Member States have incurred a loss of about €185 billion. Slightly half of the total figure, a loss of about €90 billion, occurred since 2013.

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<sup>170</sup> [Analysis of the draft budgetary plans of Belgium](#), European Commission, SWD(2017) 511 final, November 2017.

<sup>171</sup> As discussed in section 2.1.3.i.

<sup>172</sup> T. Sandler, D. Arce & W. Enders, [Transnational Terrorism](#), CREATE Homeland Security Center, 2008.

<sup>173</sup> M. Trajtenberg, [Crafting defence R&D in the anti-terrorist area](#), Innovation Policy and the Economy, Cambridge University Press, 2004.

<sup>174</sup> C.C. Lee & C.P. Chang, [The Long-Run Relationship between Defence Expenditures and GDP in Taiwan](#), Defence and Peace Economics 17(4), 361–85, 2006.

**Table 4 – Estimated total human capital, physical capital and GDP cost of terrorism by EU Member State**

Member State	2004-2016 (€m)			2013-2016 (€m)		
	Human and physical capital cost	GDP cost	Total	Human and physical capital cost	GDP cost	Total
Austria	11.0	863.0	874.0	1.2	166.7	167.9
Belgium	332.2	7 829.4	8 161.6	324.2	7 627.2	7 951.3
Bulgaria	28.4	216.2	244.6	1.9	29.9	31.8
Croatia	1.1	43.9	45.0	0.1	9.9	10.0
Cyprus	76.8	862.8	939.5	1.8	726.8	728.6
Czech Republic	14.2	380.6	394.8	12.5	176.5	189.0
Denmark	17.5	676.8	694.4	17.2	551.4	568.6
Estonia	4.8	33.9	38.7	0.3	22.6	22.9
Finland	4.1	481.3	485.4	3.8	428.3	432.1
France	1 933.6	43 009.9	44 943.5	1 811.5	36 089.9	37 901.4
Germany	287.4	19 170.4	19 457.8	242.4	15 567.4	15 809.8
Greece	124.1	10 398.2	10 522.3	33.0	3 403.6	3 436.5
Hungary	9.6	111.2	120.9	1.2	28.1	29.3
Ireland	23.6	4 339.8	4 363.4	13.8	3 027.0	3 040.8
Italy	24.2	2 212.5	2 236.7	8.3	883.0	891.3
Latvia	0.0	0.0	0.0	0.0	0.0	0.0
Lithuania	0.0	0.0	0.0	0.0	0.0	0.0
Luxembourg	0.0	0.0	0.0	0.0	0.0	0.0
Malta	0.3	26.2	26.5	0.3	26.2	26.5
Netherlands	77.3	1 700.7	1 777.9	10.0	506.7	516.6
Poland	0.1	19.1	19.2	0.1	19.1	19.2
Portugal	0.4	32.7	33.1	0.0	0.0	0.0
Romania	0.0	8.1	8.2	0.0	0.0	0.0
Slovak Republic	0.1	15.2	15.3	0.1	15.2	15.3
Slovenia	0.0	0.0	0.0	0.0	0.0	0.0
Spain	1 923.7	40 798.0	42 721.7	2.3	313.3	315.6
Sweden	52.8	2 869.1	2 921.9	41.6	2 397.2	2 438.8
United Kingdom	671.8	43 712.9	44 384.7	133.3	15 784.3	15 917.6
<b>EU-28</b>	<b>5 619.3</b>	<b>179 811.9</b>	<b>185 431.2</b>	<b>2 660.6</b>	<b>87 800.4</b>	<b>90 461.0</b>

Source: RAND 2018.

***On fundamental rights***

The main purposes of terrorism are to question the established order, spread fear, and to harm democracy and the rule of law. Terrorism directly impacts on the enjoyment of fundamental rights such as the right to life, to liberty and to physical integrity. Governments have a duty to take effective counterterrorism measures to protect individuals within their jurisdictions. However, such measures, including intelligence cooperation, information exchange, coercive action by law enforcement, and border controls, may adversely affect fundamental rights. As discussed in chapter 1,

international law including the ECHR, Charter of Fundamental Rights and national laws provide important conditions for counterterrorism measures. They need to be provided by law, respect the essence of the rights concerned and be both necessary and proportionate in view of the security interest.

In chapter 1, the freezing of assets, and illegal rendition, detention and torture of terrorism suspects were highlighted. Another example concerns the rights to privacy and data protection, which have been disproportionately impacted by surveillance measures in the USA and several EU Member States. The matter was extensively investigated by the Parliament in its inquiry into the electronic mass surveillance of EU citizens.<sup>175</sup>

Fundamental rights concerns have also been voiced with regard to programmes that aim to prevent individuals becoming radicalised. The United Nations, Council of Europe and European Parliament have recognised the need for measures to prevent violent extremism, but have also stressed that such measures should be grounded in human rights and the rule of law.<sup>176</sup>

Efforts to counter jihadist terrorism need to take into account that about 4 in 10 Muslims (39 %) report experiences of discrimination, while 1 in 5 indicate that religion was the primary motivation. Some of the negative material and immaterial impacts of discrimination were highlighted in the Cost of Non-Europe Report in the area of Equality and the Fight against Racism and Xenophobia.<sup>177</sup> Against this backdrop it is even more important for the state to act without bias.

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<sup>175</sup> [Protecting fundamental rights in a digital age. Proceedings, Outcome and Background Documents](#), European Parliament, 2014.

<sup>176</sup> UN General Assembly, [Plan of Action to Prevent Violent Extremism: Report of the Secretary General](#), A/70/674 para 44, 2015; Council of Europe, [We must respond resolutely to terrorism without compromising human rights](#), 2015; [European Parliament resolution of 25 November 2015 on the prevention of radicalisation and recruitment of European citizens by terrorist organisations](#) (2015/2063(INI)), European Parliament, 2015.

<sup>177</sup> Fundamental Rights Agency, [Second European Union Minorities and Discrimination Survey \(EU-MIDIS II\)](#) W. van Ballegooij with J. Moxom, [The Cost of Non-Europe in the area of Equality and the Fight against Racism and Xenophobia](#), EPRS, European Parliament, March 2018.

### 3. Options for counterterrorism action and cooperation at EU level that could address the gaps and barriers

#### Key findings

EU action could address effectiveness and fundamental rights protection gaps in counterterrorism policies by developing an evidence-based EU criminal policy cycle involving the European Parliament and national parliaments. In this context, EU institutions should conduct proper ex-ante assessments and ex-post evaluations of counterterrorism measures in line with better law-making principles. The effectiveness and fundamental rights compliance of counter-radicalisation programmes should be further monitored. The framework for countering terrorist financing also requires further refinement.

Finally, a European law enforcement culture needs to be fostered in which relevant information is shared and analysed, judicial cooperation tools are properly used, and seeking the support of EU agencies becomes a natural reflex. This also requires adequate training and funding at national level.

Options for action at EU level that could address the gaps and barriers identified in EU cooperation and action in the fight against terrorism include:

#### 3.1. Developing an evidence-based EU criminal policy cycle

It is argued that the enhanced role of the European Parliament and national parliaments since the entry into force of the Lisbon Treaty<sup>178</sup> should translate into their more practical and effective involvement in the development of EU criminal policy, including as regards the fight against terrorism.<sup>179</sup> To a certain extent this would require a change in culture, resulting in a situation in which the Member States, jointly in the Council, recognise the role of the European Parliament and the European Union as an equal partner in achieving the shared objective of ensuring a high level of security.<sup>180</sup> The individual building blocks of an EU criminal policy cycle are already in place, such as the appearances of Council's Standing Committee on Operational Cooperation on Internal Security (COSI)<sup>181</sup> Chair and Counter-Terrorism Coordinator in Parliament, as well as structured dialogues with the competent Commissioners.<sup>182</sup> The EU criminal

<sup>178</sup> [Implementing the Lisbon Treaty, Improving the functioning of the EU on Justice and Home Affairs](#), Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, 2015.

<sup>179</sup> Cf. W. Wensink et al., [The European Union's policies on counterterrorism, relevance, coherence and effectiveness](#), Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, January 2017, p. 81, point 10; [European Parliament resolution of 2 April 2014 on the mid-term review of the Stockholm Programme](#) (2013/2024(INI)), P7\_TA(2014)0276, paragraph 63.

<sup>180</sup> Article 67 (3) TFEU.

<sup>181</sup> Article 71 TFEU.

<sup>182</sup> European Parliament resolution of 14 December 2011 on the EU Counterterrorism Policy: main achievements and future challenges, [P7\\_TA\(2011\)0577](#); European Parliament resolution of 9 July 2015 on the European Agenda on Security, [P8\\_TA\(2015\)0269](#); paragraph 12.

policy cycle could also include the input from EU Justice and Home Affairs agencies and bodies, national parliaments, academics and NGOs.<sup>183</sup> The European Parliament has made a similar proposal for a policy cycle on the monitoring and enforcement of the rule of law.<sup>184</sup> It is important for these two policy cycles to be interconnected, to ensure the respect for the rule of law and fundamental rights and thereby the success of counterterrorism policies.

In recognising the recent efforts already undertaken by the Commission in this regard, EU efforts should also strive towards a more comprehensive and continuous evaluation of the implementation of EU measures and action in the fight against terrorism, taking into account all relevant better regulation criteria,<sup>185</sup> including as regards compliance with fundamental rights.<sup>186</sup> In this context, use could also be made of the evaluation procedure of Union policies in the area of police and judicial cooperation provided by Article 70 TFEU.<sup>187</sup> Proposals for further EU legislation and action should be based on impact assessments,<sup>188</sup> comprehensively justifying the European Added Value of the planned measure. Consultation of experts and stakeholders is also crucial in this area to ensure that EU measures are evidence-based, correspond to practical needs and comply with fundamental rights.<sup>189</sup> In this context the early engagement of the Fundamental Rights Agency and the European Data Protection Supervisor should also be ensured.

Justifications for decisions to present proposals without an impact assessment should be scrutinised properly.<sup>190</sup> A European Parliamentary Committee may invite the Commission to present its impact assessment, and may also ask the Commission to revise its original impact assessment or for the European Parliamentary Research Service to provide a complementary or substitute impact assessment.<sup>191</sup> A Committee may also

<sup>183</sup> Cf. The annexed research paper by RAND, chapter 5, section I, option 1a.

<sup>184</sup> [European Parliament resolution of 25 October 2016 with recommendations to the Commission on the establishment of an EU mechanism on democracy, the rule of law and fundamental rights](#) (2015/2254(INL)), P8\_TA(2016)0409; W. van Ballegooij, T. Evas, [An EU mechanism on democracy, the rule of law and fundamental rights](#), EPRS, European Parliament, October 2016.

<sup>185</sup> For a general overview see I. Anglmayer, [Evaluation and ex-post impact assessment at EU level](#), EPRS, European Parliament, September 2016.

<sup>186</sup> Commission [Better Regulation Tool #28 Fundamental Rights and Human Rights](#).

<sup>187</sup> Article 70 TFEU: 'Without prejudice to Articles 258, 259 and 260, the Council may, on a proposal from the Commission, adopt measures laying down the arrangements whereby Member States, in collaboration with the Commission, conduct objective and impartial evaluation of the implementation of the Union policies referred to in this Title by Member States' authorities, in particular in order to facilitate full application of the principle of mutual recognition. The European Parliament and national parliaments shall be informed of the content and results of the evaluation'; European Parliament resolution of 11 February 2015 on anti-terrorism measures, [P8\\_TA\(2015\)0032](#), paragraph 23.

<sup>188</sup> For a general overview see C. Collova, [How does ex-ante Impact Assessment work in the EU?](#), EPRS, European Parliament, February 2015.

<sup>189</sup> European Parliament resolution of 13 December 2016 on the situation of fundamental rights in the European Union in 2015, [P8\\_TA\(2016\)0485](#), paragraph 10.

<sup>190</sup> Cf. European Commission, Better Regulation Toolbox, [Tool #9](#) ('When is an impact assessment necessary?').

<sup>191</sup> [Impact Assessment Handbook](#), Guidelines for Committee Chairs, European Parliament, Conference of Committee Chairs, paragraphs 13-15.

request an impact assessment of Parliament's substantive amendments.<sup>192</sup> It should furthermore be noted that a Member State, the European Parliament, the Council, or the Commission, may obtain the opinion of the Court of Justice as to whether an envisaged international agreement is compatible with the Treaties.<sup>193</sup>

The joint parliamentary scrutiny of Justice and Home Affairs Agencies by the European Parliament and national parliaments should be further implemented and expanded to agencies whose mandate has not yet been 'Lisbonised'. Scrutiny can only be effective if access to information, including classified information, is enabled to a certain extent. These measures are expected to result in more relevant, coherent, effective and efficient counterterrorism policies the compliance with fundamental rights of which is better ensured. However, the EU criminal policy cycle should not duplicate the responsibilities of current EU actors and find the right synergies with existing monitoring mechanisms at UN and Council of Europe level.<sup>194</sup> A legislative policy cycle in which the effects of envisaged EU legislation are forecast and evaluated, would be likely to result in more (in-depth) ex-ante and ex-post impact assessments, consultations and related costs. However, these costs could be compensated by the fact that the resulting measures or follow up action will have added value and are less likely to violate fundamental rights, undermining the credibility of the EU to act internally and externally, as well as leading to potential costs of compensating victims and repairing legislation.<sup>195</sup>

### **3.2. Strengthening the effectiveness and fundamental rights compliance of counter-radicalisation programmes**

The envisaged EU criminal policy cycle needs to establish a clear link with crime prevention, economic, social, employment, and education policies. This includes ensuring equal treatment and combating racism and xenophobia targeting certain racial and ethnic minorities, religions and other vulnerable groups, such as refugees.<sup>196</sup> This also calls for a fundamental rethink of the role of criminal law within society both at national and EU level. Criminal law should only be used as a last resort, especially given

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<sup>192</sup> [Impact Assessment Handbook](#), Guidelines for Committee Chairs, European Parliament, Conference of Committee Chairs, paragraph 16.

<sup>193</sup> As was the case regarding the EU-Canada Passenger Name Records agreement; CJEU, [Opinion 1/15](#) of 26 July 2017. Opinion pursuant to Article 218 (11) TFEU-Draft agreement between Canada and the European Union – Transfer of Passenger Name Record data from the European Union to Canada-Appropriate legal bases-Article 16(2), point (d) of the second subparagraph of Article 82(1) and Article 87(2)(a) TFEU-Compatibility with Articles 7 and 8 and Article 52(1) of the Charter of Fundamental Rights of the European Union.

<sup>194</sup> Cf. W. van Ballegooij, T. Evas, [An EU mechanism on democracy, the rule of law and fundamental rights](#), EPRS, European Parliament, October 2016, chapter 3 under 1 (Annual DRF European report) and 2 (DRF policy cycle (Member State compliance)).

<sup>195</sup> Ibid, chapter 3 under 3 (DRF policy cycle in the EU institutions).

<sup>196</sup> W. van Ballegooij with J. Moxom, [The Cost of Non-Europe in the area of Equality and the Fight against Racism and Xenophobia](#), EPRS, European Parliament, March 2018; European Parliament resolution of 25 November 2015 on the prevention of radicalisation and recruitment of European citizens by terrorist organisations, [P8\\_TA\(2015\)0410](#), paragraph 1.

the stigmatising effect of a criminal record on individuals.<sup>197</sup> At the same time, the criminal justice system should ideally reform individuals. Further reflection is needed on the interaction of these policies with counter-radicalisation efforts.

Cooperation and tools available at EU level to prevent radicalisation and recruitment to terrorism as well as to support disengagement efforts, should be strengthened. This could be achieved through the development of a new overarching policy framework, the sharing of expertise and coordination at EU level and capacity building in the Member States.<sup>198</sup> In particular, EU funding could further support programmes aimed at social inclusion, equality and disengagement, including in prisons, where overcrowding increases the risk of radicalisation and reduces the opportunities for rehabilitation.<sup>199</sup> In addition, existing support for radicalisation research could be stepped up and mechanisms for monitoring actions by Member States could be strengthened.<sup>200</sup> Such monitoring should include both the effectiveness and fundamental rights compliance of those actions.

These measures are expected to result in the increased relevance, coherence effectiveness, efficiency and fundamental rights compliance of counter-radicalisation measures. However, it also needs to be clear that there is no one-size-fits-all solution and success hinges upon Member States' cooperation.

### **3.3. Further refining the framework for countering terrorist financing**

As described in chapter 1, the EU has addressed terrorist financing on the one hand through terrorist asset freezing measures and, on the other hand, through instruments monitoring financial flows, such as AML legislation and the EU-US TFTP agreement. With an extensive legislative framework (almost) in place, the focus should shift towards proper transposition and implementation. At the same time it should be acknowledged that some of these measures have been controversial and have raised concerns about fundamental rights.<sup>201</sup> Furthermore, important gaps in current powers to disrupt terrorist financing and practical barriers impede the effectiveness of counterterrorism work.

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<sup>197</sup> Cf. European Parliament resolution of 22 May 2012 on an EU approach to criminal law (2010/2310(INI), [P7\\_TA\(2012\)0208](#).

<sup>198</sup> Cf. The annexed research paper by RAND, chapter 5, section II, option 2a.

<sup>199</sup> In breach of Article 3 ECHR and Article 4 of the EU Charter; For figures see the [Council of Europe Annual Penal Statistics, SPACE I, Prison populations, Survey 2014](#), PC-CP(2015)(7); [European Prison Observatory](#); W. van Ballegooij, [The Cost of Non-Europe in the area of Procedural Rights and Detention Conditions](#), EPRS, European Parliament, December 2017, p. 35; One might however also argue that overcrowding becomes less of a problem with increasing use of the 'containment' approach to 'radicalised' convicts.

<sup>200</sup> Cf. The annexed research paper by RAND, chapter 5, section II, option 2b.

<sup>201</sup> The European Parliament has even called for suspension of the TFTP agreement based on concerns related to data protection and oversight, see [European Parliament resolution of 29 October 2015 on the follow-up to the European Parliament resolution of 12 March 2014 on the electronic mass surveillance of EU citizens](#), P8\_TA(2015)0388, paragraph 34.

Gaps and barriers relating to the mandate and cooperation between FIUs as well as both over- and under-reporting of suspicious transactions by financial institutions to FIUs need to be addressed. Based on a (partial) evaluation of current measures, further action has recently been agreed,<sup>202</sup> or is still in the pipeline, to facilitate FIUs' access to central bank account registries and enhance cooperation.<sup>203</sup> The majority of the FIUs have access to bank information via requests to individual banks or 'blanket request' to banks in their territory. It is argued that this capacity could be improved via central registers with information on bank accounts or of other centralised systems for retrieving this information. Access to bank account registries will be extended to law enforcement authorities. Furthermore access to financial transaction data held in EU jurisdictions will be facilitated for counterterrorism investigations.<sup>204</sup>

The EU-US TFTP programme leaves gaps, given the fact that a number of transaction types are not covered (intra-EU payments in euro). A roadmap was published in October 2016 exploring an EU Terrorist Finance Tracking System (EU TFTS).<sup>205</sup> However, the necessity of an EU TFTS may be contested in view of expanding access to financial data by existing information exchange tools such as financial intelligence units (FIUs) and enhanced cooperation between them at EU level.<sup>206</sup>

Furthermore, extending the mass collection and retention of financial data would exacerbate the fundamental rights concerns that have already been raised regarding the EU-US TFTP agreement. It has been argued that even if data is not transferred to the USA, an EU TFTS would still constitute a form of mass surveillance.<sup>207</sup> Moreover, as mentioned in chapter 1, providing proof of the effectiveness and added value of the EU-US TFTP agreement remains problematic.<sup>208</sup>

Without prejudice to the need to combine human and financial intelligence at the national level, action at EU level may result in positive impacts through greater harmonisation and coordination of efforts to disrupt terrorist financing. The effectiveness of the new AML rules will continue to rely to a considerable extent on the

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<sup>202</sup> European Parliament legislative resolution of 19 April 2018 on the proposal for a directive of the European Parliament and of the Council amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and amending Directive 2009/101/EC, [P8\\_TA-PROV\(2018\)0178](#).

<sup>203</sup> [Proposal](#) for a directive laying down rules facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences and repealing Council Decision 2000/642/JHA, European Commission, COM(2018) 213 final of 17 April 2018.

<sup>204</sup> For a more extensive overview see A. Scherrer, [Law enforcement access to financial data](#), Implementation Appraisal, EPRS, European Parliament, April 2018.

<sup>205</sup> European Commission roadmap, [a possible European system complementing the existing EU-US TFTP agreement](#), 25 October 2016.

<sup>206</sup> M. Wesseling, [An EU Terrorist Finance Tracking System](#), Royal United Services Institute for Defence and Security Studies, September 2016, executive summary, p. xi.

<sup>207</sup> Ibid.

<sup>208</sup> In 2015, the European Parliament was refused access to a document on the implementation of the TFTP Agreement written by Europol's own internal data protection committee, the Joint Supervisory Body. The [EU Ombudsman objected to this decision](#), arguing that it prevented the Parliament from exercising sound democratic oversight of the TFTP in the EU.

participation of reporting entities. It is possible that even the expanded remit of AML Directive provisions does not encompass financial transaction channels that may be used for terrorist financing, particularly in light of the fact that terrorist acts do not have to be very costly and therefore may not require substantial financing.

### 3.4. Moving towards a European law enforcement culture

A European law enforcement culture needs to be fostered in which relevant information is shared and analysed, judicial cooperation tools are properly utilised, and seeking the support of EU agencies becomes a natural reflex. This also requires adequate training and funding at national level.

EU action and cooperation in fostering information exchange between national authorities could be further strengthened by supporting the implementation of existing centralised and decentralised information systems in line with fundamental rights safeguards, including SIS, VIS, Eurodac, Prüm and PNR, through the provision of technical and financial support, and where necessary infringement proceedings.<sup>209</sup> This also applies to the more recently agreed systems, including the ETIAS and the Entry Exit System.<sup>210</sup> This would include additional trust-building activities such as working sessions led by Europol, and twinning projects between Member State agencies with the objective of sharing experiences and best practices, as well as training by CEPOL.

The European Commission has furthermore submitted two proposals to enhance the interoperability of existing centralised EU information systems.<sup>211</sup> The proposals also include a quality control mechanism, and are tied with negotiations on the expansion of the mandate of EU-LISA.<sup>212</sup> Such expansion should allow EU-LISA to ensure the centralised operational management of existing and future EU information systems. EU-LISA should also develop technical solutions to achieve interoperability of EU information systems, subject to the adoption of the relevant legislative instrument on interoperability, and deliver proactive advice and assistance to Member States on technical issues related to the existing or new IT systems.

Whilst the very idea of interoperability has been welcomed by a majority of stakeholders, the definition of the concept of interoperability is not explicitly stated.<sup>213</sup> Furthermore,

<sup>209</sup> Cf. The annexed research paper by RAND, chapter 5, section II, option 3a.

<sup>210</sup> Regulation (EU) 2017/2225 of the European Parliament and of the Council of 30 November 2017 amending Regulation (EU) 2016/399 as regards the use of the Entry/Exit System, OJ L 327, 9.12.2017, p. 1-19.

<sup>211</sup> See COM(2017) 793 and COM(2017) 794 of 12 December 2017; C. Dumbrava, [Interoperability of European information systems for border management and security](#), EPRS, European Parliament, June 2017.

<sup>212</sup> Proposal for a regulation of the European Parliament and of the Council on the European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice, and amending Regulation (EC) 1987/2006 and Council Decision 2007/533/JHA and repealing Regulation (EU) 1077/2011, COM(2017) 352 of 29 June 2017; C. Dumbrava, [European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice \(eu-LISA\)](#), EPRS, European Parliament, January 2018.

<sup>213</sup> [EDPS Opinion 4/2018](#).

several other weaknesses have been highlighted, including as regards indications and evidence concerning the scale of the problems, and the Commission's assertion that interoperability would not alter the balance ensured by each of the existing systems as regards their impact on fundamental rights.<sup>214</sup> In this respect, some have argued that the proposals seek to introduce new data processing and grant new access rights to authorities and thus could have implications on the fundamental rights of both EU citizens and third country nationals.<sup>215</sup>

It should be noted that as a result of the proposed interoperability reforms, the systems originally envisaged for different purposes, related to migration and border management will be expected to support preventive policing and even counterterrorism tasks. Beyond the question as to whether they are capable of accomplishing this, experts have raised doubts regarding the effectiveness of this approach in contrast to more targeted forms of data analysis.<sup>216</sup>

Criminal investigations and prosecutions could be facilitated further by applying the principle of mutual recognition, taking into account proper fundamental rights, as was the case in the EIO Directive.<sup>217</sup> Fundamental rights gaps should be remedied by providing more guidance on these matters in the judicial cooperation instruments concerned,<sup>218</sup> and by strengthening the basis for mutual trust through harmonisation of procedural standards and the monitoring of compliance with democracy, the rule of law and fundamental rights within the Union, in line with Parliament's demands.<sup>219</sup> As highlighted, JITs have faced operational and legal obstacles, and have suffered from a lack of trust between participants. These problems should be resolved in part by a revised Model Agreement, produced in 2017,<sup>220</sup> and ongoing training and awareness raising undertaken by the European Judicial Training Network.

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<sup>214</sup> K. Eisele, [Interoperability between EU information systems for security, border and migration management, Initial Appraisal of a European Commission Impact Assessment](#), EPRS, European Parliament, February 2018.

<sup>215</sup> [Interoperability of Justice and Home Affairs Information Systems](#), Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, April 2018, pp. 76-82.

<sup>216</sup> R. Kreissl, Will more data bring more security? Remarks on the Security Union approach to interoperability in S. Carrera and V. Mitsilegas, [Constitutionalising the Security Union, Effectiveness, rule of law and rights in countering terrorism and crime](#), CEPS, 2017, p. 93-98.

<sup>217</sup> e.g. as regards the [mutual recognition of freezing and confiscation orders](#); V. Vikolainen, Mutual recognition of freezing and confiscation orders, Initial Appraisal of a European Commission Impact Assessment, EPRS, European Parliament, June 2017.

<sup>218</sup> [European Parliament resolution of 27 February 2014 with recommendations to the Commission on the review of the European Arrest Warrant](#) (2013/2109(INL)), P7\_TA(2014)0174; M. Del Monte, [Revising the European Arrest Warrant](#), EPRS, European Parliament, March 2014.

<sup>219</sup> [European Parliament resolution of 25 October 2016 with recommendations to the Commission on the establishment of an EU mechanism on democracy, the rule of law and fundamental rights](#) (2015/2254(INL)), P8\_TA(2016)0409; W. van Ballegooij, T. Evas, [An EU mechanism on democracy, the rule of law and fundamental rights](#), EPRS, European Parliament, October 2016.

<sup>220</sup> Council Resolution on a Model Agreement for setting up a Joint Investigation Team (JIT), OJ C 18, 19 January 2017, p. 1-9 ; W. van Ballegooij, T. Zandstra, [The Cost of Non-Europe in the area of Organised Crime and Corruption](#), EPRS, European Parliament, March 2016, p. 27.

As mentioned, the Directive on Terrorism<sup>221</sup> does not prevent Member States from adopting or keeping in place criminal definitions which cover other (intentional) acts.<sup>222</sup> It also explicitly refers to a number of fundamental rights principles based on which Member States may limit criminal liability.<sup>223</sup> Therefore, certain differences among Member States' legal systems will remain in this respect.<sup>224</sup> It was also noted that not all Member States comply with common minimum standards regarding procedural rights of suspects, including terrorism suspects.<sup>225</sup> The correct implementation of these EU measures should (continue to) assure judicial authorities that they can cooperate with their counterparts based on the trust that the demand for assistance is proportionate and that the appropriate procedural rights standards will be applied. This can be achieved through handbooks, guidelines, databases and training of and exchanges between judicial authorities.<sup>226</sup> Such measures would require adequate support from the EU budget.<sup>227</sup> Furthermore, the monitoring of the use of judicial cooperation tools in terrorism cases could help in establishing best practices and further tailoring these tools to the needs of practitioners.<sup>228</sup> Where necessary the Commission should make use of its power to launch infringement procedures.

In line with Parliament's demands and as a next step, one could envisage measures aimed at more systematic, or even mandatory structured exchange of information between law enforcement authorities and intelligence services.<sup>229</sup> As the TFEU does not provide an explicit legal basis for such a proposal, it would have to be based on Article 352 TFEU, requiring unanimity in the Council and consent of the European Parliament. One could also consider providing 'genuine investigation and prosecution competences and capabilities'<sup>230</sup> in the fight against terrorism at EU level through common action based on Article 73 TFEU,<sup>231</sup> with the long-term option of reforming

<sup>221</sup> 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, OJ L 88, 31 March 2017, p. 6-21.

<sup>222</sup> For a selected overview see [EU and Member States' policies and laws on persons suspected of terrorism-related crimes](#), Policy Department for Citizens' Rights and Constitutional Affairs, December 2017, chapter 4.1. (Criminalisation of terrorism-related offences).

<sup>223</sup> 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, OJ L 88, 31 March 2017, p. 6-21, article 23.

<sup>224</sup> For more detail on the Directive on Terrorism see S. Voronova, [Combatting Terrorism](#), EPRS, European Parliament, September 2017.

<sup>225</sup> [EU and Member States' policies and laws on persons suspected of terrorism-related crimes](#), Policy Department for Citizens' Rights and Constitutional Affairs, December 2017, chapter 4.2. (the rights granted to suspects of terrorism-related crimes).

<sup>226</sup> Cf. The annexed research paper by RAND, chapter 5, section II, option 3a.

<sup>227</sup> Gianluca Sgueo, Counterterrorism funding in the EU budget, EPRS, April 2016.

<sup>228</sup> Cf. The annexed research paper by RAND, chapter 5, section II, option 4a.

<sup>229</sup> European Parliament resolution of 16 February 2017 on improving the functioning of the European Union building on the potential of the Lisbon Treaty (2014/2249(INI)), [P8\\_TA\(2017\)0049](#), paragraph 119.

<sup>230</sup> European Parliament resolution of 16 February 2017 on possible evolutions of and adjustments to the current institutional set-up of the European Union (2014/2248(INI)), [P8\\_TA\(2017\)0048](#), paragraph 33.

<sup>231</sup> Article 73 TFEU: 'It shall be open to Member States to organise between themselves and under their responsibility such forms of cooperation and coordination as they deem appropriate between the competent departments of their administrations responsible for safeguarding national security'.

Europol and Eurojust, subject to the necessary Treaty revision. The alternative could be extending the competence of the European Public Prosecutor's Office to cover counterterrorism in accordance with Article 86(4) TFEU. However, such developments would also require the further harmonisation of criminal definitions, procedural rights and data protection safeguards, as well as effective joint parliamentary scrutiny. The Commission has announced a Communication on the potential extension of the EPPO's mandate in its 2018 work programme.<sup>232</sup>

A European law enforcement culture should result in strategic and operational benefits for national investigations and prosecutions. In particular, interconnected databases and the enhanced mandate of EU-LISA should contribute to a more effective regime of information sharing across the EU. However, compliance with fundamental rights, including data protection standards will need to be assured. Furthermore, the success of these measures will depend on the willingness and/or ability of the relevant authorities to use them. Fostering the use mutual recognition tools and JITs, as well as further harmonising substantive and procedural criminal law should result in more effective judicial cooperation within the EU. The effective implementation of these EU criminal justice measures will however require the allocation of significant resources aimed at training and exchanges. Finally, better use of the capabilities of Europol, Eurojust and CEPOL should result in further strategic and operational gains for law enforcement.

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<sup>232</sup> Cf Commission work programme 2018, Annex I, COM (2017) 650 of 24 October 2017, p. 5.

## Conclusion

Significant benefits could be achieved by the EU and its Member States by addressing the gaps and barriers in the area of the fight against terrorism, notably by developing an evidence-based EU criminal policy cycle involving the European Parliament and national parliaments. In this context, EU institutions should conduct comprehensive ex-ante assessments and ex-post evaluations of counterterrorism measures, in line with better law-making principles. The effectiveness and fundamental rights compliance of counter-radicalisation programmes should continue to be monitored. The framework for countering terrorism requires further refinement.

A European law enforcement culture with full respect for fundamental rights needs to be fostered in which relevant information is shared and analysed, judicial cooperation tools are properly used and seeking the support of EU agencies becomes a natural reflex. This also requires the allocation of significant resources aimed at training and exchanges.

Beyond resulting in more relevant, coherent, effective and efficient action in the fight against terrorism, such measures could increase the wellbeing of the population, reduce the material and immaterial impacts of terrorism, and ensure protection of fundamental rights when impacted by counterterrorism measures.



## **Annex 1**

# **The Cost of Non-Europe in the Fight against Terrorism**

**Research paper  
by RAND Europe**

### **Abstract**

Recent terrorist attacks, including those in Belgium, France, Germany, Spain and the UK, highlight the devastating individual and societal impacts of terrorism. Given the global nature of the threat, actions to prevent terrorism, to protect the public, to pursue terrorists and to respond to attacks must be based on European and international cooperation if they are to be effective. This study, prepared by RAND Europe for the European Added Value Unit of the Directorate-General for Parliamentary Research Services, describes the state of play regarding the actions taken at the EU level to support the fight against terrorism. It examines the economic and individual impacts of terrorism, and provides new estimates of the costs of attacks across EU member states. It also examines the costs of measures to counter terrorism, and in particular their impacts on fundamental rights. The study identifies and assesses gaps and barriers in European cooperation and action in the fight against terrorism, and suggests potential options for action at the EU level that could address them.

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## Abbreviations

2SLS	Two-Stage Least Squares
API	Advanced Passenger Information
Cepol	European Police Training College
CJEU	Court of Justice of the European Union
DG EPRS	Directorate-General for Parliamentary Research Services
EAW	European Arrest Warrant
EC	European Commission
ECHR	European Convention on Human Rights
ECON	European Parliament Committee on Economic and Monetary Affairs
ECRIS	European Criminal Record Information System
ECRIS-TCN	ECRIS-Third Country National System
ECTC	European Counter Terrorism Centre
ECtHR	European Court of Human Rights
EDPS	European Data Protection Supervisor
EES	Entry/Exit System
EIO	European Investigation Order
EIS	Europol Information System
EMCDDA	European Monitoring Centre for Drugs and Drug Addiction
ESS	European Social Survey
ETIAS	European Travel Information and Authorisation System
EU	European Union
EU CTC	EU Counter Terrorism Coordinator
eu-LISA	European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice
Eurodac	European Dactyloscopy (fingerprint database)
FATF	Financial Action Task Force
FDI	Foreign Direct Investment
FIU	Financial Investigation Unit
FRA	European Union Agency for Fundamental Rights
FTA	Free Trade Agreement
GTD	Global Terrorism Database
HLCEG-R	High-Level Commission Expert Group on Radicalisation.
HLEG	High Level Expert Group
IRU	Internet Referral Unit
ISIL	Islamic State in Iraq and the Levant
IV	Instrument variable
JHA	Justice and Home Affairs
JIT	Joint Investigation Team
LIBE	European Parliament Committee on Civil Liberties, Justice and Home Affairs
MONEYVAL	Council of Europe Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism
NGO	Non-governmental organisation
OLS	Ordinary Least Squares
PNR	Passenger Name Record agreement
RAN	Radicalisation Awareness Network

SIS	Schengen Information System
TE-SAT	Terrorist Situation & Trend Report
TEU	Treaty on the European Union
TFEU	Treaty on the Functioning of the European Union
TFTP	Terrorist Finance Tracking Programme
TFTS	Terrorist Finance Tracking System
VIS	Visa Information System
WVS	World Values Survey

## Executive summary

Between 2010 and 2016, over 300 people were killed in terrorist attacks in the EU.<sup>1</sup> While there is ongoing debate regarding the precise definition of ‘terrorism’, the essential purpose of terrorist acts is to spread fear and disrupt fundamental political, constitutional, economic and social structures. Recent attacks, including those in Belgium, France, Germany, Spain and the UK, mean that the threat of a terrorist attack is present for all those living in the EU, and is a critical priority at the member state and EU level.

The response to terrorism encompasses the need to **prevent** its causes (such as radicalisation), to **protect** the public and national infrastructure by taking security measures to reduce vulnerability, to **pursue** terrorists and those planning attacks, and to **respond** to attacks if they do happen, in an efficient and effective manner. Given the geographical reach of the global terrorist threat, all these actions need to be taken not only at national level, but also in cooperation with other EU countries and internationally. While primary responsibility for security and counter-terrorism lies with member states, the EU has a responsibility to ensure a high level of security (as provided under Article 67 TFEU), and supports member states and their authorities in varied efforts to counter terrorism at the national level through enhanced cooperation and collective action.

This study has been prepared by RAND Europe for the European Added Value Unit, Directorate-General for Parliamentary Research Services, to inform a wider assessment of the ‘Cost of Non-Europe’ in the Area of Freedom, Security and Justice. Cost of Non-Europe reports aim to identify opportunities for gains or the realisation of public good through common action at the EU level and attempt to establish areas that might benefit from deeper EU integration or coordination.

We aim to answer the following research questions:

1. What is the **current state of play** in the area of the fight against terrorism?
2. What are the economic and individual **impacts** of terrorism and corresponding counter-terrorism measures at the EU level?
3. What is the **impact of any gaps and barriers in European cooperation** and action in the fight against terrorism?
4. Are there potential **options for action** at the EU level that could address these gaps and barriers, and what are their potential costs and benefits?

In addressing questions 1, 3 and 4, this study has two levels of focus: firstly, it looks at high-level rules and principles that should underlie policy making and operational action in the fight against terrorism: **respect for fundamental rights** and **democratic and judicial oversight and accountability**. Secondly, the study focuses on six areas of **operational cooperation**, as specified by the DG EPRS:

- Counter-radicalisation measures.
- Systems and databases for information sharing.
- Practices of information sharing between member states.
- Cooperation tools and mutual recognition instruments (Joint Investigation Teams, the European Arrest Warrant and European Investigation Orders).
- The support and capabilities of Europol and Eurojust.
- Action in relation to terrorism financing.

Our analysis started with a **review of relevant literature**, including academic papers, material published by European institutions and agencies, and reports by NGOs and international organisations. The aims of the review were to: understand the current state of play in terms of action already being taken at the EU level; identify available data and statistics on the costs of terrorism and

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<sup>1</sup> Using data from the Global Terrorism Database.

counter-terrorism measures; identify potential gaps and barriers in EU action, and identify ideas for reform and policy actions. **Interviews** with eight expert stakeholders were conducted to identify further ideas and challenge initial conclusions from the literature review. A **statistical and econometric analysis** was performed, to generate new estimates of the economic and individual costs of terrorism across EU member states. Lastly, a **synthesis and critical assessment** was undertaken to prioritise identified gaps and barriers and identify possible policy options to improve EU cooperation and action and thus reduce the costs of terrorism.

A summary of our key findings follows:

## **The current state of play in the fight against terrorism**

**Extensive actions are already taken at the EU level to support the fight against terrorism.** The EU has articulated, across a number of documents, **shared strategic objectives** in relation to counter-terrorism (including the Counter-Terrorism Strategy (Council of the European Union 2005) and the 2015 European Agenda on Security (EC 2015a)). EU agencies, in particular **Europol and Eurojust**, **offer a range of support services to member states**, and have both enhanced their work in the area of counter-terrorism in recent years, not least via the creation of the European Counter Terrorism Centre within Europol in 2016. At a more operational level, EU action has been taken to **coordinate counter-radicalisation efforts** and the EU and its agencies have established a number of **databases and information systems** to facilitate information sharing (for example, the Schengen Information System and the Europol Information System). EU legislation provides **legal tools that aim to facilitate police and judicial cooperation in investigating terrorism**, such as Joint Investigation Teams and the European Arrest Warrant, and has **promoted the harmonisation of laws** in relation to terrorist offences and powers to disrupt the financing of terrorism.

**The state of play is constantly evolving, with a large number of ongoing, planned and proposed reforms and developments.** Counter-terrorism is a highly active policy area. For example, there are **extensive changes being made to existing information exchange platforms** to enhance their functionality, as well as the **proposed creation of new systems** such as the European Travel Information and Authorisation System (which would collect data from visa-exempt travellers in advance of their arrival in the EU and assess whether their entry would constitute a security or health risk). Other examples include the **recent changes to the legal basis for Europol**, and proposed changes to the legal basis to Eurojust, to enhance counter-terrorism capabilities.

**Debate about the fundamental rights implications of counter-terrorism measures has been intense and this shows no sign of diminishing.** Strong concerns have been voiced by the European Parliament and EU Agency for Fundamental Rights (among others) about the impacts on privacy of counter-terrorism laws and practices. Given the essential need to share information between member states in order to counter the terrorist threat, there has been extensive debate about how data protection can be ensured in the creation of databases and the collection of information to facilitate law enforcement actions. Examples include the ongoing discussions about the **EU-US Terrorist Finance Tracking System** and the exchange of **Passenger Name Record** data with third countries, and the condemnation of mass surveillance practices. Judgements of the European Court of Human Rights have highlighted cases where rights to liberty, fair trial and family life have been infringed, not least by the practice of illegal rendition and detention.

## **The economic and individual impacts of terrorism and corresponding counter-terrorism measures at the EU level**

**We estimate that terrorism has cost the EU about €180bn in lost GDP and around €5.6bn in lost human and physical capital between 2004 and 2016.** New estimates of the cost of terrorist attacks specifically for the EU-28 have been generated for this study. These estimates are based on econometric modelling and closely follow empirical approaches taken in the academic literature.

Overall, we estimate that terrorism has led to a GDP loss across the EU-28 member states since 2004 of about €180bn, of which about €88bn occurred between 2013 and 2016. In line with previous empirical research for other countries or specific countries within Europe, we find that terrorism also has had a tangible, albeit small and probably short-lived, impact on economic output in the EU. We found that the effects on economic output were mainly a result of negative impacts on investment, although there may be a slight positive effect on aggregate consumption. A shift towards potentially less growth-enhancing defence and security public expenditure could further hamper economic growth in the longer run. However, the empirical evidence for the effects on growth of such expenditure is mixed. In addition, when calculating the human and physical capital costs from terrorism we find that these amount to about €5.6bn between 2004 and 2016, of which around €2.6bn was incurred since 2013.

**We find that terrorism may have a measurable, negative impact on the well-being of a population.**

Aside from its impact on human and physical capital and economic output, terrorism has been shown in previous studies to have psychological consequences, affecting people's life satisfaction, happiness, health and even trust within communities and in national political institutions. New analysis conducted for this study using data from the European Social Survey and World Values Survey, and adjusting for many other factors that could be associated at the individual level, finds that measures of psychological well-being tend to be lower in countries that experience relatively more terrorism.

We hope that our estimates of the economic and individual costs of acts of terrorism and of counter-terrorism measures can be used as a tool to understand potential economic and cost savings from preventing attacks or taking action to protect, pursue and respond more efficiently and effectively.

## **The impact of gaps and barriers in European cooperation and action in the fight against terrorism**

**There is a range of democratic and judicial oversight and accountability mechanisms at the EU level, but there is scope to enhance the extent to which fundamental rights are systematically protected and considered in the EU policy-making process.** Decisions of the European Court of Human Rights and reports from the EU Agency for Fundamental Rights and the European Data Protection Supervisor demonstrate that existing counter-terrorism measures have infringed rights, and that proposed new measures could have significant fundamental rights impacts. Questions about the protection of the rights of the EU population generally, and those suspected of terrorist offences specifically, have been at the forefront of debate in the EU – not least in the European Parliament, where the rights implications for individuals have regularly been raised (for example in relation to the illegal rendition and detention of terrorist suspects and mass surveillance). Evidence collected in this study suggests potential gaps in the processes for safeguarding fundamental rights in EU policy; key concerns relate to limited opportunities for consultation during policy development (with actors such as the European Parliament and human rights organisations) and the potential under-use of *ex ante* impact assessment of new policy proposals.

**Programmes to prevent individuals becoming radicalised are a cornerstone of EU counter-terrorism policy, but there are gaps in the evidence base relating to these programmes and there is potential to further build EU-wide coordination and knowledge sharing.** Despite the fact that counter-radicalisation and preventative programmes are in operation in a number of member states, and despite EU funding for research, there is limited knowledge about whether and how these programmes are effective, or about the causes of radicalisation. The Radicalisation Awareness Network, established in 2015 as a platform where practitioners, researchers and policy makers can pool expertise and experience, was reported to be functioning well, but further coordination, supported at the EU level, could have benefits in terms of shared learning and might also encourage the engagement of the wider range of actors needed to tackle the complex challenges radicalisation presents (including law enforcement and education agencies, private sector entities and research

communities). Counter-radicalisation programmes raise important fundamental rights issues relating to privacy and freedom of speech, and can pose threats to community cohesion.

**Existing information sharing systems and databases provide a vital operational tool, but there is agreement that there are gaps in functionality, coverage and interoperability.** This study describes eight databases and information sharing systems relevant to the fight against terrorism (SIS, VIS, Eurodac, EIS, API, PNR, ECRIS and Prüm), and three that have been proposed or are under development (ETIAS, ECRIS and EES). Constraints to the functionalities of these systems include, for example, limited search capabilities. There are also limitations to coverage, where data deemed useful to the fight against terrorism are not currently recorded in any system. A cross-cutting concern is that this complex landscape consists of systems that are not interoperable. These important gaps have been widely recognised and there are ongoing reforms to address them. However, proposals to create cross-searching capabilities and collect more data have serious implications for privacy and data protection. While actors such as the EU Agency for Fundamental Rights and the European Data Protection Supervisor are involved in policy formation and debate on these issues, there is potential scope to further foster a policy-making culture in which data protection issues are seen as part of the solution, rather than a hurdle to be overcome.

**There is scope for greater information sharing between member states and between member states and Europol and Eurojust. A key facilitator is the building of trust and awareness of the benefits of sharing information.** Statistics on information exchange systems and databases, such as the Schengen Information System and the Europol Information System, indicate a year-on-year increase in use by member states. However, there are possibilities for greater information sharing as well as evidence that levels of information sharing vary between member states. There are also gaps relating to the quality of information shared (its accuracy and relevance) and the capacity of EU agencies and member states to analyse it in an efficient and timely way, so that it can guide operational action. While greater information sharing might have benefits, it also raises important fundamental rights concerns, and interviewees stressed the need to consider these issues early in the policy-making process.

**There is a potential under-use of Joint Investigation Teams and the European Arrest Warrant in terrorism cases.** There was a consensus among interviewees and in the literature reviewed that tools such as Joint Investigation Teams and the European Arrest Warrant were useful in terrorism investigations. There were calls in the literature for greater uptake of these tools by member states, although some interviewees were cautious in calling for this, stressing that the tools are available for member states to use according to their needs. Experience was still being gained in relation to the European Investigation Order, which has only recently been implemented.

**There are calls for member states to make greater use of Europol and Eurojust, and there are potential gaps relating to the ability of Europol to share information with third countries.** While it is important to remember that these agencies serve the needs of member states, and that use of the support services offered by Europol and Eurojust is increasing year-on-year, authoritative voices such as the EU Counter Terrorism Coordinator have pointed out the potential benefits of greater involvement to member states. These benefits could be operational (in specific cases) or more strategic (such as allowing a better understanding of the threat landscape and the challenges faced by national actors). The new legal basis for Europol in the 2016 Regulation considerably enhances the ability of the agency to share information with countries outside the EU, but there are continued restrictions in this respect, constituting a potential gap in terms of EU action to counter terrorism. Sharing information with third countries could have costs in terms of data protection and privacy rights, however, which is why the restrictions are imposed.

**Measures to tackle terrorist financing have been controversial and raised concerns about fundamental rights. At the same time, important gaps in current powers to disrupt terrorist financing are said to impede the effectiveness of counter-terrorism work.** Key actors in this field are

the Financial Investigation Units working in member states and cooperating across the EU to collect and analyse reports of suspicious financial transactions. There are gaps relating to both over- and under-reporting of suspicious transactions by financial institutions to Financial Investigation Units, as well as gaps relating to different levels of feedback and training for institutions reporting suspicious transactions, leading to variable quality reporting. The EU-US Terrorist Finance Tracking Programme is a key part of the toolkit for law enforcement in the EU. There is agreement about the gaps in this programme, with a range of transaction types not recorded in the tracking systems. However, steps to fill these gaps have met strong opposition on the grounds that the mass collection and retention of data is a significant fundamental rights infringement. There are also gaps relating to the ability to evaluate the effectiveness of the programme; a number of documents and interviewees reported the value of the TFTP, but an assessment of its effectiveness and added value remains problematic. It is impossible to determine how many attacks have been prevented thanks to the TFTP, due both to the inherent difficulty of proving a negative and because information is not publicly available.

**Are there potential options for action at the EU level that could address these gaps and barriers, and what are their potential costs and benefits?**

The majority of the policy ideas suggested involve stepping-up the use of existing measures and powers, or ensuring full implementation of changes and measures already proposed (and in some cases underway). The study outlines potential policy options to address identified gaps and barriers. These were drawn from the literature, comments from interviewees and analysis by the research team. The majority of the policy options involve a coordinating and monitoring role for the EU and would not need new legislation. The policy options are grouped into six themes, as summarised below.

## Fundamental rights, accountability, oversight and evidence-based policy

### 1a. Strengthen coordination, consultation and oversight using new mechanisms and better use of some existing mechanisms.

- Introduce new standing mechanisms to review the implementation of counter-terrorism policy in the EU.
- Ensure early engagement of all relevant stakeholders in the EU policy-making and review process, using existing mechanisms.
- Implement existing proposals to expand joint parliamentary scrutiny approaches to Eurojust, building on experience of their use at Europol.
- Develop a new framework for the European Parliament to access classified data.

### 1b. Increase scrutiny of decisions not to undertake *ex ante* and *ex post* assessment in the policy-making process.

- Ensure additional scrutiny of decisions not to use impact assessments and evaluations.

## Counter-radicalisation measures

### 2a. Create new coordination and cooperation mechanisms.

- Development of a new overarching policy framework.
- Adoption of new coordinating policies and measures and actors.

### 2b. Enhance existing support for research and strengthen monitoring in the field of countering radicalisation.

- Step-up existing support for radicalisation research.
- Strengthen existing monitoring mechanisms of actions by member states and collect new monitoring data.

## Systems and databases for information sharing. Practices of information sharing between member states.

### 3a. Support the implementation and utilisation of existing and planned information systems.

- Support the implementation of existing capabilities in Prüm, PNR and EES.
- Initiate infringement proceedings where appropriate, using existing powers.
- Undertake additional trust-building activities to encourage greater information sharing.

### 3b. Adopt already proposed or agreed new measures to enhance the functionality, coverage and interoperability of information systems.

- Implement already proposed updates to SIS and Eurodac.
- Implement already proposed quality control systems.
- Proceed with creation of already proposed new databases – ETIAS and ECRIS-TCN.
- Proceed with already proposed eu-LISA initiatives to enhance the interoperability of existing centralised information systems.

## Cooperation tools and mutual recognition instruments

### 4a. Support and monitor the implementation of existing cooperation instruments by national authorities using existing mechanisms.

- Provide additional assistance to national-level authorities to support their implementation of cooperation instruments.
- Continue to monitor implementation and collect better information about use in terrorism cases.
- Consider new legislative amendments to mutual recognition instruments.

## The support and capabilities of Europol and Eurojust

### 5a. Advertise and increase the utility of existing analytical and operational support to member states using existing mechanisms.

- Intensification of existing Europol and Eurojust awareness-raising activities.
- Further improvements in the existing portfolio of services offered by Eurojust and Europol.

## Action in relation to terrorism financing

### 6a. Adopt and implement existing EU legislation on money laundering and mutual recognition of confiscation and freezing orders.

- Adopt and implement already proposed amendments to existing EU money laundering legislation.
- Creation of a new EU-level FIU.

### 6b. Develop new guidance for private reporting entities.

- Develop new instructions and guidelines for private sector institutions.

### 6c. Review effectiveness of the EU-US Terrorist Finance Tracking Programme with a view to inform a decision about the potential creation of an EU Terrorist Finance Tracking System.

- Assess the effectiveness of the TFTP and consider the desirability of establishing an EU TFTS.
- Make available information on which the TFTP can be assessed.

# Chapter 1: Introduction

This study is part of a series of Cost of Non-Europe (CoNE) reports that aim to identify opportunities for gains or the realisation of public good through common action at the EU level. These reports attempt to establish areas in which benefits might be expected from deeper EU integration or coordination. This report is for the European Added Value Unit, DG EPRS.

In the wake of a series of recent terrorist attacks and a number of foiled and failed terror plots, preventing radicalisation, protecting the general public against attacks, effectively investigating, prosecuting the perpetrators and upholding the values of democracy and freedom are certainly among the key concerns of EU citizens.

A recent study for the LIBE Committee (Wensink et al. 2017) highlighted that the EU and policy makers in the national governments of most EU member states feel increasingly under pressure from the population to find responses to the terrorist threat. However, given the short intervals between attacks, the variety of different perpetrator groups (foreign fighter returnees, home-grown extremists, lone actors, etc.) and changing trends in terms of *modi operandi* (such as the increasing weaponisation of ordinary objects such as kitchen knives or vehicles), it can be very difficult for security agencies to find effective responses. The EU has some competencies in the fight against terrorism; however, the primary responsibility in the field of security and counter-terrorism lies with individual member states.

While the threat from terrorism represents a pressing priority, and one that demands EU member states adopt counter-terrorism measures to protect citizens, such measures can themselves pose threats to individual freedoms and fundamental rights. Counter-terrorism measures involving enhanced law enforcement powers, surveillance, and the collection and use of data can infringe the liberty of all in society, and may specifically threaten the fundamental rights of individuals suspected of terrorism offences.

This introductory chapter first outlines the current terrorist threat to the EU and then describes the EU response to that threat. The chapter then goes on to detail the research objectives, scope and methodologies used to conduct this study.

## I – The terrorist threat to the EU

There is on-going debate regarding how ‘terrorism’ should be defined (Schmid 2011; EP 2015d), but the 2017 Directive on Terrorism (EU 2017/541) defines terrorist offences as those that aim to intimidate seriously a population, unduly compel a government or an international organisation to perform or abstain from performing any act, or seriously destabilise or destroy the fundamental political, constitutional, economic or social structures of a country or an international organisation (Article 3(2)). This definition captures the fact that terrorism aims to **spread fear and inhibit community cohesion through the threat of or carrying out of acts of violence**. A terrorist group is defined as ‘a structured group of more than two persons, established for a period of time and acting in concert to commit terrorist offences’ (Article 2(3)).

Europol’s 2017 Terrorism Situation & Trend Report (TE-SAT) identifies a ‘range of terrorist threats of a **violent jihadist nature**’ as posing the key terrorist threat to the EU (Europol 2017a). The report states that ‘in overall terms the level of activity in the EU attributed to jihadist terrorism remains high, with indications of it continuing to rise’ (Europol 2017a).

Since the events of 9/11, the threat from terrorism to the EU has changed dramatically. The geographical reach of the global terrorist threat has increased, most noticeably with the emergence of the Islamic State in Iraq and the Levant (ISIL) and its affiliates. **Foreign terrorist fighters** returning to the EU from Iraq and Syria are of particular concern in this regard, with an average of 30 per cent of

foreign fighters having reportedly returned to their countries of departure (ICCT 2016). While countering ISIL is a strategic priority for the EU, Europe also faces a threat from other violent jihadist groups including Al-Qaeda and its affiliates, notably Al-Qaeda in the Arabian Peninsula (AQAP) and Al-Qaeda in the Islamic Maghreb (AQIM).

In addition to these violent jihadist threats, the TE-SAT identifies **threats from other types of terrorism, including ethno-nationalist and separatist, left-wing and anarchist, ring-wing and single-issue terrorism**. An EP resolution of 25 November 2015 stated that EU policy on the prevention of radicalisation and recruitment of European citizens by terrorist organisations should ‘not be limited to Islamic radicalisation’, but should also consider other threats in relation to, for example, right-wing radicalisation (EP 2015c). The European Commissioner for the Security Union similarly noted the ‘need to keep in mind the growing menace of right-wing violent extremism’ (Tempest 2017).

Recent attacks in Spain (BBC News 2017), the UK (Dearden 2017) and France (France24 2017) highlight that terrorist threats are becoming more international and cross-border in nature (EC 2015a). **Migration flows** are relevant to the terrorist threat, with irregular migrant flows having been ‘exploited in order to dispatch terrorist operatives clandestinely to Europe’ (Europol 2017a). However, the TE-SAT notes that violent assaults on asylum seekers and ethnic minorities have also been carried out by right-wing extremist individuals and groups across Europe<sup>2</sup> (Europol 2017a).

Terrorist attacks in recent years have been characterised by **low-technology modi operandi**, requiring little planning time and limited financial resources, and they have often been **carried out by individuals working alone**. Use of the internet to access terrorist content, such as radicalisation messages or instructions for bomb-making, are also a common feature (Europol 2017a; von Behr et al. 2015; Bodine-Baron et al. 2016). All these features pose particular challenges to prevention efforts.

The threat from terrorism is closely linked with that posed by **organised crime** (Makarenko 2012; van Ballegooij & Zandstra 2016), with evidence that criminal networks in Europe provide financial support for terrorist groups and that ‘recent EU terrorist attacks have been funded by an opportunistic mix of licit and illicit sources’ (Europol 2017a). Both organised crime and terrorism are linked to **corruption** and that is often regarded as the enabler for both (for instance corruption may facilitate international terror attacks by providing access to false papers or documents and by enabling cross-border terrorist financing (OECD 2017)).

## II – The EU’s response to the terrorist threat

The primary responsibility in the field of security and counter-terrorism lies with individual EU member states.<sup>3</sup> However, the EU has a responsibility under Article 67 TFEU to ensure a high level of security. It therefore supports member states and their authorities in varied efforts to counter terrorism at the national level and through enhanced cooperation and collective action. A detailed description of EU competencies in this area can be found in Appendix A.

The 2005 **Counter-Terrorism Strategy** (Council of the European Union 2005) provides the EU policy framework, the objective of which 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’. The Strategy comprises four pillars – **prevent, protect, pursue and respond** – and acknowledges the significance of cooperation with third countries and international institutions.

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<sup>2</sup> These assaults do not generally qualify as terrorism (according the definitions employed by TE-SAT) and are therefore not included in the numbers of terrorist attacks reported by member states. Please see ‘Annex 4: Methodology’ in Europol’s TE-SAT 2017 report for the definition of the term ‘terrorist offences’ employed.

<sup>3</sup> ‘EU member states retain the primary responsibility in the field of security and counter-terrorism (retaining sole responsibility for national security pursuant to Article 4 of the Treaty on the European Union (TEU)’ (EC 2017f).

The **2014 Strategic guidelines in the area of freedom, security and justice** are the Council's current guidelines in this area, setting out as one of its three priorities to 'prevent and combat crime and terrorism' (Council of the European Union 2017b). The **2015 European Agenda on Security** (EC 2015a), which builds on the previous **Internal Security Strategy** 2010–2014 (EC 2017c), outlines how the EU can provide support to member states. It prioritises terrorism, organised crime and cybercrime as inter-linked areas with a strong cross-border dimension, and seeks to improve information exchange, operational cooperation and trust.

Following the Brussels terrorist attacks in March 2016, the EC President Jean-Claude Juncker launched the **Security Union**, with the objective of improving coordination 'within the EU's internal security domain particularly vis-à-vis transnational threats such as terrorism, in order to create the necessary infrastructure for national authorities to work effectively together, to close operational loopholes and gaps, and provide an environment in which national police forces will develop an automatic reflex to share relevant information with colleagues in other member states' (Wensink et al. 2017). The **Conclusions on EU External Action on Counter-Terrorism** were adopted on 19 June 2017 by the Foreign Affairs Council (Council of the European Union 2017a).

The Commission delivered a **Comprehensive Assessment of EU Security Policy** in July 2017. This covers the four thematic areas outlined in the 2015 European Agenda on Security: counter-terrorism, organised crime, cybersecurity, and information exchange and operational cooperation. Its assessment was based on 'consultations with all member states, Justice and Home Affairs (JHA) agencies (Europol, Ceuol, Frontex, EMCDDA, eu-LISA, Eurojust and FRA), think tanks, [and] researchers from EU funded projects on security and industry representatives'. The Commission also sought input from civil society and national parliaments. The key findings include (EC 2017f):

- The 2005 Counter-Terrorism Strategy continues to be valid and relevant.
- The EU's definition of terrorist offences is appropriate and fitting for combating terrorism, as regards the introduction of new offences in the recent Directive (EU) 2017/541.
- There would be added value in conducting and making available more regular threat assessments.
- The European Counter Terrorism Centre (ECTC) hosted by Europol has increased its capacity to coordinate and facilitate cooperation on counter-terrorism matters at the EU level. There is also room for growing the 'information hub' function of the ECTC (Europol 2017b).

In October 2017 the EC introduced a package of anti-terrorism measures, with actions foreseen over the next sixteen months related to (EC 2017k):

- The protection of public spaces and chemical, biological, radiological and nuclear security risks.
- Restricting access to dangerous substances (explosives precursors).
- Terrorist financing.
- The use of encryption in investigations.
- Countering radicalisation.
- The external dimension of counter-terrorism, including the seeking of a Council mandate to reopen negotiations with Canada on a revised Passenger Name Record (PNR) agreement (see Chapter 4).

The EC is also considering setting up a **European Intelligence Unit** (EC 2017c). This objective was included in the eleventh progress report on the Security Union (EC 2017g), but details of the plan, which has been the subject of consecutive questions from the EP, are not yet available (EP 2017e, 2017f).

Efforts have been made to harmonise definitions of terrorism and terrorist-related offences (EC 2017f). The most recent measure is the **Directive on combating terrorism**.<sup>4</sup> This came into force on 20 April 2017 with a deadline for transposition of 8 September 2018. The directive replaces, expands and strengthens the measures set out in the Council Framework Decision of 2002/475/JHA<sup>5</sup> and was preceded by a Proposal for a Council Framework Decision on combating terrorism. It includes definitions of new terrorist-related offences and provisions relating to foreign terrorist fighters.<sup>6</sup> It also introduces measures for the protection of victims of terrorism, such as the right to receive immediate access to professional support services, medical and psycho-social treatments, legal and practical advice, and assistance with compensation claims (EP & Council of the European Union 2017).

The 2014 UN Security Council Resolution 2178 has been cited as one driver for the new focus on foreign terrorist fighters. The Additional Protocol to the Council of Europe's Convention on the Prevention of Terrorism adopted in May 2015 (which was designed to implement UN Security Council Resolution 2178) also serves as inspiration for the 2017 Directive on combating terrorism. In the years preceding the adoption of the 2017 directive, the EP had expressed itself on foreign terrorist fighters in its resolution of 11 February 2015 on anti-terrorism measures, the resolution of 9 July 2015 on the European agenda on security, and the 25 November 2015 resolution on the prevention of radicalisation.

### III – Objectives and research questions

Against this background, this study into the Cost of Non-Europe in the areas of freedom, security and justice for the LIBE Committee of the EP aims to examine in more detail the fight against terrorism and seeks to answer the following **research questions**:

1. What is the current state of play in the area of the fight against terrorism?
2. What are the economic and individual impacts of terrorism and corresponding counter-terrorism measures at the EU level?
3. What is the impact of any gaps and barriers in European cooperation and action in the fight against terrorism?
4. Are there potential options for action at the EU level that could address these gaps and barriers and what are their potential costs and benefits?

The fact that member states have given the EU a shared competence in relation to the fight against terrorism indicates the potential for EU added value compared to member states acting alone or organising coordination bi-laterally. The EU can provide cooperation tools and act as a forum for information sharing, and EU agencies such as Europol and Eurojust can provide support. However, this potential EU added value is only realised if EU-level tools are effective (achieve their desired effects), efficient (do so at reasonable financial cost), relevant (address the challenges actually faced by member states), and are coherent with other member state and EU measures. This report aims to understand if current EU measures add sufficient value, and if they do not, it aims to understand what the corresponding barriers are. It also aims to understand if there are areas where further EU action would add value (while being in accordance with the principle of subsidiarity and in line with the competence of the EU in this area).

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<sup>4</sup> EU 2017/541 OJEU L88/6. In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark annexed to the TEU and to the TFEU, Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application (As stated in Article 42 of the Directive).

<sup>5</sup> This 2002 Framework Decision had itself been amended by Council Framework Decisions in 2005 (2005/671/JHA) and 2008 (2008/919/JHA).

<sup>6</sup> The Directive makes the following acts offences: Providing or receiving training for terrorism (Article 7 and 8); Travelling for the purpose of terrorism (Article 9); Facilitating the travel for the purpose of terrorism (Article 10).

## IV – Scope

The range of actions that can contribute to preventing terrorism, protecting the public, pursuing perpetrators and responding to attacks is extremely wide. The focus of this study is on the ‘internal’ aspects of counterterrorism policy<sup>7</sup> and in particular we look at the issue within the frame of protecting citizens’ rights, human rights and fundamental rights.

At the request of the European Added Value Unit, DG EPRS, this study has two levels of focus. Firstly, it looks at high-level rules and principles that underlie policy making and operational action to ensure that fundamental rights are respected, that there is democratic and judicial oversight and accountability, and that policy is based on evidence. Secondly, the study focuses on six areas of **operational cooperation**:

- Counter-radicalisation measures.
- Systems and databases for information sharing.
- Practices of information sharing between member states.
- Cooperation tools and mutual recognition instruments (Joint Investigation Teams (JITs), European Arrest Warrants (EAWs) and European Investigation Orders (EIOs)).
- The support and capabilities of Europol and Eurojust.
- Action in relation to terrorism financing.

Within the areas set out above, two further considerations were relevant to deciding the breadth and depth of investigation into each issue, and were discussed with DG EPRS at the outset of the study:

- The establishment of a Special Committee to Tackle Deficiencies in the Fight Against Terrorism within the EP (EP 2017h). Some of the issues addressed in this study overlap with the mandate of that committee, and therefore the findings may be of relevance to its work.
- Topics already covered in recent studies and assessments.<sup>8</sup> For example, the EP has commissioned a study on the EU’s polices on counter terrorism (Wensink et al. 2017), organised crime and corruption (West Sands Advisory LLP 2012), victims of terrorism (Ivanković, Altan & Verelst 2017), cyber issues (Hayes et al. 2015), etc. The focus of this study was selected to minimise the duplication of existing work.

## V – Study methods and limitations

The following research activities were employed to produce this research paper:

**A review of the literature**, including academic papers, material published by European institutions and publications from organisations such as the EU Agency for Fundamental Rights (FRA). Two studies, in particular, were relied on: *The European Union’s Policies on Counter-Terrorism: Relevance, Coherence and Effectiveness* (Wensink et al. 2017) and the *Comprehensive Assessment of EU Security Policy* undertaken by the Commission (EC 2017f). The former is a wide-ranging report, commissioned by the EP and published just before the commencement of this study. Mindful of not duplicating work and ensuring that this study adds value, we make use of the evidence collected in that report.

**Interviews with expert stakeholders.** The interviews were semi-structured, following a standardised topic guide (which is provided in Appendix C), but allowing for the discussion of unanticipated topics. Interviews were undertaken with representatives from:

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<sup>7</sup> A 2006 Costs of Non-Europe report in the area of security and defence explored increased defence cooperation but did not include the fight against terrorism. The study noted terrorism as one of the threats facing Europe and described how the CSDP covered the fight against terrorism: ‘CSDP action – while primarily an instrument of external policy – also brings value to internal EU security. CSDP addresses the wider notion of rule of law as the ultimate objective, and so promotes capacity building in fighting organised crime and terrorism, including strengthening host countries’ ability to cooperate with international law enforcement agencies [...]’ (Ballester 2013, 29).

<sup>8</sup> The Policy Department for Citizens’ Rights and Constitutional Affairs (2017) is a recently published an overview of relevant studies in this area.

- EC DG HOME (two interviewees).
- EC DG JUSTICE.
- The Cabinet of the EU Counter Terrorism Coordinator (EU CTC).
- The Agency for Fundamental Rights.
- Europol Counter Terrorism Centre.
- Eurojust.
- The European Data Protection Supervisor.
- Council of Europe.

The interviews were audio recorded and notes from the interviews were made by the research team. The notes were analysed thematically and insights were used to further nuance and contextualise the literature review. Interview findings are reported anonymously in this document.

**An econometric analysis of the different types of impacts of terrorism and counter-terrorism measures at the individual and country level.** This empirical analysis is based on available data and statistics on terrorism activity and methodologically follows closely previous research studies in the area. Appendix B provides a detailed account of the methods used and the data sources.

**A qualitative assessment of the impact of the identified gaps and barriers.** Cost of Non-Europe reports aim, where possible, to include a quantitative assessment. However, data needed for a quantitative assessment of the gaps identified in this report are not available – it is not possible to estimate how many attacks might have been prevented, or whether time and resources might have been saved in responding to an attack, had these gaps been filled. Such an assessment is also complicated by the need to take into account the likely implications of additional counter-terrorism powers and measures for fundamental rights. Therefore a qualitative assessment was undertaken of the extent to which the gap is likely to impede prevention, protection, pursuit and response in the fight against terrorism, or is likely to impact on fundamental rights.

The qualitative assessment places each gap in one of two broad categories: **very likely** to impede prevention, protection, pursuit and response to terrorism and/or to impact on fundamental rights; or **somewhat likely** to do so. This categorisation reflects the fact that all the issues identified are important, but highlights those that the evidence collected in this study indicates are most pressing for policy attention.

For each gap, the assessment is based on the research team's appraisal of:

- The view of interviewees and findings from literature review.
- The extent to which the challenge was specific to terrorism or posed a particular challenge in terrorist cases.
- Whether there are already ongoing or recently implemented reforms, or other trends, which suggest the gap/barrier will diminish or be addressed in the near future.

The assessments are therefore subject to limitations; they are somewhat subjective, relying on the appraisal of the evidence by the evaluation team; they are subject to the limitations of scope for this study, which focuses on a sub-set of key issues and was not able to look at all of them in depth; and they are also subject to the quickly changing threat landscape and evidence base.

More broadly, the study has the following limitations:

- Terrorism is a complex and crowded field with ongoing and multiple interrelated initiatives, thus any mapping of the state of play quickly becomes out of date.
- Given the wide range of measures that could contribute to the fight against terrorism, this study aims to strike a balance between breadth and depth of coverage in its mapping of the state of play and gaps and barriers. The agreed focus, outlined above, does not encompass all the actions that the EU might take but is intended inform the EP on the issues selected for attention.

- It is difficult to assess the impact of specific gaps in EU cooperation in the fight against terrorism. There is little or no evidence on which to conclude whether attacks would have been prevented if gaps were filled. Similarly, it is difficult to assess the effectiveness of existing measures.

## **VI – Structure**

This report is structured as follows:

- Chapter 2 describes in more detail the impact of terrorism and counter-terrorism measures on individuals, communities and the wider economy. It also provides a quantitative assessment of the impact of terrorism on the 28 EU member states.
- Chapter 3 looks at the state of play in the area of the fight against terrorism and corresponding gaps and barriers in relation to the extent to which fundamental rights are embedded in EU policy making.
- Chapter 4 looks at the state of play and gaps and barriers in relation to six selected areas of operational cooperation.
- Chapter 5 concludes by outlining various potential policy options to address the current gaps and barriers.

Appendix A outlines European competencies in the fight against terrorism. Appendix B provides technical details of the quantitative assessments in Chapter 2. Appendix C provides the topic guides used in stakeholder interviews. Appendix D sets out data on information exchange.

## Chapter 2: The impacts of terrorism and corresponding counter-terrorism measures

This chapter addresses our second research question: what are the economic and individual impacts of terrorism and corresponding counter-terrorism measures at the EU level?

### Key findings:

- Existing evidence suggests that terrorism and the measures taken in the fight against it can have a variety of adverse impacts for individuals and communities, and even negatively affect whole nations, both politically and economically.
- Specifically, as witnessed in Europe over the last decade, terror attacks can cause significant destruction, leading to large number of dead or injured civilians. By quantifying these impacts, we estimate that terrorism has caused a loss of about €5.6bn in lives lost and injuries and physical capital between 2004 and 2016. Roughly €2.6bn of this loss has occurred since 2013.
- In line with previous empirical research, we find that terrorism has had a tangible, albeit small and short-lived, impact on economic output in the EU. We estimate that it has led to a GDP loss across the EU-28 member states since 2004 of about €180bn, of which about €88bn occurred between 2013 and 2016. With regard to the pathways via which terrorism affects economic output, we found that terrorism mainly negatively affects investment, but may have a slight positive effect on aggregate consumption.
- A shift towards potentially less growth-enhancing defence and security public expenditures could further hamper economic growth in the long run. However, the empirical evidence about the effects on growth of such expenditure is mixed.
- Apart from its impact on human and physical capital and economic output, terrorism can also have psychological effects on people not directly involved in an attack and can affect people's life satisfaction, happiness and their trust in other people, as well as their communities and national political institutions. Adjusting for many other factors that could be associated with these measures at the individual level, we find that individuals tend to report lower levels of all the abovementioned variables in European countries that experience relatively more terrorism. However, existing evidence suggests that the effects are probably short-lived.
- Counter-terrorism measures can have a detrimental impact on the fundamental rights of suspects, particular groups and communities and society at large. The existing evidence and case studies point to a large number of infringements of fundamental rights.

Parts I and II of this chapter summarise the existing evidence on the different types of impacts of terrorism and counter-terrorism measures, as outlined in Table 1. It is of note that, due to the unprecedented scale of the 9/11 attacks, a lot of literature about the impact of terrorism uses this event as a unit of investigation or a case study. Nevertheless, wherever possible, specific European evidence about the impact of terrorism is described. Part III of this chapter sets out new quantitative estimates on the impact of terrorism, generated by the research team, which aim to assign a conservative monetary value to the cost of terrorism in Europe more broadly. The general analytical framework, data and applied quantitative methods to derive the estimates and the corresponding detailed steps of calculation are described in Appendix B.

**Table 1. Impacts of terrorism and counter-terrorism measures**

Impact	Type	Examples
<b>Terrorism</b>	<i>Human</i>	Human impact, including, for example, the value of lost lives and injuries
	<i>Physical capital</i>	Damage to infrastructure such as buildings or transportation infrastructure
	<i>Psychological</i>	Psychological effects, including impact on life satisfaction, interpersonal trust or feeling of security
	<i>Economic</i>	Economic output, including, for example, the effect on economic growth, trade and investment
<b>Counter-terrorism</b>	<i>Public expenditure</i>	Counter-terrorism expenditure, including on defence and security or public order and safety
	<i>Fundamental rights</i>	Treatment of terror suspects

## I – The impacts of terrorism

In recent decades, especially since 9/11, the body of literature on the consequences of terrorism and how to quantify them has been growing.<sup>9</sup> Previous research has identified and investigated different types of detrimental impacts of terrorism, outlined in Table 1 and described in more detail below.

### The impact of terrorism on human and physical capital

Terror attacks can lead to considerable human and physical losses. For instance, the 9/11 attacks resulted in the loss of more than 3,000 lives (including aircraft passengers, office workers and rescue personnel), in addition to individuals suffering temporary or permanent injury or health problems as a consequence of the attacks (Navarro & Spencer 2001). While the 9/11 attacks were of unprecedented magnitude, over the last decade large-scale attacks in Europe have involved a significant number of fatalities and casualties. For instance, the 2004 Madrid train bombings cost 192 lives and injured more than 2,000, and the 2005 London bombings killed 52 civilians and injured 784. More recently, the 2015 Paris and 2016 Nice attacks in France together killed more than 200 and injured more than 800 civilians, and the 2016 Brussels bombings cost 32 lives and injured more than 300 (GTD 2017). In addition to human costs, terror attacks can result in widespread physical damage by destroying physical capital, such as important transport or commercial infrastructure.

Generally, even though some argue that putting an economic value on a human life is difficult or not appropriate, previous studies have found that the 9/11 attacks resulted in human and physical capital losses of between \$25bn and \$65bn (Becker & Murphy 2001; Navarro & Spencer 2001). It has been estimated that the collapse of the Twin Towers destroyed more than 1 million square metres of real estate and almost 30 per cent of premium office space in downtown New York City (Frey et al. 2007). From a European perspective, the human and physical capital costs for the 2004 Madrid train bombings have been estimated to be about €148m (Buesa et al. 2007), including the damage in infrastructure and housing (€5m) and the losses related to immediate rescue attention and health cost to victims, as well as their wage losses and compensation (€143m). To give an example of how the costs related to human lives and injuries have been calculated in the literature, a previous study by

<sup>9</sup> For example, Frey, Luechinger & Stutzer (2007), Enders & Olson (2012) and Schneider, Brueck & Meierrieks (2014).

Sandler, Arce & Enders (2011) expresses the economic loss of a human life as the average income per worker and multiplies this with the total number of terrorism casualties and the average life expectancy to get an overall value of lost income. The Institute for Economics and Peace (IEP) uses the Global Terrorism Database (GTD) to calculate the global costs of terrorism, taking into account the impact of lost lives and injuries. The GTD is one of the largest and the most up-to-date databases of worldwide terror attacks and contains information on infrastructure damage, type of attack and number of injuries and fatalities from 1970 to 2016. The impact of terrorism is calculated using IEP's cost of violence methodology, which includes both the direct and indirect costs, including the lost life-time earnings, and the cost of medical treatments from incidents of terrorism (Institute for Economics and Peace 2015). The direct costs include those borne by the victim of the terrorist act, such as medical spending, whereas the indirect costs include lost productivity and earnings as well as psychological trauma to the victims, their families and friends. For its calculations, the IEP uses parameters on the cost per homicide and cost per injury from previous work by McCollister, French & Fangs (2010), which uses the cost-of-violence approach. On this basis, the IEP estimates the global cost of terrorism in 2016 to be \$84bn (IEP 2017).

### **The psychological impact of terrorism**

While terrorism can directly affect victims and their families by taking their lives or impairing their health, it can also alter the behaviour of individuals who are not directly affected. Terrorism is a hostile activity that is primarily aimed at civilians, with the purpose of advancing a specific agenda, political or otherwise, and with the goal to produce fear. The increasing diffusion of different channels of social media, such as Twitter and Facebook, has led to the exponential growth of eyewitnesses of each terror event and these channels may magnify the psychological impact and the production of fear among the wider public.

With large-scale media coverage of terrorism, many other individuals not directly involved are also likely to be affected. In fact, terrorism can trigger feelings of fear and uncertainty (Becker & Rubinstein 2004) and can affect the behaviour of individuals. Previous research has shown that repeated exposure to terrorist events, for instance through a variety of media channels, exacerbates negative emotions and stress, and hence affects economic behaviour and physical well-being (Nair 2006; Holman et al. 2014). There may in fact be a positive effect on consumption because following a terrorist attack in the news may heighten awareness of one's own mortality. This may trigger an impulse in individuals to save less and consume more in the present (Dholakia 2015). With regard to the impact on health, as North & Pfefferbaum (2002) show, acts of terrorism can have a severe detrimental impact on individuals that can lead to stress and trauma (e.g. in the form of post-traumatic stress disorder). The feeling of stress may further spill over to close family members such as children, with adverse effects on family health (Pesko & Baum 2016).

Even before the widespread diffusion of social media, Frey, Luechinger & Stutzer (2004) showed that terrorism reduces the average life satisfaction of individuals in Europe. Using Eurobarometer data, the authors concluded that the more prevalent terrorism is in a person's area of living, the lower the individual's self-reported life satisfaction. Aside from the fear that terrorism can provoke in individuals, counter-terrorism measures such as increased security screenings at borders and airports and the subsequent longer waiting times may also affect the life satisfaction of individuals not directly involved in terror attacks. In the United States, Clark et al. (2017) have examined the effects of the 2012 Boston Marathon bombing on subjective well-being. They found that the effect on individual's well-being is relatively large and on the same magnitude as a reduction in well-being associated with a rise in the annual unemployment rate of about two percentage points. Interestingly, the authors found that the effect on well-being is generally short-lived – in the case of the Boston Marathon bombing, it only persisted for a week. Previous research has also shown that terrorism can lead to lower levels of trust between individuals and lower trust by citizens of their political

institutions (Blomberg, Hess & Tan 2011). Terrorist events tend to make people feel unsafe and make individuals wary and distrustful (Lindsey 2002).

In summary, psychological factors, including effects on life satisfaction, happiness or trust, can ultimately impact on the behaviour of different agents in an economy, even in the case of individuals who have not been directly involved in a terrorist attack but are exposed through media coverage. Consumption behaviour and labour productivity may be affected, and if fear leads to mental health problems, then medical treatment may also be required.

## **The economic impact of terrorism**

A number of studies have investigated the impact of terrorism on the economy. Generally, the literature focuses on two key measures in this area: economic growth and economic integration in the form of trade and foreign direct investment (FDI) flows. Some studies also investigate impact on specific sectors such as travel and tourism or the insurance sector.

In this section we summarise existing estimates of the economic impact of terrorism on aggregate output (e.g. gross domestic product) and its components including investment, consumption, public expenditure and trade (e.g. Enders & Olson 2012).

### **Impact on GDP growth**

Overall, **most studies that investigate the link between terrorism and economic output conclude that terrorism has a tangible but relatively small and short-term negative effect on the economy.**<sup>10</sup>

Terror attacks have been found to be detrimental to economic activity, with the extent of the damage depending on the scale of the attack. For instance, Blomberg et al. (2004) applied a cross-country analysis to observations from 177 countries between 1968 and 2000 and estimated that every additional terror incident per million people in a country reduces economic growth by about 0.25 percentage points. Concerning the magnitude of the impact, the authors concluded that the effect of terrorism tends to be smaller and less persistent compared to the effects of armed conflict and war. The mechanisms through which these economic impacts might be created can be direct – for example, Blomberg et al. (2004) hypothesised that terrorist activity destroys crucial production inputs like capital and labour (due to death or injury, for example), diverts public resources away from economic production to national security, and imposes higher levels of uncertainty on households and businesses by altering their behaviour or investment plans. However, as discussed above, the impact of terrorism is not just on the victims and their relatives but also on society more widely. The pernicious effects of increasing risks and fear seem to affect a number of industries and sectors of the economy. For instance, if a country suffers from frequent terror attacks, some inflows of resources from other countries might be diverted externally towards other countries that are considered to be safer, while internally citizens' choices regarding investment, savings and consumption may be distorted because of the rise in uncertainty (Schneider et al. 2014). It is estimated that 9/11 caused the United States to lose about \$47bn in total economic output (Sandler & Enders 2004).

Abadie & Gardeazabal (2003), investigating terrorism in the Basque country, estimated that terrorism can reduce economic growth by up to 10 percentage points. Looking at Israel, Eckstein & Tsiddon (2004) found that the GDP per capita for Israel in 2004 could have been about 10 percent higher if the country had not experienced widespread terror attacks in previous years. With a focus on Western European countries only, Gaibullov & Sandler (2008) showed that terrorism is detrimental to economic growth, with each additional transnational terrorist incident reducing it by about 0.4 percentage points.

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<sup>10</sup> For example, the negative effect of terrorism tends to be noticed only in the year of the attack and not in the medium and long term.

## **Impact on economic integration**

Previous research has shown that terrorism may affect economic integration between countries by harming trade and foreign direct investment. For instance, trade can be affected when strengthened security measures at borders or transport hubs lead to increased waiting times or disruptions in border flows (Schneider et al. 2014). In the case of FDI, terrorism may increase uncertainty and as such reduce the expected returns on investment in a country suffering from terrorism. This is important since multinational companies tend to have a wide panel of countries to which they can choose to implant their subsidiary firms should they wish to move away from terrorism threats. Abadie & Gardeazabal (2008) argue that mobility of productive capital in an open economy may account for much of the economic impact of terrorism. They conclude that while terrorism increases uncertainty, it also reduces the return on large capital investments. As a result, changes in the intensity of terrorism can cause movements of capital across countries if the world economy is sufficiently open. Using econometric modelling techniques, the authors find that higher levels of terrorist risks are associated with lower levels of (net) FDI positions. Furthermore, Enders & Sandler (1996) report a decrease of 13.5 per cent of annual FDI inflow on average between 1975 and 1991 in Spain due to terror attacks.

With regard to international trade, a 2004 study looking at over 200 countries found that countries affected by terrorism trade significantly less with each other than countries not affected (Nitsch & Schumacher 2004). However, a more recent study found that the effect depends on the product or industry – trade of primary products was little changed, but trade in manufacturing goods was reduced. This impact was mainly caused by transnational terrorism, although domestic terrorism has found to have an additional impact, albeit small, on trade (Bandyopadhyay et al. 2017).

## **Impacts on specific sectors of the economy**

Terrorism can have economic impacts across different sectors, depending on the type and nature of attack. Some studies have examined the impact of terrorism on specific sectors such as tourism, transport or insurance. With regard to tourism, it has been shown that terrorism can divert tourists away from affected countries towards other destinations, especially when tourists have been the target of terrorists. Using quarterly terrorism data, Enders, Sandler & Parise (1992) estimated that the tourism industry in continental Europe as a whole lost about \$16bn in revenue between 1974 and 1988 due to terrorism. In Spain, Enders & Sandler (1991) estimated that a typical terrorist attack (by ETA) scared away more than 14,000 potential tourists. Overall, however, the impact of terrorism on tourism tends to be immediate but short lived. For instance, Fleischer & Buccola (2002) showed immediate effects on tourism in Spain and Israel, lasting about two to three months. With regard to the aviation industry, the 9/11 terror attacks resulted in increased security measures and fewer passengers travelling by plane. These factors were estimated to be responsible for about 94 per cent of the decline in Revenue Passenger Miles (RPM) post 9/11 (Ito & Lee 2005).

In addition to transport and tourism, the insurance sector is affected by terrorism by ensuing payment claims. Schneider et al. (2014) argue that insurance companies tend to be able to cover smaller terror attacks well, but 9/11 represented a transformative event for the industry due to its unprecedented scale and impact. Simultaneous claims involving billions of dollars and the reduced capital base of insurance companies due to the negative impact on stock markets triggered a change in the industry. Premiums were raised, which hit shipping and transport companies and owners of large commercial property the highest (with an increase of premiums between 50 and 100 per cent).

While some sectors suffer specifically from terror attacks, others, such as the defence industry, may benefit. For instance, Berrebi & Klor (2005) investigated the stock values of Israeli companies during the second intifada and found that terror attacks had a negative impact on non-defence-related companies but a positive impact on defence- and security-related companies. In total, this led on

average to a \$65m reduction in market capitalisation of the non-defence companies and an average increase of \$53m in the market capitalisation of defence companies.

## **II – The impact of counter-terrorism measures**

The previous section focused on the cost of terrorism for victims and society at large. Here we examine the potential impacts stemming from counter-terrorism measures.

### **The impact of counter-terrorism measures on public sector spending**

Since 2001, counter-terrorism spending by Western countries has increased substantially (Mueller & Stewart 2011). It is estimated that total EU spending on counter-terrorism measures increased from approximately €5.7m in 2002 to about €93.5m in 2009. In addition, EU spending in the area of freedom, security and justice increased by 163 per cent between 2006 and 2011 (Wensink, van de Velde & Boer 2011). In light of increased terror threats in Europe, for 2016 the EU budgeted about €4bn in commitments and €3bn in payments for security and citizenship (Sgueo 2016). It is important to note that the EU budget provides only additional funds to counter-terrorism at the EU level and that the figures represent only a small fraction of what member states together allocate in their national budgets to the fight against terrorism. However, unfortunately it is not straightforward to calculate member state spending as most countries do not reveal their security spending due to national security concerns, which especially applies in the field of intelligence (Sandler et al. 2008). In addition, public spending on counter-terrorism may often be found under different expenditure allocations such as ‘public order and safety’ or ‘defence’, which makes a calculation of overall spend difficult. To give an example, the UK Home Office estimates a spend of £824m in 2017 on their ‘Office for Security and Counter-terrorism’ in addition to the £8.5bn allocated to the ‘Crime Policing & Fire Group’ (UK Home Office 2017). It is known from official sources that about £731m of that budget is allocated for counter-terrorism policing (UK Government 2017). It is unlikely, though, that this is the total UK government spend on counter-terrorism measures, since other Home Office areas such as immigration or the border force may deal to some extent with counter-terrorism, as do other UK government departments such as the Ministry of Justice, Foreign Office and Ministry of Defence.<sup>11</sup> In 2013 it is claimed that the United States spent about \$16.6bn on counter-terrorism, which is about 0.1 per cent of US GDP (Pew Research Centre 2013).<sup>12</sup>

The existing literature looks at whether a negative shock such as a terrorist event is associated with an increase in public security spending. This could subsequently lead to a lower long-term growth because large budgets for defence and homeland security may crowd out crucial growth-enhancing investments. However, a large body of literature (e.g. Lee & Chang 2006; Trajtenberg 2004) examining the effects of defence and security expenditure on the economy does not identify a straightforward and conclusive relationship. Some studies show that expenditure on defence has a lagged effect on growth or could have a positive effect on it in the short run and a negative one in the long run, or vice versa. The relationship may even be reversed, i.e. economic growth may induce defence spending (Schneider et al. 2014).

### **The impact of counter-terrorism measures on fundamental rights**

Terrorism aims to spread fear and harm democracy and the rule of law and it directly impacts on the enjoyment of fundamental rights such as the right to life and the right to liberty and physical integrity (OHCHR, 2008). Governments have a duty to take effective counter-terrorism measures to protect

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<sup>11</sup> Note that former UK chancellor George Osborne pledged that the annual UK spend would be roughly £3bn (Barber 2015).

<sup>12</sup> Using this figure and weighting with the relative spend to defence and security compared to the United States, we estimate that EU member states could together spend as much as €8bn in total. See Appendix B for more detail.

individuals within their jurisdictions, but such measures, including intelligence cooperation, information exchange or migration controls, may adversely affect fundamental rights.

Perhaps one of the most well-known instances where counter-terrorism measures curtailed the fundamental rights of suspects is the Central Intelligence Agency (CIA) renditions and secret detention programme. After the 9/11 attacks, the former US President George W. Bush gave the CIA authority to capture and detain individuals who may pose a serious threat of violence to US persons or interests or who were terror suspects. The programme involved potentially illegal seizures or arrests of individuals suspected of belonging to Al-Qaeda and the Taliban. These individuals were subsequently transferred through 'extraordinary rendition' operations to the Guantanamo Bay detention facility or to secret detention sites in partner countries (EP 2016e). There was evidence of the passive or active involvement of 12 European countries in the CIA's programme. As described in the box below, the European Court of Human Rights (ECtHR) found that the treatment of those detained under the programme contravened Article 3 of the European Convention on Human Rights (ECHR)<sup>13</sup> and that the member states involved were 'complicit in torture'.

The EP's LIBE Committee investigated the matter in 2006 (EP 2007a) and voted in November 2015 to continue investigating CIA detention, torture and rendition programmes in EU countries (EP 2015e). The EP, in its 8 June 2016 resolution and follow-up to the EP resolution of 11 February 2015 on the US Senate report on the use of torture by the CIA, reiterated 'its strong condemnation of the use of enhanced interrogation techniques, which are prohibited under international law and which breach, inter alia, the rights to liberty, security, humane treatment, freedom from torture, presumption of innocence, fair trial, legal counsel and equal protection under the law' (EP 2016a). It also urged 'Lithuania, Romania and Poland to conduct, as a matter of urgency, transparent, thorough and effective criminal investigations into CIA secret detention facilities on their respective territories' (EP 2016a; Bigo, Carrera & Guild 2015; ECtHR 2017; EP 2016a).

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<sup>13</sup> *El-Masri v. FYR Macedonia* (2012); *Al Nashiri v. Poland and Husayn (Abu Zubaydah) v. Poland*; *Nasr and Ghali vs Italy*.

### ECtHR cases related to CIA rendition

The most prominent cases illustrating infringements of fundamental rights and concerning 'allegations of torture, ill-treatment and secret detention' in the EU involve two Saudi Arabian suspects of terrorism: Abd al-Rahim Al Nashiri, accused of planning the bombing of the *USS Cole*, an American warship, in 2000, and Abu Zubaydeh, accused of being a senior Al-Qaeda lieutenant (*The Economist* 2015).

In *Al Nashiri v. Poland* and *Husayn (Abu Zubaydah) v. Poland* in 2014, the applicants submitted to the ECtHR that they 'had been held at a CIA "black site" in Poland' and that critically Poland had 'knowingly and intentionally enabled the CIA to hold them in secret detention in the Stare Kiejkuty facility, for six and nine months, respectively, without any legal basis or review and without any contact with their families' (ECtHR 2016). Furthermore, the applicants asserted that Poland had 'knowingly and intentionally enabled their transfer from Polish territory despite the real risk of further ill-treatment and incommunicado detention, allowing them to be transferred to a jurisdiction where they would be denied a fair trial' and failed to investigate these allegations (ECtHR 2016). Although the Court acknowledged that it was likely that Polish authorities did not witness or were not aware entirely of what took place in Stare Kiejkuty, Poland had nevertheless 'created the conditions for it to happen and had made no attempt to prevent it from occurring' (Deutsche Welle 2014).

The ECtHR found Poland to have 'cooperated in the preparation and execution of the CIA rendition, secret detention and interrogation operations on its territory' (ECtHR 2016). It was also asserted by the Court that Poland should have been aware that 'by enabling the CIA to detain the applicants on its territory, it was exposing them to a serious risk of treatment contrary to the Convention' (ECtHR 2016). The Court found Poland had violated several Articles of the European Convention on Human Rights, including Article 3 (prohibition of torture and inhuman or degrading treatment), in both its substantive and procedural aspects, Article 5 (right to liberty and security), Article 8 (right to respect for private and family life), Article 13 (right to an effective remedy) and Article 6 § 1 (right to a fair trial), as well as in the case of Al Nashiri 'Articles 2 (right to life) and 3 taken together with Article 1 (abolition of the death penalty) of Protocol No. 6 to the Convention' by permitting his deportation to the United States where he could be at risk of receiving the death penalty (ECtHR 2016; *The Economist* 2016).

In 2012 similar cases were raised against Romania in *Al Nashiri v. Romania* (no. 33234/12) and Lithuania in *Abu Zubaydah v. Lithuania* (no. 46454/11), as 'Zubaydah was subsequently transferred to Lithuania, while al-Nashiri was sent to Romania before they both ultimately ended up in Guantanamo Bay' (ECtHR 2016; Kimball 2014). In 2012 the ECtHR also ordered Macedonia to pay €60,000 'to a Lebanese-German man who was seized in Macedonia on erroneous suspicion of terrorist ties and subjected to abuse by the CIA' (Associated Press 2015).

As further discussed in Chapter 4, Section I, **fundamental rights concerns have also been voiced with regard to programmes that aim to prevent individuals becoming radicalised**. The EU Agency for Fundamental Rights (FRA) reported that such programmes tended to target Muslims and other ethnic groups, and interfere with their rights to human dignity (Article 1 ECHR), freedom of expression (Article 10 ECHR), privacy (through monitoring communications or online activity) (Article 8 ECHR), freedom of religion (Article 9 ECHR) and freedom of assembly and association (Article 11 ECHR). In the UK, the non-governmental organisation (NGO) Rights Watch UK argued that the UK government 'Prevent' counter-radicalisation programme did not adequately consider the potential differential impact on the rights of Muslim children and did not acknowledge that the programme might violate children's human rights, particularly their rights to education, freedom of expression, freedom of religion, and privacy (Rights Watch UK 2016). Similar concerns have been voiced in relation to counter-radicalisation programmes in France and Germany (Mucha 2017). These potential fundamental rights infringements could be counter-productive, damaging community cohesion and increasing radicalisation; 'policies that are perceived as targeting an entire community rather than individual suspects can further exacerbate the problem' (FRA 2015a). They impose a cost in terms of the relationship between communities and individuals on one side and state authorities on the other (Bigo et al. 2014). Following the attacks in Paris in 2015, a number of member states have sought to use anti-radicalisation policies more widely (Bigo, Bonelli, Guittet & Ragazzi 2014). The UN, Council of Europe and the EP have recognised the need for measures to prevent violent extremism, but have also stressed that such measures should be grounded in human rights and the rule of law (CoE 2015c; EP 2015b; UN General Assembly 2015).

As explored in detail in Chapter 4, Section II, **a range of impacts in terms of individual privacy are risked by counter-terrorism policies**. For example, in relation to **surveillance and the collection of data**, the CoE Commissioner for Human Rights stated that '[s]ecret, massive and indiscriminate surveillance programmes are not in conformity with European human rights law and cannot be justified by the fight against terrorism or other important threats to national security. Such interferences can only be accepted if they are authorized by law, strictly necessary and proportionate to a legitimate aim' (CoE 2015a). The collection of surveillance data was extensively investigated by the EP in its inquiry into the electronic mass surveillance of EU citizens (Bigo et al. 2013; EP 2014a). **Data retention** policies have related, society-wide implications for privacy (Boehm & Cole 2014). The 2006 Data Retention Directive (2006/24/EC) was annulled by the CJEU in 2014, on the grounds that it posed 'a wide-ranging and particularly serious interference with the fundamental rights to the respect for private life and to the protection of personal data, without that interference being limited to what is strictly necessary' (EP 2017d). This example is a strong illustration of how the provision of tools used by law enforcement and intelligence agencies to fight terrorism can pose serious threats to liberty and impose costs on us all.<sup>14</sup> As further discussed in Chapter 4, moves to enhance the **interoperability of EU security databases** can create new fundamental rights challenges or amplify those already present in existing systems (FRA 2017b); they may infringe upon the right to private life (Article 7 ECHR) and the right to protection of personal data (Article 8 ECHR). **Agreements between the EU and third countries** regarding the bulk international transfer of PNR data have been criticised by (among others) the EP and European Data Protection Supervisor (EDPS), which have questioned the necessity and proportionality of the PNR scheme (EDPS 2005, 2011a, 2011b; 2015; EP 2014c) (PNRs are further discussed in Chapter 4, Section II).

This section has not comprehensively mapped all the ways in which the fight against terrorism might infringe upon fundamental rights and thus impose costs for individuals and society, but it has illustrated the challenges that arise in relation to EU and member state action against terrorism. Careful judgements are needed about how to achieve an appropriate balance between the need to prevent, protect, pursue and respond, thus reducing the burdens to society and individuals who are affected by terrorist attacks, and protecting freedoms and liberty. As one legal academic commented, the 'effects of the fight against terrorism are possible in European societies only if member states provide sufficient procedural safeguards in order to challenge restrictive measures... how member states will keep such a delicate balance, this is still to be seen.' (Muñoz 2016).

### III – Quantitative assessment of the impacts of terrorism in the EU

The previous sections have provided an overview of how terrorism and corresponding counter-terrorism measures may impact on individuals, communities and the wider economy through various channels. However, while there have been a handful of studies estimating the cost of a specific terror attack or the economic consequences of terrorism in specific European regions, to the best of our knowledge a more comprehensive quantitative assessment of **the overall impact of terrorism for all 28 EU member states is absent so far**. The analysis below aims to bridge that gap by developing a quantitative analytical framework similar to the one established by Sandler et al. (2011), and taking into account the various impacts of terrorism in Europe.

We begin with a description of the past and current terror threat in Europe and then present new estimates for the impact of terrorism in terms of:

- Human and physical capital
- Economic effects

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<sup>14</sup> In the case of *Tele2 Sverige and Home Secretary v. Watson C-203/15 - Tele2 Sverige*, the court concluded that member states cannot impose a general obligation on providers of electronic telecommunications services to retain data, but did not ban data retention altogether (FRA 2017a).

- Psychological effects.

Note that only the key findings of the quantitative analysis are presented here. A full description of the technical details is provided in Appendix B, which discusses the quantitative methods applied to derive our empirical findings.

### How to measure terrorist events

In order to analyse the past and current threat of terrorism in Europe we draw on data from the GTD (Global Terrorism Database n.d.). At the time of our analysis, it included national and transnational terror incidents that occurred between 1970 and 2016. A transnational terror attack is defined as when an incident in the venue country includes perpetrators or victims from another country. For example, if a terrorist attack in the UK is perpetrated by terrorists from another country, the incident is defined as transnational; and when, for instance, a terror attack in Spain, perpetrated by a domestic terrorist group such as ETA, harms a German citizen, the attack is also classified as transnational. In the case of an attack by a domestic perpetrator with only victims of the same nationality, the incident is categorised as domestic.<sup>15</sup>

Due to its detailed coverage and the inclusion of many different relevant variables, the GTD has become the preferred dataset for empirical research in the area of terrorism and it is the one that this study uses. Specifically, the GTD defines a terrorist attack as *'the threatened or actual use of illegal force and violence by a non-state actor to attain a political, economic, religious, or social goal through fear, coercion, or intimidation'*. In essence, in order to consider an incident for inclusion in the GTD, all three of the following attributes must be present:

1. The incident must be intentional, or in other words a result of a conscious calculation on the part of a perpetrator.
2. The incident must entail some level of violence or immediate threat of violence – including property violence, as well as violence against people.
3. The perpetrators of the incidents must be sub-national actors. The database does not include acts of state terrorism.

In addition, at least two of the following three criteria must be present for an incident to be included in the GTD: 1) the act must be aimed at attaining a political, economic, religious or social goal; 2) there must be evidence of an intention to coerce, intimidate or convey some other message to a larger audience than the immediate victims; 3) the action must be outside the context of legitimate warfare activities (for example the act must lie outside the parameters permitted by international humanitarian law).<sup>16</sup>

Table 2 gives a breakdown of the prevalence and severity of domestic vs transnational terrorism in Europe from 2004–2016. The number of incidents is broadly similar for the two categories, but transnational terrorism is on average the cause of more fatalities and injuries.

<sup>15</sup> For instance, the 2011 Norway attacks by far-right extremist Anders Breivik are categorised as a domestic incident.

<sup>16</sup> Including the prohibition against deliberately targeting civilians or non-combatants.

**Table 2. Domestic and transnational terrorism in Europe**

Year	Incidents		Fatalities		Injured	
	Domestic	Transnational	Domestic	Transnational	Domestic	Transnational
2004	20	33	1	192	4	1833
2005	40	54	1	55	21	919
2006	50	41	0	5	6	25
2007	27	34	2	5	6	20
2008	73	84	0	3	28	68
2009	138	43	10	6	46	60
2010	44	85	2	2	3	30
2011	32	55	0	1	9	4
2012	78	110	10	7	11	32
2013	106	145	2	4	16	66
2014	97	114	1	4	14	4
2015	160	165	15	144	26	479
2016	117	136	4	151	47	830
<b>Total</b>	<b>982</b>	<b>1099</b>	<b>48</b>	<b>579</b>	<b>237</b>	<b>4370</b>

*Note: Based on the GTD database.*

For the 2004–2016 time period, the GTD database contains 982 domestic and 1,099 transnational terrorist incidents. However, more than 500 people were killed as a result of transnational terrorism against 48 from domestic terrorism across the 28 EU member states. The difference in number of injuries is also large (237 vs 4,370). Hence, when distinguishing explicitly between domestic and transnational terrorism in the analysis, the latter tends to show stronger effects due to the average severity of the attacks. It is important to remember, though, that while transnational attacks such as those performed by jihadists are becoming more prevalent in Europe, other forms of terrorism may emerge over the coming years with equally severe impacts.

### Human and physical capital

The Institute for Economics and Peace (IEP) uses the GTD to calculate the global costs of terrorism with regard to lives lost, injuries and damage to property and infrastructure, and we follow their methodology closely. IEP's cost of violence calculation includes different types of costs, including lost life-time earnings and the cost of medical treatments relating to incidents of terrorism. It also uses parameters on cost per homicide and cost per injury from previous work by McCollister et al. (2010), who used different methods to estimate both the tangible and intangible costs attributable to violence and homicides.<sup>17</sup> The IEP then uses GDP per capita figures to scale these costs and finally multiplies them by the number of death or injuries resulting from a particular attack, enabling the average cost of a terror attack to be determined, depending on its type, the income level of the affected country and the likely damage resulting from it. This study also uses the GTD for data on terror attacks that occurred between 2004 and 2016, including the number of dead, the number of injured, the type of attack and corresponding property damage.

Table 3 reports the costs related to fatalities, injuries and property damage across the 28 EU member states since the 2004 Madrid train bombings. Since 2004 the estimated total cost of lives lost across all member states is about €4.3bn. The estimated total cost related to injuries is about €399m and the estimated property damage from terrorism is about €898m. More than half of the cost from fatalities

<sup>17</sup> Specifically, their analysis used the 'cost-of-illness' and extent of 'jury compensation' to estimate the costs of crime in the United States. Because the jury compensation method attempts to comprehensively take into account both the direct costs of violence and its associated pain and suffering, it is considered to be a more comprehensive measure.

has occurred since 2013 (about €2.4bn), driven by the 2015 attacks in France, the 2016 Brussels bombings and the 2016 Berlin attack. In contrast, the majority of property damage caused by terrorism across EU-28 member states occurred before 2014, with the Madrid 2004 bombing constituting a large proportion of that cost.

**Table 3. Estimated human and physical capital cost of terrorism in the EU-28**

Member state	Total: 2004–2016 (€m)			Total: 2013–2016 (€m)		
	Cost of fatalities	Cost of injuries	Property damage	Cost of fatalities	Cost of injuries	Property damage
Austria	7.5	1.1	2.4	0.0	0.2	1.0
Belgium	304.1	27.8	0.3	296.5	27.7	0.0
Bulgaria	23.3	1.2	3.9	0.0	0.0	1.8
Croatia	0.0	0.1	1.0	0.0	0.1	0.0
Cyprus	0.0	0.0	76.8	0.0	0.0	1.8
Czech Republic	10.8	1.8	1.6	10.8	0.1	1.6
Denmark	16.1	0.9	0.6	16.1	0.5	0.6
Estonia	4.5	0.0	0.3	0.0	0.0	0.3
Finland	0.0	0.2	3.9	0.0	0.1	3.7
France	1802.9	85.6	45.1	1722.4	81.5	7.6
Germany	251.4	18.2	17.8	209.8	15.8	16.9
Greece	40.5	3.5	80.0	13.4	0.9	18.6
Hungary	7.6	0.1	1.9	0.0	0.1	1.1
Ireland	19.9	0.8	2.9	11.0	0.6	2.2
Italy	19.2	2.2	2.9	6.1	0.8	1.4
Latvia	0.0	0.0	0.0	0.0	0.0	0.0
Lithuania	0.0	0.0	0.0	0.0	0.0	0.0
Luxembourg	0.0	0.0	0.0	0.0	0.0	0.0
Malta	0.0	0.0	0.3	0.0	0.0	0.3
Netherlands	73.2	1.9	2.2	8.1	0.3	1.5
Poland	0.0	0.1	0.0	0.0	0.1	0.0
Portugal	0.0	0.0	0.4	0.0	0.0	0.0
Romania	0.0	0.0	0.0	0.0	0.0	0.0
Slovak Republic	0.0	0.1	0.0	0.0	0.1	0.0
Slovenia	0.0	0.0	0.0	0.0	0.0	0.0
Spain	1178.9	163.7	581.1	0.0	0.4	1.9
Sweden	39.3	0.9	12.6	31.4	0.6	9.6
United Kingdom	523.8	88.5	59.6	92.9	9.2	31.2
<b>EU-28</b>	<b>4323.2</b>	<b>398.5</b>	<b>897.6</b>	<b>2418.5</b>	<b>139.2</b>	<b>103.0</b>

*Note: Calculated using the IEP methodology and GTD data from 2004–2016 using all terror incidents (domestic and transnational). Figures are presented in 2016 values.*

## Economic effects

As previous research suggests, there is potentially a relationship between terror risk and economic growth. However, while the effect of terrorist incidents on economic output has been investigated before, including for a sub-sample of Western European countries (Gaibullov & Sandler 2008), a recent and comprehensive analysis covering the EU-28 has not been carried out and this study aims to bridge that gap. Specifically, we aim to investigate the relationship between terror risk and economic growth, as well as to identify the corresponding pathways through which terrorism affects growth. In

addition, with a more sector-specific view, we examine how terrorism may affect the European tourism industry.

### **Economic growth**

Similarly to Blomberg et al. (2004), Llusa & Tavares (2010) and Gaibullov & Sandler (2008), we examine the relationship between terror risk and economic growth using panel data for European countries from a variety of different sources. Specifically, we complement the GTD data on terrorism activity with country-level economic data provided by the Penn World Tables (PWT). The PWT is one of several workhorse databases used in macroeconomic research and it has been applied in previous research that examined the link between terrorism and economic activity (e.g. Gaibullov & Sandler 2008). It includes economic activity measures such as real GDP at constant prices, population data, the level of investment, government expenditure, as well as household consumption, and so on. For the purpose of this analysis we focus on a balanced panel dataset of 28 EU member states plus Norway, Switzerland and Iceland, for the time period 1990–2014.<sup>18</sup> For the purpose of this analysis we created a weighted terrorism index that takes into account civilians killed or injured and the number and frequency of terror incidents within a country, in line with the established Global Terrorism Index (GTI) calculated by the IEP.<sup>19</sup> Note that the terrorism index takes into account the severity of an attack (e.g. number of fatalities) and the frequency of which terror events occur (e.g. number of incidents).

Our findings suggest that terrorism is indeed negatively associated with economic growth in Europe. On average, a one-unit increase in the terrorism index is associated with a reduction in economic growth by about 0.04 percentage points in the year of the attack. To give an example, based on this estimate the 2016 Brussels bombings, with 32 civilian fatalities and 340 injuries,<sup>20</sup> may have led to a 0.1 percentage point reduction in growth in Belgium in 2016. Interestingly, the effects of terrorism on economic growth tend to be relatively short term and only apply within the year of the incident. When looking at the pathways via which terrorism may affect economic output, we find that it mainly affects investments, which tend to be cut back to some extent. In addition, we find that consumption as a share of GDP increases slightly. This is in line with previous empirical research which has found that in light of terrorism risk individuals may change their consumption behaviour. We do not find any significant change in the share of government expenditure relative to GDP caused by terrorism. However, there may be a shift in the budget towards less growth-enhancing defence and security spending, which could hamper economic growth in the long run. The empirical literature is inconclusive about this effect, but if it is real our estimated GDP cost from terrorism would represent a lower-bound estimate and the true cost would be greater in the long term (compared to the short-term GDP cost presented below).

In Table 4 we summarise the overall GDP cost of terrorism for the 28 EU member states, based on the parameters from the econometric analysis. The overall cost since 2004 is estimated to be about €180bn. The member states bearing the largest cost with regard to lost GDP in absolute values are Belgium, France, Germany, Greece, Spain and the United Kingdom. It is important to note that the relatively large GDP costs for Cyprus and Greece stem mainly from domestic terrorism, whereas for Belgium, France, Germany, Spain, Sweden and the United Kingdom, the main source of GDP cost since 2004 has been transnational terrorism.

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<sup>18</sup> Note that the Penn World Tables data covers the years 1950 to 2014, but reliable and non-missing data for some of the newer member states such as the Czech Republic is only available from 1990.

<sup>19</sup> The GTI gives each casualty a weighting factor of 3, each injured civilian a weight of 0.5 and each terror incident a weight of 1.

<sup>20</sup> Based on the GTD database.

**Table 4. Estimated GDP cost of terrorism in the EU-28**

Member state	2004–2016		2013–2016	
	€m	per capita	€m	per capita
Austria	863.0	103.0	166.7	19.9
Belgium	7,829.4	721.1	7,627.2	702.5
Bulgaria	216.2	29.1	29.9	4.0
Croatia	43.9	10.3	9.9	2.3
Cyprus	862.8	1,071.1	726.8	902.3
Czech Republic	380.6	36.6	176.5	17.0
Denmark	676.8	122.3	551.4	99.6
Estonia	33.9	25.4	22.6	17.0
Finland	481.3	89.9	428.3	80.0
France	43,009.9	665.6	36,089.9	558.5
Germany	19,170.4	234.9	15,567.4	190.7
Greece	10,398.2	945.2	3,403.6	309.4
Hungary	111.2	11.1	28.1	2.8
Ireland	4,339.8	974.0	3,027.0	679.4
Italy	2,212.5	37.4	883.0	14.9
Latvia	0.0	0.0	0.0	0.0
Lithuania	0.0	0.0	0.0	0.0
Luxembourg	0.0	0.0	0.0	0.0
Malta	26.2	63.2	26.2	63.2
Netherlands	1,700.7	102.5	506.7	30.6
Poland	19.1	0.5	19.1	0.5
Portugal	32.7	3.1	0.0	0.0
Romania	8.1	0.4	0.0	0.0
Slovakia	15.2	2.8	15.2	2.8
Slovenia	0.0	0.0	0.0	0.0
Spain	40,798.0	894.9	313.3	6.9
Sweden	2,869.1	306.7	2,397.2	256.2
United Kingdom	43,712.9	699.1	15,784.3	252.4
<b>EU-28</b>	<b>179,811.9</b>		<b>87,800.4</b>	

*Note: Calculated using parameters provided by estimating the relationship between terrorism and economic growth using econometric modelling techniques, the GTD and a country-level panel dataset based on the PWT databases. The technical details of the estimations can be found in Appendix B. Figures are presented in 2016 values.*

With an emphasis on a sector that tends to be strongly affected by terrorism, we examine whether the tourism sector in the EU is affected by terrorism, we draw on monthly panel data from Eurostat on arrivals and nights spent of non-residents at tourist establishments, including hotels, holiday and other short-stay accommodation (Eurostat n.d). The data sample includes the years 1990 to 2016 for all EU-28 member states. In line with previous research, we found that terror attacks tend to have a short-lived effect only and that tourism levels tend to normalise within one to three months.

## Psychological effects

Aside from the economic impact and human cost of terrorism, we have also examined how the prevalence of terrorist attacks may affect individuals, especially those not directly impacted by the attacks. In order to assess the wider psychological effects of terrorism on European citizens we drew on information covered in two large survey datasets, the European Social Survey (ESS) for the years

2002 to 2015, and the World Values Survey (WVS) for the years 1990 to 2015. From both surveys we used a large dataset provided by citizens living either in one of the EU-28 member states, Switzerland, Norway or Iceland.

Using similar econometric regression methods to those used to assess the relationship between terrorism and economic growth, we examined the associations between terrorism activity and the average levels of reported life satisfaction, happiness and trust (interpersonal and institutional) within EU member states. Similarly to previous work by Frey et al. (2007), our findings suggest that the greater the number of terror attacks in a given year, the lower the average self-reported life satisfaction and happiness of EU citizens. This association holds true in both datasets, the ESS and the WVS, and is adjusted for a large number of control variables including demographic factors such as age, gender, income, education, occupation, employment and marital status, as well as region-specific factors, common time trends and year fixed effects, which capture regional time-invariant factors as well as common trends over time.

Furthermore, similarly to Blomberg et al. (2011), we find that the more terrorism activity there is within a country the less likely EU citizens report that they can trust another person, and thus terrorism may have a negative impact on interpersonal trust. Analysis of data from the ESS shows that terrorism is associated with lower levels of citizen trust in national political institutions such as the national parliament, politicians in general, the legal system and the police.

Our findings confirm that terrorism not only directly affects victims but also may have a wider psychological effect on all EU citizens that are witnesses of such attacks through different media channels. It should be remembered, though, that psychological measures such as life satisfaction could also be affected by the fact that terror and subsequent counterterrorism policies (e.g. heightened security checks at airports and borders) can impair the day-to-day life of ordinary citizens by impacting on their fundamental rights of freedom for instance. However, it is not straightforward to differentiate and isolate the effects of the attacks and the corresponding policy responses.

### **Summary of the overall quantifiable impacts of terrorism in the EU**

Following the methodological approaches applied in previous research and in addition to a more qualitative description of impacts, this study has specifically aimed to examine the impact of terrorism from a quantitative perspective for the EU-28 member states. The focus for the quantification was on those impacts that are relevant and for which sufficient data for the analysis was available. The emphasis was on the human and physical capital costs, GDP costs, and on the effects of terrorism on life satisfaction and trust.

The estimates provided in Table 5, based on the empirical analysis described in this study, are mostly in line with previous work focusing on different geographical areas.

**Table 5. Estimated total human capital, physical capital and GDP cost by EU member state**

	2004–2016 (€m)			2013–2016 (€m)		
Member state	Human and physical capital cost	GDP cost	Total	Human and physical capital cost	GDP cost	Total
Austria	11.0	863.0	874.0	1.2	166.7	167.9
Belgium	332.2	7,829.4	8,161.6	324.2	7,627.2	7,951.3
Bulgaria	28.4	216.2	244.6	1.9	29.9	31.8
Croatia	1.1	43.9	45.0	0.1	9.9	10.0
Cyprus	76.8	862.8	939.5	1.8	726.8	728.6
Czech Republic	14.2	380.6	394.8	12.5	176.5	189.0
Denmark	17.5	676.8	694.4	17.2	551.4	568.6
Estonia	4.8	33.9	38.7	0.3	22.6	22.9
Finland	4.1	481.3	485.4	3.8	428.3	432.1
France	1,933.6	43,009.9	44,943.5	1,811.5	36,089.9	37,901.4
Germany	287.4	19,170.4	19,457.8	242.4	15,567.4	15,809.8
Greece	124.1	10,398.2	10,522.3	33.0	3,403.6	3,436.5
Hungary	9.6	111.2	120.9	1.2	28.1	29.3
Ireland	23.6	4,339.8	4,363.4	13.8	3,027.0	3,040.8
Italy	24.2	2,212.5	2,236.7	8.3	883.0	891.3
Latvia	0.0	0.0	0.0	0.0	0.0	0.0
Lithuania	0.0	0.0	0.0	0.0	0.0	0.0
Luxembourg	0.0	0.0	0.0	0.0	0.0	0.0
Malta	0.3	26.2	26.5	0.3	26.2	26.5
Netherlands	77.3	1,700.7	1,777.9	10.0	506.7	516.6
Poland	0.1	19.1	19.2	0.1	19.1	19.2
Portugal	0.4	32.7	33.1	0.0	0.0	0.0
Romania	0.0	8.1	8.2	0.0	0.0	0.0
Slovak Republic	0.1	15.2	15.3	0.1	15.2	15.3
Slovenia	0.0	0.0	0.0	0.0	0.0	0.0
Spain	1,923.7	40,798.0	42,721.7	2.3	313.3	315.6
Sweden	52.8	2,869.1	2,921.9	41.6	2,397.2	2,438.8
United Kingdom	671.8	43,712.9	44,384.7	133.3	15,784.3	15,917.6
<b>EU-28</b>	<b>5,619.3</b>	<b>179,811.9</b>	<b>185,431.2</b>	<b>2,660.6</b>	<b>87,800.4</b>	<b>90,461.0</b>

*Note: Based on own calculations. See Appendix B for more details.*

Our empirical findings suggest that **terrorism has a small but tangible economic impact in the EU**. Specifically, from 2004 to 2016 the total cost from losses in human and physical capital as well as reduced economic growth across the EU-28 member states amounts to about €185bn. Slightly under half of these costs (€90bn) have occurred since 2013.<sup>21</sup> The impact is mainly concentrated in the member states most heavily affected by relatively deadly terror attacks, such as France, Spain, Belgium, Germany and the United Kingdom. Significant losses in Greece, Cyprus and Ireland are also evident, but in those cases the predominant type of terrorism is more domestic in form.

<sup>21</sup> Note that attacks from the year 2017 have not been taken into account as the GTD database is only available until 2016. In 2017, however, there have been a number of high-profile attacks across Europe. For instance, the attacks in Barcelona and Stockholm were extensively covered in the media. In addition, the United Kingdom experienced a wave of severe terror attacks in 2017. For the UK, we estimated the overall GDP cost in 2017 to be about 0.15 percentage points of economic growth. This corresponds to a loss in economic output of about €3.5bn (see Appendix B for more detail).

In addition to the quantifiable impact on human and physical capital and economic output, as discussed above, one of the goals of terrorism is to cause fear among the wider population and this may have a psychological impact on individuals not directly affected by an attack. Our findings are in line with the results found by Frey et al. (2007), namely that terrorism is associated with lower levels of life satisfaction and happiness in EU member states. In addition we find that terrorism may play a role in the deterioration of interpersonal trust among people in the EU. Increased terrorist activity is also associated with lower levels of trust in political institutions. It is important to stress that the cost estimates presented are likely to be an underestimation of the overall costs of terrorism, as some factors (e.g. the potential impact on terror suspects held excessively in pre-trial detention) have not been monetised due to a lack of data.

Counter-terrorism measures can be associated with profound impacts on individuals and public spending. Existing data and examples show that in the fight against terrorism fundamental rights are not always acknowledged by public authorities, with a potentially large cost to terror suspects and their families, a consequential impact on wider society, and – for parts of the community particularly targeted by such measures – reduced trust and willingness to engage with law enforcement and security services in combatting terrorism. Information on what countries spend on counter-terrorism is not straightforward to find, due to its sensitive nature among other factors.

Using data for the United States on the percentage spend on counter-terrorism relative to overall GDP, we estimate that together the EU-28 member states could spend as much as €8bn per year countering terrorism.<sup>22</sup>

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<sup>22</sup> See Appendix B for details on the calculation of this estimate, which has to be treated with caution.

## Chapter 3: Description and qualitative assessment of gaps and barriers relating to fundamental rights, oversight and the policy-making process

Chapter 2 outlined a variety of different types of adverse impacts of terrorism and counter-terrorism measures on individuals, communities and society as a whole. This and the following chapter address our third research question: what is the impact of any gaps and barriers in European cooperation and action in the fight against terrorism?

Specifically, this chapter focuses on **fundamental rights, democratic and judicial oversight and accountability, and the use of evidence in the policy-making process**. These principles guide operational cooperation in the fight against terrorism (the focus of Chapter 4) and policy measures to address gaps and barriers (Chapter 5).

### Key findings:

- A range of democratic and judicial oversight and accountability mechanisms and actors play a role, at both the EU and national levels, in ensuring that the fight against terrorism is conducted in a way that respects fundamental rights.
- As outlined in Chapter 2, decisions of the ECtHR and reports from the FRA and EDPS demonstrate that existing counter-terrorism measures have infringed rights, and proposed measures currently under discussion could have significant fundamental rights impacts. Human rights organisations have raised concern about the broad range of activities – such as ‘facilitating travelling’ – that are criminalised in the 2017 Directive, arguing that they do not meet human rights standards.
- While not intended as a comprehensive review of accountability measures, our literature review and interviews highlight aspects of the EU policy and legislative process that could be improved in order to better safeguard fundamental rights. Key concerns relate to limited opportunities for consultation (with actors such as the EP and human rights organisations) and under-use of *ex ante* impact assessment.
- Interviewees had differing views on these issues. Some highlighted that the need to act quickly in response to new terrorist threats prohibited impact assessment and consultation and pointed out that expert consultation was usually conducted in some form during the policy-making process. Others argued that consultation and assessment was even more necessary where legislation or policy was made quickly, and that impact assessment and consultation were essential to carefully consider fundamental rights impacts.
- The High-Level Expert Group on Interoperability was seen as a potentially effective model for multi-stakeholder consultation in highly complex policy areas with considerable human rights implications.
- Interviewees felt that it was important to foster a culture in which fundamental rights considerations were seen as contributing to policy objectives, rather than one in which they were seen as a barrier to action.

## I – State of play

This chapter aims to give an overview of the context for counter-terrorism policy making and operational actions and to highlight key modes of accountability and oversight. It does not provide an

in-depth analysis of all EU and national accountability measures and fundamental rights concerns (although the latter are covered in some detail in Chapter 2).

## Fundamental rights protections

Existing EU (Article 347 TFEU) and ECHR (Article 15) provisions give member states the right to derogate from their fundamental rights obligations on the grounds of national security considerations. For example, in relation to investigations, it may be permissible to infringe on certain rights to privacy and family life, as long as such restrictions are in compliance with national law as well as the ECHR (CoE 2015c; Moonen 2010). However, some lawyers have argued that the ‘threat of terrorism in the abstract cannot justify a derogation under Article 15 ECHR’, and that a derogation is only appropriate ‘if the abstract terrorist threat has intensified in a particular place and for a specific period of time’ (Eckes, 2009, p. 425). Guidance from the Council of Europe on ‘Human Rights and the fighting against terrorism’, adopted by the Committee of Ministers of the Council of Europe on 11 July 2002, provides a reminder of the requirements of the ECHR for each Contracting Party when fighting terrorism.

Chapter 2 offered evidence, in the form of judgements from the ECtHR and reports by the FRA and EP (which has been very active in relation to potential infringement of fundamental rights by security measures), that **fundamental rights have been infringed by counter-terrorism measures**. These infringements stem from both the treatment of specific individuals who are suspects and from measures that affect the general population. In Chapter 4, concerns relating to data protection and privacy in the area of operational cooperation are described in detail.

A range of forms of **democratic and judicial oversight** could play a role in protecting fundamental rights in the context of the fight against terrorism. The oversight landscape is complex, but in the following paragraphs some of the key relevant mechanisms, at EU and member state level, are briefly described.

## Judicial and democratic oversight

The security sector and intelligence agencies are typically held to account by **national parliaments** (CoE 2015b; EP 2011a), which monitor the use of their powers (both *ex ante* and *ex post*) and their financial resources (EP 2011a; CoE 2015c). However, the EP can provide **guidance and recommendations** (and has done so in the past; for examples see EP 2007a, EP 2014b). It has also called for the development of minimum standards on oversight (via a high-level expert group), but this has not been acted upon so far.

**National courts** play an important oversight role both with respect to prior authorisation of law enforcement activities (especially intrusive investigative techniques such as covert surveillance, which can infringe rights; see DCAF (2013)<sup>23</sup>) and through providing a remedy in the event that individuals’ rights have been infringed during the implementation of counter-terrorism measures. In addition, national courts may examine the legality of various counterterrorism and security measures. Unlike parliamentary scrutiny, however, judicial oversight does not involve an analysis of the effectiveness, legitimacy, efficiency, operation or impact of measures (de Londras 2016; SECILE Consortium 2014).

The Treaty of Lisbon gave ‘full legislative powers on the Parliament in the field of Justice and Home Affairs, including counter-terrorism’ (Mortera-Martinez 2015) and as such the **European Parliament** acts in the capacity of co-legislator in this field and as a decision maker alongside the Council. As one interviewee highlighted, the EP can use its powers to ensure that other EU institutions adhere to agreed democratic standards and rule of law principles. The EP’s rejection of the first EU-US Terrorist

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<sup>23</sup> In some instances, particularly the investigative stage, it may be permissible to infringe on certain rights, typically rights to privacy and family life, as long as such restrictions are in compliance with national law as well as the ECtHR (CoE 2015c; Moonen 2010). This gives rise to risks associated with potential misapplications and abuse of such powers.

Finance Tracking Programme (TFTP) Agreement (further discussed in Chapter 4) on the grounds of insufficient safeguards is an illustration of this. The EP also has a role in relation to oversight of Europol, Eurojust and Frontex. Its powers include: a) the ability to summon agency directors (although not uniform across all agencies); b) informal meetings; c) budgetary powers; and d) ad hoc powers (e.g. special committees, committees of inquiry) (EP 2011a). The new Europol Regulation<sup>24</sup> (see Chapter 4, Section V) enhanced the EP's oversight powers vis-à-vis the agency and established a Joint Parliamentary Supervisory Group (Article 51) with information and hearing rights, consisting of representatives of the EP as well as national parliaments.

Important oversight of the EU's policy-making processes is exercised by the **European Court of Justice** (CJEU) (EC 2017f). As outlined by the Commission, 'in order to guarantee a high level of security while ensuring that the measures adopted comply with fundamental rights, a number of safeguards are built in the EU policy making processes' (EC 2017f). In this capacity the Court 'examines not only the compatibility of EU legislation with fundamental rights, but also the compatibility with fundamental rights of measures taken at national level by the member states to apply or comply with EU law' (EC 2017f). The CJEU can exercise judicial oversight of counter-terrorism policy and relevant measures and has done so in the past, for instance in the context of the Data Retention Directive (EP 2017d). However, as with legality reviews at the national level, while judicial oversight at the EU level may result in appropriate respect for rights, it is a solution that compensates for the lack of appropriate prior analysis and consultation in the policy-making process (De Londras 2016).

A role in the policy-making process is also played by other committees and bodies. The Committee of Permanent Representatives (COREPER) in conjunction with the EU Counter-Terrorism Coordinator (see box below) and the Commission monitor progress against the 2005 EU Counter-Terrorism Strategy (Wensink et al. 2017). The Commission is also responsible for the effective implementation of the Charter of Fundamental Rights by the European Union. There is also a Commissioner for the Security Union, and as noted in Chapter 1, a recent addition is the Special Committee to Tackle Deficiencies in the Fight Against Terrorism, established within the EP (EP 2017h).

#### **Powers of the EU Counter Terrorism Coordinator**

It was noted in the LIBE Committee meeting on 4 May 2017 that the Counter Terrorism Coordinator has a limited mandate under the Council. While the Coordinator has put important issues on the agenda and 'pushed the envelope', the role does not have the mandate to move beyond that. The Coordinator's mandate is limited to coordination, monitoring and recommendation of policies as well as working to enhance communication between the EU and third countries in the area of counter-terrorism.

Concern is expressed about the number of actors engaged in the conception and implementation of counter-terrorism policy and how 'overlapping competences and unclear mandates can make it difficult to establish' which actor has responsibility to lead or coordinate certain activities (Wensink et al. 2017).

*Source: Notes of the exchange made by the research team (LIBE/8/09804) (Wensink et al. 2017).*

There are also **oversight mechanisms at the international level**. Concerning judicial oversight, the ECtHR has developed a substantial body of jurisprudence related to counter-terrorism measures (see, for example, Moonen 2010). International bodies such as the United Nations Human Rights Council or the CoE's Venice Commission have adopted guidelines and issue monitoring reports pertaining to the application of counter-terrorism measures (CoE 2002, 2010). The EU has ratified the CoE Convention on the Prevention of Terrorism (CoE 2018) and its Additional Protocol (CoE 2018). As such, the EU is subject to the Convention's monitoring mechanism (CoE 2012).

<sup>24</sup> (EU) 2016/794.

## ***Ex ante* and *ex post* policy assessment**

Another mechanism for protecting fundamental rights lies in the use of *ex ante* and *ex post* assessment and evaluation in the EU policy-making process. The Better Regulation Guidelines stipulate that an *ex ante* impact assessment must be prepared for all Commission initiatives with likely ‘significant economic, environmental or social impacts’ and require that EU legislation and policies are evaluated to assess their relevance, coherence, effectiveness, efficiency and added value (EC 2017d, 15). The Guidelines explicitly require that fundamental rights impacts should be considered where relevant. The use of impact assessment and *ex post* evaluation of existing legislation is also demanded in the Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making.<sup>25</sup> As explained further below, in practice there have not been many impact assessments, evaluations or transposition assessments of counter-terrorism policies.<sup>26</sup>

## **II – Description of gaps and barriers**

**Gaps related to consultation in EU policy making.** A 2014 report by the SECILE Consortium (an FP7-funded project entitled ‘Security Europe through Counter-Terrorism: Impact, Legitimacy, Effectiveness’) noted that there was limited opportunity for consultation with actors such as the EP and human rights organisations in relation to EU counter-terrorism actions (de Londras & Doody 2014). The report argued that expert consultation enhances the perceived legitimacy of EU counter-terrorism policies (as well as their effectiveness) and that increased and proactive engagement could make measures less vulnerable to criticism after implementation (de Londras 2014).

Recent data suggest that public consultation is not widely used; of 88 legislative initiatives regarding counter-terrorism since 2001, public consultation was performed in just three (Wensink et al. 2017). An interviewee did stress, however, that there had been expert, targeted consultation on most measures. Two interviewees pointed to the High-Level Expert Group on database interoperability (further described in Chapter 4) as an example of good practice in expert consultation, as it involved a range of stakeholders in the policy-making process (including technical experts, the EDPS, member states, the LIBE secretariat and CTC) in a transparent way (as a public report was published), and the Group undertook its work in a relatively short period of time. One interviewee reported that this was a mechanism that could be used to identify potential fundamental rights challenges at an early stage.

**Gaps related to the use of *ex ante* impact assessment.** The LIBE Committee’s 2017 study on the EU’s counter-terrorism policies found that one quarter of the legally binding measures in the area adopted since 2001 had been subject to impact assessments and that the Commission had ‘not been forthcoming’ in subjecting its proposals to assessments (Wensink et al. 2017). The LIBE study particularly noted the lack of impact assessment before the new Directive on Combating Terrorism, which has been criticised by NGOs for including an overly broad terminology (International Commission of Jurists et al. 2016). None of the Council initiatives has been accompanied by an impact assessment (de Londras 2014), although an interviewee noted that the Better Regulation Guidelines do not apply to Council initiatives.

There were differing views on the use of impact assessment among interviewees. Some felt that impact assessment was used appropriately, pointing out that in cases where it is not conducted, *ex post* evaluation is usually required, and arguing that time constraints made impact assessment impractical in certain situations. Others commented that *ex post* evaluation was not a substitute for *ex ante* impact assessment, as the former was unlikely to result in substantial change or the repeal of measures that infringe human rights. It was also reported by an interviewee that legislation and

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<sup>25</sup> OJ L 123, 12.5.2016, 1–14.

<sup>26</sup> To further illustrate this point, the recent Commission comprehensive assessment of EU security policy (EC 2017f) does not follow Better Regulation Guidelines.

policy made under time pressure had a greater need for impact assessment of its fundamental rights implications because unintended consequences might be missed, although the interviewee acknowledged that a robust assessment of the implications for fundamental rights of new measures did take time. A further argument for the importance of impact assessment is that the CJEU increasingly refers to impact assessments in its decisions (lacking the capacity to do technical assessments itself) (De Longras 2016).

**Gaps related to the oversight of EU agencies.** The new oversight arrangements for Europol, involving a Joint Parliamentary Scrutiny Committee (further described in Chapter 4, Section V), have been welcomed by some as a potential new model of effective oversight for other agencies (Busuioc 2017). Potential shortcomings could stem from the large size of the Committee, which may render it unwieldy (especially with its plan to adopt decisions by consensus) (Fromage 2017), although it is too early for the practicality and success of the new arrangements to be evaluated.

**Barriers related to EP oversight.** The need for greater oversight by the EP to provide democratic accountability of counter-terrorism measures has been stressed in a variety of sources (EC 2017f; Wensink et al. 2017; SECILE Consortium 2014). A possible barrier is a lack of uniform procedures for EU institutions and agencies to share classified information with the EP (de Londras 2016; SECILE Consortium 2014; Abazi 2016). This has implications for what information is available to MEPs but also for the quality of the information that can be provided.<sup>27</sup> Another possible barrier is that the EP does not have an intelligence committee (De Londras 2016). The newly created Special Committee to Tackle Deficiencies in the Fight Against Terrorism within the EP (EP 2017h) may help to address these gaps (Carrera et al. 2017).

**Barriers related to culture.** An interviewee noted that changing the culture and attitudes of policy makers was essential to ensure that fundamental rights considerations are embedded in policy making. The interviewee felt it was advisable to involve expert input, systematically, as early as possible to assess draft legislation and feed into impact assessment. Two interviewees felt that better protections of fundamental rights, better legislation and better policies resulted when rights issues and data protection were seen as enablers to the objectives, rather than a hurdle to be overcome.

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<sup>27</sup> The EP does have mechanisms and infrastructure (a reading room) for scrutinising confidential material (see, for example, EP 2011b). However, the rules of procedure for their utilisation are subject to considerable constraints (Maurer 2015). A related issue is the fact that many MEPs are not required and/or are unable to be subject to security clearance in their home countries. The EP does not have its own clearance procedure (Wills & Vermeulen 2011).

### III – Assessment of gaps and barriers

The summary below provides a qualitative assessment of identified gaps and barriers, applying the assessment approach described in Chapter 1, Section V.

Summary of evidence	Overall assessment
<b>Gaps related to consultation in EU policy making</b>	
<p><i>View of interviewees and findings from literature review</i></p> <ul style="list-style-type: none"> <li>- The literature reports three out of 88 legislative initiatives involved public consultation, and that there has generally been limited consultation of, for example, human rights organisations and the European Parliament.</li> <li>- However, there are some recent examples of expert consultation (for example the HLEG on interoperability) that aim to ensure that measures address needs and are informed by technical advice.</li> </ul> <p><i>Extent to which challenge is specific to terrorism</i></p> <ul style="list-style-type: none"> <li>- Specific to terrorism to the extent that the under-use of consultation and impact assessment are seen as more common in this area.</li> </ul>	<p>Somewhat likely to impede protection, pursuit and response</p> <p>Somewhat likely to impact fundamental rights and data protection</p>
<b>Gaps related to the use of <i>ex ante</i> impact assessment</b>	
<p><i>View of interviewees and findings from literature review</i></p> <ul style="list-style-type: none"> <li>- Literature reports only a quarter of measures since 2001 have been subject to impact assessment.</li> <li>- There were differing views on this issue among interviewees, some stressing that lack of impact assessment is mitigated by <i>ex post</i> evaluation and expert consultation, and citing lack of time as a reason for not conducting assessments. Others stressed the vital importance of impact assessment to examine fundamental rights impacts of new measures, which cannot be replaced by <i>ex post</i> evaluation and is especially important in a fast-moving policy environment.</li> </ul> <p><i>Extent to which challenge is specific to terrorism</i></p> <ul style="list-style-type: none"> <li>- Specific to terrorism to the extent that the under-use of consultation and impact assessment are seen as more common in this area.</li> </ul>	<p>Very likely to impact fundamental rights and data protection</p>
<b>Gaps related to the oversight of EU agencies</b>	
<p><i>View of interviewees and findings from literature review</i></p> <ul style="list-style-type: none"> <li>- Oversight of Europol has been reformed in the 2016 Regulation. Some potential concerns have been expressed about how the Joint Parliamentary Scrutiny Group will operate.</li> </ul> <p><i>Extent to which challenge is specific to terrorism</i></p> <ul style="list-style-type: none"> <li>- This is not specific to terrorism, but relates to the scrutiny of Europol more widely.</li> </ul> <p><i>Reforms ongoing/ just implemented, or other trends</i></p> <ul style="list-style-type: none"> <li>- Too early to assess the working of the new oversight of Europol.</li> <li>- Planned reforms to Eurojust would mirror Joint Parliamentary arrangements recently created for Europol.</li> </ul>	<p>Impact not known at this time</p>

## Chapter 4: Gaps and barriers in relation to operational cooperation

This chapter addresses our third research question – what is the impact of any gaps and barriers in European cooperation and action in the fight against terrorism? – in relation to six selected areas of operational cooperation: counter-radicalisation measures; systems and databases for information sharing; practices of information sharing between member states; cooperation tools and mutual recognition instruments; support and capabilities of Europol and Eurojust; and action against terrorism financing.

### Key findings:

- Programmes to prevent individuals becoming radicalised have been described as a cornerstone of EU counter-terrorism policy, and are being implemented in many member states. Gaps were identified in relation to the evidence base for counter-radicalisation programmes and in relation to the coordination and exchange of knowledge between the full range of relevant stakeholders. Counter-radicalisation programmes can pose threats to fundamental rights and can have impacts on community cohesion.
- Information sharing is essential to terrorism prevention, protection, pursuit and response. On a technical level, potential gaps were identified in relation to the functionality of existing databases and systems designed to allow the exchange of information between member states and with EU agencies. Instances where data are currently not collected at all, as well as limitations to the interoperability of databases, were identified.
- In relation to information sharing practice, gaps identified related to possibilities for greater information sharing, variable levels of information sharing by member states, and limited analytical capacity. The need to continue to build trust between member states was stressed by interviewees and the literature as the main way in which to drive improvements, along with measures to raise awareness of the need to share information. However, greater information sharing raises important fundamental rights concerns, and interviewees stressed the need to consider these issues early in the policy-making process.
- The EU Counter Terrorism Coordinator and others have encouraged greater use of Joint Investigation Teams and the European Arrest Warrant, as well as the range of support services offered by Europol and Eurojust. However, some interviewees were reluctant to conclude that these agencies were under-used, given that their mandate is to serve the needs of member states.
- A potential gap that has received considerable attention relates to measures to tackle terrorism financing – through the collection and analysis of financial intelligence, which is primarily undertaken by Financial Intelligence Units (FIUs) and programmes such as the EU-US TFTP. This has implications for the privacy rights of both wider society and individual suspects. Law enforcement stakeholders highlight the value of existing tools and gaps in current abilities. Others point to the limited robust evidence of effectiveness.

Chapter 1 described the terrorism threat in the EU as of the end of 2017. The operational cooperation measures detailed in this chapter offer ways in which these threats can be tackled. Similarly to Chapter 3, the gaps and barriers presented here were identified from a review of the literature and interview discussions. And as with Chapter 3, we are careful not to duplicate the contents of the in-depth Commission Comprehensive Assessment or the 2017 study for the EP on the EU's Policies on Counter Terrorism; we refer the reader to those reports for further detail where appropriate.

In this chapter, for each area of operational cooperation the state of play is described (summarising key EU action); gaps and barriers are identified and explained; and the evidence is summarised in order to undertake a qualitative assessment of the identified gaps and barriers (applying the assessment approach described in Chapter 1, Section V).

## I – Counter-radicalisation measures

### State of play

The Europol TE-SAT makes frequent references to the threat posed by individuals who have become radicalised (Europol 2017a). Accordingly, efforts to counter radicalisation are a crucial component of counter-terrorism policies (Bigo et al. 2014).<sup>28</sup> As the prevention of radicalisation falls under the mandate of member states (Wensink et al. 2017), EU activities in this area have taken the form of providing support to various stakeholders at the national and sub-national level, as stressed in the Council Conclusions on radicalisation (Council of the European Union 2015a). The objectives of these activities have included facilitating the exchange of information and good practices, strengthening the evidence base and providing material support for activities and programmes in member states (EC 2017f). An interviewee described counter-radicalisation measures as a cornerstone of EU policy. Examples of EU actions include:

**Funding interventions and research.** The Commission reported that it has provided around €150m to projects addressing radicalisation in the EU.<sup>29</sup> A comparable amount was also invested in projects outside Europe. In 2016 alone the Erasmus+ programme dedicated in excess of €200m to projects that aim to counter radicalisation through social inclusion and intercultural dialogue (EC 2017f). Major funding vehicles for radicalisation-relevant research projects include the FP7 and Horizon 2020 programmes.<sup>30</sup>

**Facilitating information and exchange of best practices.** While there are several mechanisms for this, the most prominent initiative is the Radicalisation Awareness Network (RAN), launched in 2011. RAN is a platform where practitioners, researchers and policy makers can pool expertise and experience to tackle radicalisation (EC 2017r). As highlighted by one interviewee, Europris also plays a role, by facilitating best practice and knowledge sharing between probation and prison staff, in order to address radicalisation in prison.

#### The RAN Centre of Excellence

Launched in 2015, The RAN Centre of Excellence concentrates know-how and expertise on counter-radicalisation. National authorities can apply for tailor-made assistance from the RAN Centre (e.g. workshops, consultations, training) supported by funding from the Commission (EU CTC 2016b).

As of July 2017, RAN has involved more than 3,000 first-line practitioners (EC 2017f), although the intensity of their participation and collaboration may vary. According to a RAN survey of 175 event participants conducted in 2016, the vast majority (90 per cent) of attendees felt that their participation was going to have positive impact on their day-to-day work tackling radicalisation. In addition, three quarters of attendees reported having disseminated the knowledge gained at the event throughout their organisations (RAN Centre of Excellence 2016)

**Support for online measures.** The EU Internet Forum was launched in 2015. Its objectives are to 'reduce accessibility to terrorist content online and to empower civil society partners to increase the

<sup>28</sup> These include the 2005 EU Counter Terrorism Strategy; Strategy for Combating Radicalisation and Recruitment to Terrorism (issued in 2005 and updated in 2008 and 2014); Internal Security Strategies 2010–2014 and 2015–2020; the 2015 European Agenda on Security and its follow-up communication; the Opinion of the Committee of the Regions (15/16 June 2016); and the Report of the European Parliament (3 November 2015) on radicalisation.

<sup>29</sup> The relevant funding mechanisms include Horizon 2020, Internal Security Fund and the Prevention of and Fight against Crime fund. However, it is difficult to clearly identify projects related to radicalisation due to the cross-cutting character of the underlying challenge (EC 2017f). The €150m figure is an estimate intended to provide an indication of relevant funding directly targeting radicalisation. It does not include projects funded directly by national authorities under ISF-Police shared management.

<sup>30</sup> Specifically the Programme on Social Sciences and Humanities under FP7 and Societal Challenges 6 and 7 (inclusive, innovative and reflective societies, secure societies) under Horizon 2020.

volume of effective alternative narratives online’ (EC 2017i, 8). Outputs from the forum to date include a referral mechanism to remove internet content (the EU Internet Referral Unit, IRU), with the participation of Europol)<sup>31</sup> and a prototype shared database for use by the internet industry to help identify potential terrorist content on social media and prevent its reappearance on other platforms. Between its establishment and October 2016, the IRU had identified over 15,000 referrals relating to relevant internet content for removal and reported that the removal was successful in nearly 90 per cent of cases (EU CTC 2016a). The forum has also established a Civil Society Empowerment Programme, designed to help civil society organisations to produce alternative online content (EC 2017m). In May 2016 the European Commission and key information technology companies (Facebook, Twitter, YouTube and Microsoft) presented a code of conduct that included a set of commitments to combat the spread of illegal online hate speech in Europe (EC 2017ab). An interviewee noted that swift removal of terrorist content online was a high priority, and was of the view the IRU was playing a vital role and working well with IT companies.

**Ongoing policy development for future collaboration.** In July 2017, the Commission announced the creation of a High-Level Commission Expert Group on Radicalisation (HLCEG-R), bringing together competent authorities from all member states as well as other relevant EU-level agencies and bodies (EC 2017a).<sup>32</sup> The objective of the group is threefold. Firstly, it will provide advice on how cooperation and collaboration among various stakeholders can be improved. Secondly, it will offer assistance to the Commission in developing Union policies in the area of counter-radicalisation. Thirdly, it will explore options for future, more structured, cooperation mechanisms (HLCEG-R 2017b).<sup>33</sup> The Expert Group held its first meeting on 11 September 2017 (HLCEG-R 2017a).

## Gaps and barriers

**Gaps in the evidence base and monitoring of counter-radicalisation programmes.** While the EU and member states have invested in research on radicalisation and how to counter it, there is a consensus in the literature that the evidence base remains underdeveloped. For instance, there is limited understanding of why some young people take up violent extremism while others refrain from doing so, and about the effectiveness of preventive counter-radicalisation programmes (Bigo et al. 2014). The RAN Centre of Excellence published a gap analysis of radicalisation research in 2016 which concluded that ‘more research is needed to understand the causes, processes and mechanisms of radicalisation in order to be able to develop effective preventive and counter-measures’ (Pisoui & Ahmed 2016, 2). This conclusion was supported by an interviewee, who also noted the need for further research to inform the development and use of tools to assess the risk posed by individuals suspected or convicted of terrorist offences.

In relation to monitoring, while the EU has developed a series of mechanisms and tools to provide support to national authorities who want to implement counter-radicalisation programmes, there is no system in place to monitor the (voluntary) uptake of these tools (Wensink et al. 2017). This feeds into the evidence gap, making it more difficult to evaluate the implementation and effectiveness of the programmes. At the same time, the literature notes the challenges of conducting robust evaluation; as noted by an interviewee, even if researchers can speak to people who have been radicalised, the reasons for their radicalisation may not be generalisable.

**Gaps in coordination and exchange of knowledge.** The Commission Comprehensive Assessment noted the complexity of the radicalisation challenge as well as the existence of a multitude of programmes, projects and stakeholder groups. Informed by stakeholder consultation, the Assessment concluded that there was a need for a more structured approach to coordinating existing efforts and

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<sup>31</sup> The EU IRU has been subsumed by the newly established ECTC (EU CTC, 2016a).

<sup>32</sup> Europol, Eurojust, FRA, Cepol, RAN Centre of Excellence, EEAS, EU CTC.

<sup>33</sup> The mandate of the Expert Group will expire at the end of 2018.

work across relevant stakeholders (EC 2017f). This finding was supported by a similar observation made by two interviewees, who felt that counter-radicalisation efforts could benefit from further coordination efforts. One interviewee noted that practitioners and other relevant stakeholders may not always be aware of all entities and organisations working in the area and may not be able to avail themselves of all available resources. The other interviewee noted that counter-radicalisation work has a tendency to be conducted in silos (for example, just focusing on prison radicalisation, or online sources), whereas a more effective response was likely to be cross-cutting, looking for the root causes in society (such as access to education and employment, personal security and marginalisation).

**Gaps in the involvement of some relevant stakeholders.** Linked to gaps in knowledge exchange, the Commission's Comprehensive Assessment (EC 2017f) noted that further work needs to be done to ensure that all relevant stakeholders contribute to and benefit from existing mechanisms to counter radicalisation. For instance, specifically in relation to the EU Internet Forum, the Commission noted that more needs to be done to ensure the involvement of smaller and/or younger enterprises with platforms that may be subject to growing attention and use from terrorist organisations. Wensink et al. (2017) also noted the need for greater outreach, specifically with respect to RAN, and suggested one existing limiting factor is that the RAN Centre of Excellence has a constrained mandate. This is an issue on the agenda for the HLCEG-R.

**Gaps relating to fundamental rights and impacts on community cohesion.** As discussed in Chapter 2, Section III, and Chapter 3, Section II, a range of organisations, including the FRA and NGOs, have raised concerns about the impact of counter-radicalisation programmes on fundamental rights. An interviewee acknowledged the clear benefit of increased coordination at the EU level, but emphasised the need to be mindful of differences between the target populations of such programmes in different member states, and to tailor programmes accordingly. The interviewee also expressed concern about the potential impacts of counter-radicalisation programmes on freedom of speech and expression. With respect to the different target populations, a European Parliament resolution of 25 November 2015<sup>34</sup> stressed that EU policy on the prevention of radicalisation and recruitment of European citizens by terrorist organisations should not be limited to Islamic radicalisation, but should also consider, for example, right-wing radicalisation (EP 2015c).

**Gaps related to removing online terrorist content.** An interviewee commented that while existing work to identify and remove material on the web was having an impact, the current approach of reacting to content and removing it had limits to its effectiveness. The interviewee hoped that future developments in this respect would include technologies that could identify inappropriate content to prevent it being posted in the first place.

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<sup>34</sup> 2015/2063(INI).

## Assessment of gaps and barriers

Summary of evidence	Overall assessment
<b>Gaps in the evidence base and monitoring of counter-radicalisation programmes</b>	
<p><i>View of interviewees and findings from literature review</i></p> <ul style="list-style-type: none"> <li>- Radicalisation is an important part of the threat landscape; anti-radicalisation programmes are described as a 'cornerstone' of EU prevent policy and are increasing in number at the member state level.</li> <li>- Consensus in literature and among interviewees that evidence gaps are a pressing issue and that there should be greater coordination and knowledge sharing.</li> <li>- Potential fundamental rights implications of counter-radicalisation programmes heighten the need for a robust evidence base.</li> </ul> <p><i>Extent to which challenge is specific to terrorism</i></p> <ul style="list-style-type: none"> <li>- This challenge is specific to terrorism.</li> </ul> <p><i>Reforms ongoing/ just implemented, or other trends</i></p> <ul style="list-style-type: none"> <li>- High-Level Commission Expert Group on Radicalisation was established in July 2017 to inform policy, but whether and how this might look at measures to improve the evidence base is not yet known.</li> </ul>	Very likely to impede prevention
<b>Gaps in coordination and exchange of knowledge and gaps in the involvement of some relevant stakeholders</b>	
<p><i>View of interviewees and findings from literature review</i></p> <ul style="list-style-type: none"> <li>- Literature and interviewees identified the very positive work of RAN, and of the IRU in relation to private sector engagement, but highlighted need for continued and further stakeholder engagement, including with civil society and the private sector.</li> <li>- Interviewees noted importance of broad stakeholder engagement, and that this was important to ensuring a response that addressed the range of possible root causes of radicalisation.</li> <li>- Interviewees and literature identified need for greater exchange of learning and coordination of existing work, especially given the number of counter-radicalisation programmes across the EU.</li> </ul> <p><i>Extent to which challenge is specific to terrorism</i></p> <ul style="list-style-type: none"> <li>- This challenge is specific to terrorism.</li> </ul> <p><i>Reforms ongoing/ just implemented, or other trends</i></p> <ul style="list-style-type: none"> <li>- High-Level Commission Expert Group on Radicalisation was established in July 2017 and its mandate includes exploring options for future, more structured, cooperation mechanisms.</li> </ul>	Very likely to impede prevention
<b>Gaps relating to fundamental rights and impacts on community cohesion</b>	
<p><i>View of interviewees and findings from literature review</i></p> <ul style="list-style-type: none"> <li>- The FRA, among others, has expressed concerns about the fundamental rights implications of counter-radicalisation programmes.</li> <li>- There are examples where existing counter-radicalisation programmes are said to threaten or infringe fundamental rights.</li> <li>- Lack of consideration of these factors could be counter-productive and increase radicalisation by damaging community cohesion and disproportionality targeting some minority groups.</li> </ul> <p><i>Extent to which challenge is specific to terrorism</i></p> <ul style="list-style-type: none"> <li>- This challenge is specific to terrorism.</li> </ul>	Very likely to impede prevention and impact fundamental rights
<b>Gaps relating to removing online terrorist content</b>	
<p><i>View of interviewees and findings from literature review</i></p> <ul style="list-style-type: none"> <li>- TE-SAT identifies online terrorist content as an important element of the threat landscape.</li> <li>- Interviewees noted the successes of the IRU in removing online terrorist content.</li> <li>- One interviewee noted that the next step is to develop the technical capability to remove content proactively, before such content is posted.</li> </ul> <p><i>Extent to which challenge is specific to terrorism</i></p> <ul style="list-style-type: none"> <li>- This challenge is specific to terrorism.</li> </ul>	Very likely to impede prevention and impact fundamental rights

## II – Systems and databases for information sharing

This section and the next look at the exchange of information. Information sharing is essential to terrorism prevention, protection, pursuit and response (Carrera, Guild & Mitsilegas 2017). Accordingly, numerous actors need to share information, including member state law enforcement authorities, border control authorities, intelligence services, customs authorities, judicial authorities, asylum authorities as well as EU agencies and third-country authorities.<sup>35</sup> As the Europe TE-SAT sets out, movements of large numbers of migrants are being exploited by those wishing to enter Europe to carry out attacks, and returning foreign fighters could enhance the threat level in the EU (Europol 2017a). Such movements of people create a need for information about individuals potentially posing a threat, in order to make decision about their entry to the EU. Similarly, as highlighted in Chapter 1, the speed at which recent attacks have been planned means that exchange of intelligence and information must be rapid for protection to be effective.

Throughout this section, there is an important distinction between ‘information,’ ‘intelligence’ and ‘evidence’, as explained in the box below.

### Information, intelligence, evidence

‘Information’ can be understood as facts and data describing a given situation (Striegher 2013). Collected information can be assessed for veracity, processed and analysed to produce ‘intelligence’ (Den Boer 2015), which is used to disrupt criminal and terrorist offences. The collection of intelligence information can involve covert operations and robust protection of sources (Eijkman & van Ginkel 2011). As such, intelligence data contain information that may not be admissible in court, unlike ‘evidence’ used to investigate and prosecute terrorist offences. Intelligence information may be forwarded and acted upon by various law enforcement authorities (e.g. by triggering a criminal investigation), although the extent of information sharing between intelligence services and law enforcement may vary across contexts (Eijkman & van Ginkel 2011).

There is no common understanding of what data constitute ‘information,’ ‘intelligence’ and ‘evidence’ across EU member states (Cocq 2017).

### State of play

The state of play in this area is complex, as there are a number of databases for information exchange already operational, there are extensive ongoing reforms to these databases, and there are proposals for possible future reforms to address gaps and barriers.

### The landscape of existing databases

In terms of existing databases for the sharing and exchange of information, a helpful categorisation is provided by an FRA report on interoperability, which broadly groups existing information infrastructure into three types of mechanisms (FRA 2017c):

- 1) Centralised information systems set up and directly operated by the EU and its agencies. These typically rely on participating member states to provide data that will be stored in the system. This includes the Schengen Information System (SIS), the Visa Information System (VIS) and European Dactyloscopy (Eurodac). New EU IT systems have been proposed and are discussed in this section.
- 2) Centralised databases managed by a designated agency, relying on user agencies for the provision of content. Examples include Europol databases (e.g. the Europol Information System, EIS) and, beyond the EU, the Interpol Stolen and Lost Travel Document database and Interpol Travel Documents Associated with Notices database.

<sup>35</sup> For an overview of access rights to existing as well as planned EU IT systems, see EC (2017l).

- 3) Information systems managed by national authorities. Some systems in this group are purely national while others may be governed by EU law (e.g. Advanced Passenger Information (API), Passenger Name Record (PNR)). Mechanisms for the exchange of information may exist between national systems (e.g. European Criminal Record Information System (ECRIS), Prüm).

There are many **ongoing reforms** and changes in this area, relating to three priorities identified by the Commission in 2016: 1) maximising the potential benefits of existing systems; 2) filling existing gaps in the coverage of existing systems; and 3) improving the interoperability of existing information systems (EC 2016e). We discuss each area in turn below.

### **Proposed reforms that aim to maximise the potential benefits of existing systems**

Proposals are currently under consideration to improve two existing information systems – SIS and Eurodac.

An evaluation of the currently used second generation of **SIS** noted an increase in the use of this system in regard to terrorism-related activities, although it concluded further improvements should be made to increase its functionality (EC 2016s). Particular issues highlighted included the absence of common standards with regard to information in SIS and no systematic entry of information relating to foreign terrorist fighters (EU CTC 2016b). In December 2016, the Commission put forward a series of proposals to improve and extend the remit of SIS, particularly in relation to technical and operational requirements (EC 2016o, 2016p, 2016r). This step is expected to result in the following additional functionalities:

- **Creation of new alerts.** The proposal would impose a duty on member states to create alerts in the system for terrorism-related cases.
- **Creation of new checks.** The proposal would introduce a new type of check ('inquiry check') intended to provide additional information relevant in terrorism and serious crime cases.
- **Increased use of biometrics.** This includes expanding the use of existing biometrics (e.g. mandatory fingerprinting in certain situations) and the introduction of new types (palm prints, DNA). The importance of the ability to share biometric information was stressed by an interviewee.
- **Increased number of law enforcement authorities who can access the database.** Examples include immigration authorities.
- **Widened participation by Europol and the Frontex (European Border and Coast Guard Agency).** Europol's access rights would be expanded and the European Border and Coast Guard Agency's added.

The Commission also proposed updates to the **Eurodac** system. The primary objectives of the proposed changes were to facilitate returns and address irregular migration (EC 2017h), although the changes are also relevant to the fight against terrorism since they allow access to the database to law enforcement authorities to 'identify irregular third-country nationals who are suspects (or victims) of terrorism' (EC 2016n, 8). In addition, the proposal acknowledges the desirability of strengthening the interoperability between Eurodac and SIS and VIS (Wensink et al. 2017).

### **Proposed reforms that aim to fill gaps in the coverage of existing systems**

Two initiatives have been proposed by the Commission that involve establishing new information systems, to fill gaps in the information currently collected.

In November 2016, the Commission proposed the establishment of a **European Travel Information and Authorisation System (ETIAS)** (EC 2016l). The proposal is modelled on systems in place elsewhere in the world (e.g. US, Canada, Australia). ETIAS would collect data from visa-exempt travellers in advance of their arrival to the EU and assess whether their entry would constitute a

security or health risk. The objective of ETIAS is to undertake a risk assessment before the individual reaches the EU and fill a gap where, at the moment, information is not routinely captured about visa-exempt third-country nationals (Wensink et al. 2017). In addition, unlike existing systems such as PNR and Advanced Passenger Information (API), which collect information only on arrivals via air travel, ETIAS is intended to cover all types of borders, closing another existing information gap. In this context, as the feasibility study for ETIAS pointed out, the proportion of visa-exempt third-country nationals who arrive via land or sea remains relatively small.<sup>36</sup> However, their numbers are expected to grow and can be expected to further increase in light of future visa liberalisation decisions concerning countries bordering EU territory (PwC 2016). Trilogue negotiations on the establishment of ETIAS were launched in October 2017 (EC 2017x).

Improvements have also been proposed in the form of a centralised extension of the **ECRIS**. One identified shortcoming of ECRIS stems from its decentralised structure, i.e. the fact that each member state keeps a record of the convictions of its nationals in its state and others. Information in ECRIS is ordered by nationality, which means there are challenges in recording information about third-country nationals. In addition, there is no simple way to let a member state know when one of their nationals has been convicted, or to request information from a member state when new proceedings are instituted. Currently, 'blanket requests' must be sent to all member states when seeking information, and a reply is obligatory, even without a positive result (EP 2016e).

In response, there have been proposals by the Commission to upgrade and improve ECRIS. In January 2016, the Commission put forward a proposal to 'improve the exchange of information on third country nationals and stateless persons' and include the fingerprints of non-EU citizens (EC 2016i, 3). The proposal was revised in light of new developments including the work of the High-Level Expert Group on interoperability and a new proposal by the Commission was put forward in June 2017 (EC 2017p). The document proposes the creation of an ECRIS-Third Country National System (ECRIS-TCN), a centralised database maintained by eu-LISA.<sup>37</sup> The creation of such a database is intended to bring the following benefits (EC 2017v):

- Facilitate verification of criminal records on non-EU citizens held by other member states.
- Support identification of non-EU citizens with the help of biometric information where necessary.
- Enable more efficient (easier and faster) information exchange of criminal records.

### **Ongoing reforms that aim to fill gaps in the coverage of existing systems**

Efforts are currently ongoing or approved to commence on developing two information systems – EU PNR and Entry/Exit System (EES).

The most advanced initiative to close existing gaps is the ongoing establishment of the **EU PNR** scheme. In this system airlines have an obligation to share passengers' data with national authorities for all flights between third countries and the EU (i.e. excluding intra-EU travel). Originally put forward in 2011, the initial proposal received substantial scrutiny (FRA 2011a) and was rejected by the LIBE Committee in April 2013 due to concerns over its necessity and proportionality as well as its potential impacts on issues related to data protection (EP 2013b). In December 2015, the European Parliament and the Council agreed on a revised version of the text incorporating additional data protection and privacy safeguards. The agreement was subsequently endorsed by the LIBE Committee (EP 2015a) and the directive was adopted in April 2016 (EU 2016a). Member states have two years to bring the directive into force in their national systems. As of mid-November 2017, the

<sup>36</sup> The proportions are 9 per cent and 7 per cent respectively, according to the Smart Borders Technical Study cited in PwC (2016).

<sup>37</sup> Unlike the 2017 version of the proposal, the changes to ECRIS proposed in January 2016 would entail setting up a decentralised system. One of the considerations behind the change towards a centralised system was a desire to create a system that could be made interoperable with other centralised databases.

implementation picture was mixed. Seven member states had established their capacity to collect and analyse PNR data, although some still needed to make amendments to their relevant national legal bases. Thirteen member states had reached an intermediate implementation stage, having completed or being close to completing the establishment of their national data units. The remaining participating member states had shown little implementation progress (EC 2017x).

Regarding the external dimension of PNR data transfer (i.e. from EU airlines to third countries), the EU has conducted a series of bilateral agreements with Australia (EU 2012a), Canada (European Community 2006) and the United States (EU 2012b).<sup>38</sup> The challenges associated with these are described in the box below.

#### **PNR agreements with third countries**

The agreements with Australia, Canada and the United States (EC 2016h) came under criticism from various sources (EDRi 2012), including the EDPS, who repeatedly questioned the necessity and proportionality of the PNR scheme (EDPS 2005, 2011a, 2011b). In 2013, the Council initiated a renegotiation of the agreement with Canada, which was concluded in 2014. The EDPS expressed concerns with respect to the data protection safeguards in the draft agreement (EDPS 2013), as did the European Parliament, which requested an opinion of the CJEU regarding the agreement's compatibility with Treaty and Charter provisions and the underlying legal basis (EP 2014c). In response, AG Mengozzi's opinion,<sup>39</sup> as well as the subsequent Court's opinion,<sup>40</sup> found that the agreement is not compatible with the Charter and 'may not be concluded in its current form'. This decision has implications not only immediately for the agreement with Canada, but more broadly for agreements with other countries, including the EU-US Privacy Shield (EP 2017b; Kuner 2017).

The Commission has also proposed the establishment of an **EES**, which would record data on the entry and exit (time and place) by third-country nationals into the Schengen area (EC 2016m; EP 2017a; EP n.d.). This is intended to lead to a more efficient process of border controls as well as the control of the authorised period of stay of third-country nationals and the identification of overstayers, on whom there are no reliable data available. Conceived primarily as a border control tool,<sup>41</sup> the proposal and the impact assessment suggest that an EES would support the fight against terrorism by facilitating the identification of terrorists and by developing a record of third-country nationals' history of travel (EC 2016b).<sup>42</sup> The EES regulation<sup>43</sup> was adopted in November 2017, along with a regulation making corresponding amendments to the Schengen Borders Code.<sup>44</sup> The development of the system will commence in 2018 with a fully operational launch planned by 2020 (EC 2017x).

<sup>38</sup> An agreement with Mexico is currently under negotiation (EC 2015b).

<sup>39</sup> Opinion Of Advocate General Mengozzi delivered on 8 September 2016 (1) Opinion 1/15 (Request for an opinion submitted by the European Parliament).

<sup>40</sup> Opinion 1/15 of the Court (Grand Chamber) 26 July 2017 ECLI:EU:C:2017:592

<sup>41</sup> As the accompanying IA noted (EC 2016b, 19), the priorities of the system were, in order: (1) To improve the management of external borders; (2) To reduce irregular migration, by addressing the phenomenon of overstaying; (3) To contribute to the fight against terrorism and serious crime and ensure a high level of internal security.

<sup>42</sup> The key provisions in this regard are the provision of access to the EES by law enforcement authorities and a retention period of 5 years (EC 2016b).

<sup>43</sup> Regulation (EU) 2017/2226 of the European Parliament and of the Council of 30 November 2017 establishing an Entry/Exit System (EES) to register entry and exit data and refusal of entry data of third-country nationals crossing the external borders of the member states and determining the conditions for access to the EES for law enforcement purposes, and amending the Convention implementing the Schengen Agreement and Regulations (EC) No 767/2008 and (EU) No 1077/2011. OJ L 327, 9.12.2017.

<sup>44</sup> Regulation (EU) 2017/2225 of the European Parliament and of the Council of 30 November 2017 amending Regulation (EU) 2016/399 as regards the use of the Entry/Exit System. OJ L 327, 9.12.2017.

## Ongoing reforms that aim to improve the interoperability of existing information systems

To explore options in this last priority area and to analyse issues related to the fragmentation and complexity of existing systems, in 2016 the Commission set up a High-Level Expert Group (HLEG) on information systems and interoperability. The HLEG found that ‘it is necessary and technically feasible’ to introduce a set of solutions to enhance interoperability (HLEG 2017, 40). The solutions under consideration were: 1) a European search portal; 2) a shared biometric matching service; and 3) a common identity repository.<sup>45</sup> Importantly, the HLEG expressed confidence that the introduction of these solutions can lead to operational gains while meeting data protection standards.

The HLEG’s recommendations were reflected in the Commission’s new approach towards information management laid out in the seventh progress report on the Security Union (EC 2017h). As the next step in the execution of this approach, the Commission proposed in June 2017 to reform and enhance the mandate of eu-LISA (EC 2017q). Under the proposal,<sup>46</sup> the responsibilities of eu-LISA will include:

- **Management of centralised EU information systems.** This includes both existing systems already under the agency’s management (SIS, VIS, Eurodac)<sup>47</sup> as well as newly proposed systems (EES, ETIAS, ECRIS-TCN). With respect to the latter, the proposal envisages that eu-LISA will play a role in the preparation and development of these systems.
- **Oversight of the development of the interoperability solutions,** ‘subject to the adoption of the relevant legislative instruments’ (EC 2017q).
- **Development of data quality control mechanisms.** The objective of these mechanisms will be to identify existing inaccuracies and inconsistencies and refer them to originating member states for remedial action.

In December 2017, the Commission published a pair of sister proposed regulations to establish an interoperability framework between existing as well as planned and proposed EU information systems for security, border and migration management (EC 2017w; EC 2017y). The proposals envisage the development of the three interoperability components listed in the eu-LISA Regulation proposal (European search portal, shared biometric matching service and common identity repository). In addition, the proposals include the establishment of an additional interoperability component – a multiple-identity detector. Further details are provided in the box below. The actions envisaged by the draft regulations would require amending other relevant legal instruments and the draft regulations include the relevant provisions for these changes.<sup>48</sup>

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<sup>45</sup> The fourth option presented in the 2016 Commission Communication, interconnectivity of information systems where data registered in one system will automatically be consulted by another system, was not endorsed by the HLEG. With respect to one of the retained options, the original term ‘single-search interface’ was replaced with ‘European search portal’ to clarify this does not involve single-search interfaces existing at the national level (EC 2017h).

<sup>46</sup> There was no impact assessment prepared before this proposal.

<sup>47</sup> For a report on the functioning of eu-LISA see (EC 2017t).

<sup>48</sup> The existing legal instruments that would require a change are: 1) Regulation (EU) No 2016/399 (the Schengen Borders Code); 2) Regulation (EU) 2017/2226 (the EES Regulation); 3) Regulation (EC) No 767/2008 (the VIS Regulation); 4) Council Decision 2004/512/EC (the VIS Decision); and 5) Council Decision 2008/633/JHA (the VIS/law enforcement access Decision). Furthermore, several legislative instruments that are currently under consideration and have not been adopted would require amendments. These are: 1) the ETIAS Regulation; 2) the Eurodac Regulation; 3) the SIS Regulations; 4) the ECRIS-TCN Regulation, including the corresponding provisions of Regulation (EU) 2016/1624 (the European Border and Coast Guard Regulation); and 5) the eu-LISA Regulation.

### Features of the proposed regulation to establish an interoperability framework

The **multiple-identity detector** is intended to offer the ability to check whether particular identity data exist in multiple systems and thus support the correct identification of persons and combat identity fraud.

The development of the **common identity repository** would provide law enforcement with the opportunity to consult systems not primarily intended for law enforcement purposes (Eurodac, VIS, EES (when functional), ETIAS (if approved)) via a two-step approach.<sup>49</sup> Firstly, after launching a query, a law enforcement official would receive a hit/no hit indication of which, if any, information systems contain data on a given person. Secondly, the official may request access to pertinent systems in accordance with the rules and procedures governing the system in question. The multiple-identity detector is also expected to lend support to the two-step approach by examining if the same person is listed under different identities across the participating systems.

The proposals include three additional elements intended to further support the interoperability elements discussed above. Firstly, the draft regulations would establish a **central repository for reporting and statistics**, which would enable the sharing of statistical data for a variety of purposes, including operational, policy and data quality aims. Secondly, the regulations also propose to establish a **Universal Message Format** to be used as a standard for the exchange of information between EU systems and (possibly in the future) by Interpol and Europol. Thirdly, the proposals introduce quality indicators and data quality control mechanisms to help identify and remedy incorrect and inconsistent data entries.

According to the impact assessment accompanying the proposal (EC 2017z), the expected benefits will include enhancements in the areas of border management, internal security and law enforcement and police cooperation. By extension, this is expected to have a positive social impact on EU citizens in the form of increased reassurance. In addition, the introduction of interoperability components is associated with potential economic impacts in the form of savings achieved primarily through lower training costs and reduced need to spend resources on cases involving multiple identities and identity fraud.

The impact assessment acknowledges that interoperability has the potential to impact on fundamental rights, both in positive terms (e.g. through correct identification of a person and avoidance of confused identities) and negative terms (e.g. through the collection of biometric data). The proposals would also have an impact on the protection of personal data, although the assessment concluded that the measures are proportionate and the minimum necessary given their objectives (EC 2017aa). The execution of the impact assessment as well as its discussion of the core principles of proportionality and necessity are in line with recommendations in the EDPS's 2017 paper on interoperability, published before the adoption of the latest Commission proposals. In that paper, the EDPS reiterated its principal support for interoperability components on the condition of their compliance with core data protection requirements (EDPS 2017f). However, as one interviewee pointed out, the December proposals include features that go beyond the scope of previous discussions (notably the MID) and will therefore require dedicated analysis by the EDPS and others. The EDPS has not published its opinion on the proposals yet.

### Gaps and barriers

As is clear from the description above of the proposed reforms, there are gaps related to functionality, coverage and interoperability:

**Limits to the functionality and coverage of existing databases and systems.** Assessments by the Commission have identified sub-optimal functionalities in existing information systems, gaps in the EU's architecture of data management, a complex landscape of differently governed information systems, and a fragmented architecture of data management for border control and security (EC 2016e, 3). Subsequent Commission reports have reiterated the possible risks associated with gaps in the existing information system infrastructure. In relation to coverage issues, examples of data gaps

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<sup>49</sup> The establishment of the common identity repository would also enable more effective checks of third-country nationals in member states' territories (EC 2017z).

mentioned in the literature include passenger data and data on entry of third-country nationals to the Schengen area.

**Databases are not interoperable.** The Seventh progress report on the Security Union, published in May 2017, acknowledged the existence of ‘blindspots where terrorist suspects can be recorded in different, unconnected databases under different aliases (EC 2017h, 2). Similarly, the European Council has called for better ‘interoperability of relevant EU Databases’ (EU CTC 2016b, 6) and the Parliament invited the Commission to develop proposals in these areas (EP 2016c). These concerns and gaps have been the catalyst for the reforms outlined above. One interviewee felt that greater interoperability could be ‘game changing’. The current situation reflects the fact that existing systems were set up with a particular purpose in mind, which may not always be compatible with the current demands placed on them in the context of the fight against terrorism. For example, while the SIS (and its current iteration) was explicitly established to support law enforcement objectives, this was not the case for other systems: Eurodac and VIS were designed to support immigration policy, and (as mentioned by an interviewee from the Council of Europe), this means it has proved legally challenging for law enforcement to gain access to them.

**Concerns about data protection and privacy in relation to EU databases.** As discussed in Chapter 2, there are significant concerns about whether the *existing* landscape of databases offers sufficient protection for personal data and against infringements of privacy. *Proposed changes* to these databases, to make them more interoperable and functional, raise further concerns about EU data protection compliance. An interviewee acknowledged the need to work with all stakeholders to ensure new models of access that provide safeguards – a particular example mentioned was biometric data collected from children. The interviewee also linked data protection and privacy to questions about data quality. For example, the information in national databases connected by the Prüm system is subject to different safeguards and quality requirements at the national level. The same concern could apply to data collected by third countries and entered into shared databases. Inaccurate data could have significant implications for individuals who risked being wrongly suspected, if that data is used for intelligence purposes. The interviewee also noted, however, that greater functionality and interoperability could have benefits – such as facilitating family reunification for asylum seekers.

The particular concerns raised in relation to each system are described in the following paragraphs:

In response to the existing use of SIS, a survey of staff at diplomatic missions and consulate posts conducted by the FRA<sup>50</sup> found that more than 40 per cent of respondents reported that incidents of incorrect matches sometimes occurred in SIS (and VIS). Slightly more than 40 per cent of respondents noted that data in SIS are sometimes inaccurate, incorrect or not updated. Reflecting on possible improvements in interoperability, the FRA (2017c) observed this represents both an opportunity and a challenge. On the one hand, greater interoperability may increase the chances of detecting and correcting an error in the data; on the other hand it may exacerbate any negative impacts of erroneous data by making the information more widely available.

In relation to the SIS proposal package, the EDPS produced an opinion on the suggested modifications (EDPS 2017b) that raised questions about the necessity and proportionality of the changes (particularly the introduction of new data categories and the expansion of biometric identifiers) and called for an impact assessment addressing the rights to privacy and data protection. Among other recommendations and conclusions, the opinion also asked for a better specification of access rights to various types of SIS alerts as well as for a firmer justification for the proposed extensions of data retention periods.

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<sup>50</sup> The survey was conducted as part of FRA’s project Biometric data in large EU IT systems in the areas of borders, visa and asylum (FRA 2014a).

With respect to the proposed modifications to Eurodac, an FRA opinion on their impact on fundamental rights stressed that the recast Regulation does not change the modality for law enforcement access, which is stipulated in the 2013 Eurodac Regulation. The proposed Regulation would, however, increase the volume of types of data available to law enforcement authorities due to the proposed expansion of Eurodac's remit. In addition, the FRA pointed out that the 2013 provisions for law enforcement are subject to a broad range of safeguards, put in place in response to concerns from the EDPS and others about the possible 'function creep' of the database and discrimination risks (EDPS 2012, 7). Therefore, the FRA called for a continuation of the current provisions, at least until the completion of an evaluation of the Eurodac Regulation, due to be conducted in 2018 (FRA 2016).

In the context of ETIAS, the FRA produced an opinion on the system's impact on fundamental rights (FRA 2017e). The FRA invited the legislator to compensate for the lack of an impact assessment and called for fundamental rights to be explicitly included in the mechanisms to assess the system's implementation as well as in an eventual ETIAS practical handbook, to which FRA can contribute. Further concerns identified by the FRA included: 1) overly broad scope of questioning and data collection; 2) risks of discriminatory profiling; 3) proposed provision of access to information by law enforcement officials before initial implementation is assessed; 4) risk of sharing sensitive information with third countries; and 5) lack of effective remedy, complaints mechanism and right of access. Along similar lines, the EDPS also called for an impact assessment of the ETIAS proposal, particularly in light of the fact that it would result in various types of data, collected for a range of purposes, becoming available to an expanded range of relevant authorities (EDPS 2017c). Similarly to the FRA, the EDPS also called for justification of the collection of certain types of data as well as access to data by law enforcement authorities, and raised concerns about profiling.

The EDPS also offered an opinion on the ECRIS-TCN proposal (EDPS 2016). The document lauded the proposed use of technical measures to minimise possible interferences in people's rights to personal data protection and private life. Nevertheless, the opinion highlighted three areas for concern. Firstly, it recommended establishing the regime for fingerprint processing of TCNs in a way that is equivalent to that for EU nationals, i.e. in accordance with national criminal systems rather than mandatory across the board. Secondly, the opinion noted information processed by the ECRIS-TCN system will be pseudonymised personal data (rather than anonymous). Thirdly, the EDPS recommended that the provisions in the proposal apply only to TCNs and not to dual citizens, to avoid discrimination against EU citizens with an additional third-country nationality.

In the context of connecting multiple existing information systems, data protection and fundamental rights issues stem from the fact that each existing system has different access and data protection arrangements in place, which may need to be amended in order to offer genuinely meaningful interoperable functionality. This was explicitly highlighted by the EDPS in its statement on interoperability from May 2017, which concludes that 'the main obstacles to a sustainable interoperability arise from the current legal basis of the information systems rather than merely from data protection principles' (EDPS 2017e, 2). With respect to concrete interoperability features, the statement raised concerns about the proposed shared biometric matching service without a clarification on the purpose and use of flags indicating the existence of information on the individual in question in other information systems. Similarly, the EDPS called for a clear justification of the need to create a common identity repository and noted that its creation may be either prohibited or constrained by existing national legal frameworks. An assessment by the FRA (2017c) also highlighted a series of potential issues in the design of interoperability solutions. Firstly, due to the fact that interoperability will likely result in easier access to data, the possibility of unauthorised access as well as unlawful sharing of data (e.g. with third countries) may be increased. Secondly, efforts to increase interoperability may lead to the processing of greater volumes of data than is currently necessary under the existing legal framework associated with each information system. Thirdly, there is a risk that data available through various information systems will be utilised for

discriminatory profiling. Each of these risks can be addressed through appropriate safeguards, the adequacy of which should be subject to continuous monitoring and assessment. At the same time, the FRA assessment also concluded that increased interoperability may increase the chances of detecting an incorrect entry, which may help prevent negative outcomes for the individuals concerned.

The EDPS has also provided an opinion specifically on the proposed changes to the eu-LISA Regulation (EDPS 2017d). It called on the Commission to produce an impact assessment of the proposed changes on the rights to privacy and data protection. It also raised concerns regarding a provision of the proposed Regulation foreseeing the possibility that eu-LISA will be asked by a group of member states to develop a centralised solution for a currently decentralised system. The EDPS reiterated that such a change cannot be effected without modifying the legislative basis underlying the system in question. This observation is also relevant to, among other initiatives, any future considerations surrounding the creation of any centralised components of PNR, the exploration of which was called for by the HLEG on interoperability (HLEG 2017c).

## Assessment of gaps and barriers

Summary of evidence	Overall assessment
<b>Gaps relating to limits to the functionality of existing databases and systems</b>	
<p><i>View of interviewees and findings from literature review</i></p> <ul style="list-style-type: none"> <li>- Information exchange at the root of all elements of the counter-terrorism strategy.</li> <li>- Importance of enhanced capabilities in relation to biometrics was stressed by interviewees and these have been called for by the Commission.</li> <li>- Need for additional search capabilities and wider access also mentioned in literature.</li> </ul> <p><i>Extent to which challenge is specific to terrorism</i></p> <ul style="list-style-type: none"> <li>- This challenge is not specific to terrorism but is likely to have significant implications for the fight against terrorism.</li> </ul> <p><i>Reforms ongoing/ just implemented, or other trends</i></p> <ul style="list-style-type: none"> <li>- Reforms to SIS and Eurodac have been proposed by the Commission and are under consideration. Whether they will be taken forward is not confirmed at the time of writing.</li> </ul>	Very likely to impede prevention, protection, pursuit and response
<b>Gaps relating to data not currently collected in any databases or systems</b>	
<p><i>View of interviewees and findings from literature review</i></p> <ul style="list-style-type: none"> <li>- Examples of data gaps mentioned in the literature include passenger data and data on entry of third-country nationals to the Schengen area.</li> <li>- Strong emphasis in EU policy in recent years on improving the availability of information. Interviewees stressed the importance of information being available to front-line officers.</li> </ul> <p><i>Extent to which challenge is specific to terrorism</i></p> <ul style="list-style-type: none"> <li>- This challenge is not specific to terrorism but is likely to have significant implications for the fight against terrorism.</li> </ul> <p><i>Reforms ongoing/ just implemented, or other trends</i></p> <ul style="list-style-type: none"> <li>- PNR system currently in the process of being implemented by member states.</li> <li>- New EES expected to be fully operational by 2020.</li> <li>- Creation of ETIAS and ECRIS/TCN is still under consideration.</li> </ul>	Very likely to impede prevention, protection, pursuit and response
<b>Gaps relating to lack of interoperability</b>	
<p><i>View of interviewees and findings from literature review</i></p> <ul style="list-style-type: none"> <li>- Strong consensus in literature and interviews that ability to cross-search many databases would increase the likelihood of protecting against terrorism, for example by identifying individuals at the border and addressing issues of multiple names/identities and identity fraud. It could also help prevent false positives (where a person is wrongly identified as a suspect or threat).</li> <li>- However, a review of recent attacks (admittedly based on limited publicly available data) did not indicate that database interoperability impeded information exchange, so it is not possible to further verify claims of the importance of interoperability.</li> </ul> <p><i>Extent to which challenge is specific to terrorism</i></p> <ul style="list-style-type: none"> <li>- This challenge is not specific to terrorism but is likely to have significant implications for the fight against terrorism.</li> </ul> <p><i>Reforms ongoing/ just implemented, or other trends</i></p> <ul style="list-style-type: none"> <li>- The Commission has published proposed regulations to establish an interoperability framework. These are under discussion and their effect in practice is not yet known. There are still challenging data protection issues to address, and an EDPS opinion is expected.</li> </ul>	Very likely to impede prevention, protection, pursuit and response
<b>Gaps relating to data protection and privacy in relation to EU databases</b>	
<p><i>View of interviewees and findings from literature review</i></p> <ul style="list-style-type: none"> <li>- Interviewees and literature highlighted tension between facilitating counter-terrorism work and respecting fundamental rights.</li> <li>- Objections strongly raised (for example, European Parliament's rejection of the first iteration of the EU-US TFTP) and concerns outlined in reports by the FRA.</li> </ul> <p><i>Extent to which challenge is specific to terrorism</i></p> <ul style="list-style-type: none"> <li>- This challenge is not specific to terrorism but is likely to have significant implications for the fight against terrorism.</li> </ul> <p><i>Reforms ongoing/ just implemented, or other trends</i></p> <ul style="list-style-type: none"> <li>- Data protection and privacy safeguards strongly feature in discussions about reforms being implemented and proposed.</li> <li>- The EDPS is part of the HLEG and regularly produces reports on interoperability reforms. An opinion from the EDPS on the draft interoperability regulations from 2017 is expected.</li> </ul>	Very likely to impact fundamental rights and data protection

### III – Practices of information sharing between member states

This section focuses on the human, legal and resource issues related to information sharing.

#### State of play

In the context of the cross-border transfer of information in the EU, available statistics as well as previous assessments suggest that **the use of existing information systems for the exchange of data and information sharing has been increasing**. Both ECRIS and SIS, for example, have recorded an increase in usage in recent years (see Appendix D).

Available evidence indicates that **improvements have been seen in information sharing by member states specifically in relation to terrorism** (EU CTC 2016b). For example, Europol reported that a year after the establishment of the ECTC, ‘information sharing on counter-terrorism, across European countries as well as through and with Europol, had reached an all-time high by the end of 2016’ (Europol 2017c). Similarly, experts giving evidence to the recent LIBE Committee hearing were of the view that exchange of information at senior levels is increasingly effective.<sup>51</sup>

Numerous previous assessments conclude that, despite the existence of multiple mechanisms, there is still scope to improve information sharing, with gaps and barriers relating to a variety of factors (EC 2017f; Wensink et al. 2017).

#### Gaps and barriers

**Gaps from possibilities for greater information sharing.** The EU Counter-Terrorism Coordinator reported ‘significant gaps’ pertaining to data on foreign terrorist fighters uploaded onto the Europol Information System (EIS) and the Focal Point Traveller database (EU CTC 2016c). The Coordinator also noted that ‘Eurojust encourages the judicial authorities in the member states to make a better use of the spontaneous exchange of information irrespective of Rogatory Letters, which is also a legal possibility to cooperate internationally, in a way which seems to be more adequate to the necessity of a fast and efficient circulation of information, supported by Eurojust’.<sup>52</sup> Recent attacks provide anecdotal evidence of possible gaps in information sharing and cooperation: for example, in the case of the Brussels Jewish museum attack in 2014, the perpetrator was known to French authorities, but this information was not shared at the EU level (Brunsden, Chassany & Jones 2016).

**Gaps relating to variable levels of information sharing.** Data about information exchanges show that a small number of countries are responsible for a large proportion of available content on and searches of EU databases. For example, the number of alerts on SIS is distributed unevenly, with three countries (Italy, Germany and France) inputting over half the total number of alerts as of 31 December 2016 (eu-LISA 2017). France, the UK, Spain and Germany accounted in 2016 for more than half of all accesses to the system. Italy, which owned 28 per cent of all records in SIS, conducted less than 5 per cent of all searches (eu-LISA 2017). The use of ECRIS is also uneven. Some member states, such as Germany, the UK and Austria, sent substantially more requests for information than they received in 2016. Germany, along with Italy and Belgium, was among the countries that kept their information the most up to date, in contrast with a number of countries that sent few notifications of new or updated convictions (EC 2017s). While acknowledging the consensus in the literature that more use should be made of these systems, some variability in use is to be expected, given the different needs and sizes of member states. The risk stemming from uneven use (and in particular uneven provision of content) lies in possible damage to trust among member states stemming from perceptions of free-riding on the part of less active users.

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<sup>51</sup> Calum Anthony Steele, General Secretary of the Scottish Police Federation and Vice President of EuroCop, noted in the LIBE Committee meeting on 11 May 2017 that European police cooperation has improved in the past years. LIBE/8/09865 11 May 2017 (notes of the exchange made by the research team).

<sup>52</sup> EU CTC (2016a).

**Gaps relating to data quality and analytical capacity.** While the amount of information sharing is important, the quality of data is also vital. The High-Level Expert Group on information systems and interoperability highlighted the need to raise the standard of data quality across all systems and the need for criteria to prioritise in order to deal with the huge amount of data (HLEG 2017c).

The final report of the High-Level Expert Group on information systems and interoperability made calls for data quality control systems that would aid the 'central systems to automatically identify apparently incorrect or inconsistent data submissions so that the originating member state is able to verify the data and carry out any necessary remedial actions' (HLEG 2017c, 11). Although member states are ultimately responsible for data quality, improving the 'automated quality, format and completeness checks imposed or suggested by the (central) systems' (HLEG 2017c, 10) would be beneficial. It was recommended that this be done through the implementation of the eu-LISA produced data quality roadmap, developing data quality training for national officials, establishing automated data quality systems and common data quality indicators, as well as potentially a 'data warehouse with anonymised data and the various examples of reporting it would enable' (HLEG 2017c, 13). It is noted that the data warehouse recommendation may 'require amendments to existing legal instruments or a new proposal' (HLEG 2017c, 13).

Wensink et al. (2017) note that sharing too much information could lead to overwhelming demands on the recipient agencies, and this point was picked up by an interviewee, who stressed the importance of information analysis capability, which was as important as increasing the quantity of information shared.

Potential barriers, leading to the identified gaps, were suggested in the evidence collected. **A lack of trust in information sharing systems and/or how information will be used and protected by other actors is widely considered to be a key factor inhibiting information sharing between member states.** In the case of ongoing investigations, sharing of information is particularly sensitive as agencies may be reluctant to potentially compromise their efforts (as a result of revealing sources or ongoing covert techniques). There is a consensus in the literature, also expressed by two interviewees, that trust is essential for facilitating greater information sharing between member states. Some member states prefer not to share sensitive information through Europol for this reason (Booth et al. 2017; Brunsden et al. 2016), preferring informal, often bi-lateral sharing with trusted individuals in other jurisdictions (Wensink et al. 2017). Lack of knowledge among law enforcement (and other) practitioners at the member state level is also thought to contribute to the under-use of existing information exchange mechanisms, although the Commission Comprehensive Assessment concluded that recent increases in awareness and understanding of the added value of information exchange have contributed to a growing volume and quality of transmitted data (EC 2017f).

Other possible barriers may stem from **legal and institutional differences between member states and EU agencies.** Institutional and legal arrangements surrounding law enforcement and security services vary across member states, and can impose limitations on what can be shared and with whom. Evidence given to the LIBE Committee meeting on 4 May 2017 highlighted the challenges to harmonisation and alignment presented by the existence of different legal contexts, different roles for and organisation of customs agencies and different budgets assigned to the fight against terrorism in member states (Wensink et al. 2017). Eckes & Konstantinides (2011) have also noted that 'member states have organised the national institutions that take part in the fight against terrorism according to their distinct judicial and institutional cultures'. In recognition of this limitation, consideration has been given to whether access privilege rules could be amended to enable greater information sharing without falling short of data protection requirements. Past examples of steps in this direction include providing for Europol's access to VIS and Eurodac in 2013 and 2015, respectively (although this has not yet been operationalised) (HLEG 2017c). Among current initiatives, one of the options assessed and retained in developing the EES proposal was whether to provide for access by law enforcement agencies (EC 2016b). Another example is the proposal to widen access to SIS for selected EU agencies.

**Barriers stemming from implementation of existing systems at the national and agency level.** The exchange of information may be hampered by gaps in the implementation of information systems at the national and EU agency level. Examples mentioned in the literature include:

- **Prüm.** According to the HLEG final report, around 20–22 member states have established connections for the exchange of DNA profiles, fingerprints and vehicle registration data in accordance with the Prüm Decision. However, it is noted that a number of new connections were made in recent years and additional ones are expected to follow ‘shortly’ (HLEG 2017c, 19).
- **VIS and Eurodac.** Despite having adopted provisions for Europol access to these databases, this has not yet been operationalised in practice (HLEG 2017c).
- **ECRIS.** The system gives member states the option to choose with whom they connect and exchange information and a number of interconnections are missing. At the end of 2016, 76 per cent of all possible interconnections had been established and no member state was in a position to exchange information with all the other member states (EC 2017s).
- **SIENA.** Not all member states have the right infrastructure to operate this Europol information exchange (Wensink et al. 2017, 56).
- **PNR.** The system has already been approved and is being implemented. The FRA’s 2017 fundamental rights report noted that 17 member states did not ‘appear to prioritise implementing the PNR Directive’ (FRA 2017d, 160).

## Assessment of gaps and barriers

Summary of evidence	Overall assessment
<b>Gaps from possibilities for greater information sharing; gaps relating to variable levels of information sharing</b>	
<p><i>View of interviewees and findings from literature review</i></p> <ul style="list-style-type: none"> <li>- A number of sources in the literature argue that more information could be shared, for example, in relation to foreign terrorist fighters.</li> <li>- Possibilities for additional information sharing between member states were identified in reviews of recent attacks.</li> <li>- However, it is not possible to know with certainty what additional tangible benefits might have been achieved through greater information sharing or fuller implementation of existing systems (for example, in terms of attacks prevented or efficiencies in investigation).</li> </ul> <p><i>Extent to which challenge is specific to terrorism</i></p> <ul style="list-style-type: none"> <li>- Problem has a particular relevance to terrorism, where member states may be especially cautious in sharing sensitive information.</li> </ul> <p><i>Reforms ongoing/ just implemented, or other trends</i></p> <ul style="list-style-type: none"> <li>- Evidence indicates an increase in sharing of information in through Europol databases, and increasing use of SIS and ECRIS.</li> </ul>	<p>Very likely to impede prevention, protection, pursuit and response</p>
<b>Gaps relating to analytical capacity</b>	
<p><i>View of interviewees and findings from literature review</i></p> <ul style="list-style-type: none"> <li>- Not covered extensively in the literature, but mentioned by one interviewee. Greater information sharing necessarily creates a need for more sophisticated and efficient ways of analysing and processing data to inform counter-terrorism activities.</li> </ul> <p><i>Extent to which challenge is specific to terrorism</i></p> <ul style="list-style-type: none"> <li>- This is not specific to terrorism, but is relevant to all areas where greater information is exchanged.</li> </ul>	<p>Somewhat likely to impact prevention, protection, pursuit and response</p>

The box below features a practical illustration of how gaps related to information sharing may have contributed to the failure to prevent terrorist attacks in the EU.

#### **Paris attacks (2015)**

On 13 November 2015, 130 people were killed and 352 were injured in a terrorist attack in Paris carried out by eight ISIS terrorists targeting the Bataclan Concert Hall, the Stade de France and the Belle Equipe Bar (BBC News 2015). The attack highlights a gap in information sharing and utilisation. A French parliamentary investigation found that it could have been prevented and that the structure of the French intelligence apparatus, comprising six units, prevented effective threat identification, with all the terrorists previously flagged to authorities (Fenech & Pietresanta 2016). Three of the attackers had previously been monitored by the French authorities and were known to have fought abroad for ISIL. All three were able to travel between Syria and Europe without being detected. The inquiry report also noted that Salah Abdeslam, accused of assisting the Paris attacks, was interrogated by the Belgian authorities upon his return to Belgium the day after the attacks and released. His SIS record had not been updated to include elements relating to his radicalisation (Chambre des Représentants de Belgique 2017b, 25).

#### **Brussels attacks (2016)**

On 22 March 2016, two suicide bomb attacks took place in Brussels, killing 32 people and injuring more than 320. ISIS claimed responsibility for the attacks (Bilefsky 2017). The attack suggests gaps in the utilisation of transmitted information. Turkey had notified Belgian authorities already in June 2015 about one of the perpetrators, having stopped him at the Syrian border and deported him to the Netherlands. However, this information was not used and the Belgian Interior Minister Jan Jambon acknowledged that negligence was a factor. (Heath, Sheftalovich & Spillane 2016).

## **IV – Cooperation tools and mutual recognition instruments**

This section looks at three mutual recognition instruments that can be used in the pursuit of those planning or carrying out terrorist attacks: Joint Investigation Teams (JITs), the European Arrest Warrant (EAW) and the European Investigation Order (EIO). These are designed to improve cooperation in cross-border investigations and prosecutions, which, as described in the overview of the terrorist threat to the EU in Chapter 1, Section I, is needed to respond to the international and cross-border nature of terrorism. This section also touches on plans to introduce measures relating to the collection of electronic evidence.

### **State of play**

JITs, EAW and EIOs are described in detail in a Cost of Non-Europe Report into Procedural Rights and Detention Conditions (van Ballegooij 2017).

The **Framework Decision on the EAW** (2002/584/JHA) provides a process for requesting the surrender of individuals from one member state so that a criminal prosecution or custodial sentence can be carried out in another. Terrorism is one of the offences listed in Article 2(2) of the Framework Decision as warranting surrender under the EAW without necessitating establishment of double criminality. An example of the use of the EAW in a terrorism case (there are also other examples) is that of Hussain Osman, a suspect in the 21 July 2005 attempted London bombings. Osman ‘fled to Italy, was arrested on 29 July 2005, and was returned to the United Kingdom on 22 September 2005’ (Walker 2011). The EAW has also been used to transfer terrorist suspects from the United Kingdom (Walker 2011). According to figures in the European Commission’s Comprehensive Assessment, member states issued over 120,000 EAWs between 2005 and 2015, leading to over 70,000 persons being surrendered (EC 2017f). Statistics available on EAW issues do not provide information as to the number of occasions on which the EAW was used for terrorism-related offences across the EU. Data were identified for the UK, where out of 1,438 UK arrests involving EAWs from other member states in 2012/13, 5 were for terrorism. Some of the Commission’s implementation reports identified

implementation or application issues with the EAW but also noted that the EAW ‘operates most efficiently with serious crimes including terrorism and organised crime, by abolishing the so called double criminality check’ (EC 2017f).

The **Directive regarding the European Investigation Order** in criminal matters (2014/41/EU) was intended to simplify and streamline how EU member states obtain evidence from one another in cross-border criminal cases and to reduce administrative costs. Terrorism is one of the offences listed in Annex D of the Directive as being an offence that is an exception to the usual grounds for non-recognition or non-execution of an EIO, and an EIO can be used even if the terrorism offence is not an offence under the law of the executing state. Given the recent adoption of the EIO (the transposition deadline was 22 May 2017), searches conducted for this study have not identified any publicly available examples of the EIO being used in terrorism cases. Accordingly, interviewees reported the agency was starting to build experience with the use of this instrument. Regarding the potential to use the EIO in terrorism cases, it is worth noting that Article 11(b) of the Directive provides the following grounds for non-recognition or non-execution of an EIO: where ‘in a specific case the execution of the EIO would harm essential national security interests, jeopardise the source of the information or involve the use of classified information relating to specific intelligence activities’. Terrorism cases might, perhaps, be more likely to involve classified information.

The Commission is currently undertaking work on the **use of digital evidence or e-evidence in criminal investigations**. Commissioner Jourova announced an intention to propose legislative measures to be adopted by the Commission in early 2018 (EC 2017j). To this end, an impact assessment and public consultation was concluded in October 2017. This follows an expert consultation process launched in July 2016 to ‘explore possible solutions and work towards a common European Union position’ (EC 2017j) on the use of digital evidence in criminal investigations. Preliminary results from this consultation were presented at the JHA Council meeting in December 2016 and in a non-paper at the JHA Council meeting in June 2017, where Ministers called on the Commission to ‘proceed with the implementation of the set of practical measures and to come forward with concrete legislative proposals’ (EC 2017j).<sup>53</sup> At the time of writing, the details of the proposals have not been published.

The third instrument we focus on is the **joint investigation team (JIT)**, which is ‘an international cooperation tool based on an agreement between competent authorities – both judicial (judges, prosecutors, investigative judges) and law enforcement – of two or more States, established for a limited duration and for a specific purpose, to carry out criminal investigations in one or more of the involved States’ (Eurojust 2017c). The Council Framework Decision 2002/465/JHA on joint investigation teams was adopted on 20 June 2002.<sup>54</sup> Although cross-border investigations usually take place under informal and bilateral arrangements, JITs provide a framework that can be used and which provides support mechanisms at the EU level (Friedrichs 2007).<sup>55</sup>

According to independent research, JITs can be useful tools in terrorism cases, ‘for example those in which the venues of a planned attack differ from the location where the initial intelligence is gathered’ (de Frías, Samuel & White 2012). A similar view is taken by the EU Counter-Terrorism Coordinator, that ‘JITs [...] provide an excellent opportunity for EU agencies to learn and to become more operational’ (Eurojust 2013, 2). Further supporting evidence was gathered from interviewees who stressed the usefulness of JITs and the possibilities that they provide for coordination and cooperation. Cases where a suspect from one member state may flee to a second member state were

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<sup>53</sup> Furthermore, the following ‘technical’ documents were produced by the Commission but these have not been adopted or endorsed by the Commission (Commission Services 2017).

<sup>54</sup> The 2000 convention is effectively being repealed and replaced for most matters – except JITs by the European Investigation Order.

<sup>55</sup> For further information about the background of JITs and how they work in practice see Carrera et al. (2016), Eurojust (2017c), Occhipinti (2015) and Tomescu (2014).

used as examples, wherein the police forces of the second member states may undertake monitoring activities. Searches conducted by the research team identified that JITs have been used in terrorism cases, for example in the aftermath of the shooting down of Malaysian Airlines flight MH17 over Ukraine in July 2014 as well as following the terrorist attacks in Paris in November 2015 and in Brussels March 2016 (Eurojust 2013; Wensink et al. 2017). They have also been used by the French and Spanish governments in response to Basque separatist violence (Baker & Powderly 2011).

While Baker & Powderly (2011, 6) suggest that 'this is a perfect example of highly effective inter-state police cooperation with a common, clearly defined goal', they also note that the Basque separatist violence is a case of protracted terrorist activity and that the successes of the French and Spanish law enforcement authorities are also 'largely the product of 30 years of active engagement and mutual trust'. This type of a relationship and engagement is therefore 'not possible on an ad hoc short term basis as would inevitably be necessary in response to the variety of terrorist threats facing states today'. The key variables that would contribute to successful cooperation on JITs include 'a strong, trustworthy relationship amongst participating states; a willingness to negotiate a balanced and effective legal framework which clearly defines who will have jurisdiction over what; a sense of shared interests and incentives; and ultimately a clear operational purpose'.

The European Commission's Ninth progress report towards an effective and genuine Security Union noted, on the basis of stakeholder consultations, that member states valued the practical benefits gained from the formation and usage of JITs for investigations. Benefits included 'improved information exchange, exchange of best practices, enhanced collection of evidence, and optimisation of the procedures within the investigation by mutual recognition of the actions carried out by the parties' (EC 2017f, 9). A majority of people responding to a survey for a research paper supporting a 2016 EPRS report on the Cost of Non-Europe in the area of Organised Crime and Corruption 'considered that JITs are an efficient tool for addressing [organised crime] in the EU' and '85% or 29 out of 34 said that their country used JITs for cross-border cooperation' (Carrera et al. 2016). The benefits of JITs were strongly emphasised by interviewees from Eurojust.

## Gaps and barriers

A review of the relevant literature and interviews conducted for this study have not identified any gaps and barriers specifically relating to the use of the EAW in terrorism cases (perhaps aside from the concern about protecting sensitive information, which is commonly used in terrorism investigations). Given that the transposition deadline for the EIO Directive was in 2017, it may be 'premature' to try to assess its effectiveness (EC 2017f, 150; Carrera et al. 2016). However, some broader concerns about the instruments are relevant to their use in terrorism cases. These are described fully in a research paper supporting a Cost of Non Europe Report in the Area of Procedural Rights and Detention Conditions (van Ballegooij 2017), and are briefly described below:

**Gaps relating to under-use of mutual recognition instruments.** During an exchange with experts at the LIBE meeting on terrorism on 30 May 2017, it was noted that more use could be made of JITs, specifically in terrorism cases. Looking at data from 2014, Carrera et al. (2016) reported there were just two JITs for terrorism cases, compared to 32 for fraud and 31 for drug trafficking. Assessing this potential gap, the research team cannot verify whether JITs are under-used (i.e. whether there are cases where a JIT would have been beneficial but was not used). However, interviewees were not of the view that JITs were under-used. Rather, JITs (and the other mutual recognition instruments) are tools available to member states to call on as needed. Another interviewee noted ongoing training and awareness raising undertaken by the European Judicial Training Network which aimed to encourage uptake.

**Fundamental rights concerns about mutual recognition instruments.** The potential for the EAW to infringe rights to a fair trial, the presumption of innocence, the principles of *nulla poena sine lege* (no

punishment without law), or the prohibition of cruel, inhuman and degrading treatment have been voiced widely, including by the European Parliament (Del Monte 2014). For example, in 2014 the EP adopted in 2014 a resolution with recommendations to the Commission on the review of the EAW, and which outlined a series of legislative suggestions pertaining to mutual recognition instruments. The recommendations are summarised in the box below.

#### European Parliament recommendations pertaining to envisaged legislative proposals

The EP requested the Commission submit legislative proposals in the following areas:

- **Validation procedure for EU mutual recognition instruments**, whereby a mutual recognition measure can, if necessary, be validated in the issuing member state by a judge, court, investigating magistrate or public prosecutor, in order to overcome the differing interpretations of the term 'judicial authority'.
- **Proportionality check for the issuing of Union mutual recognition legal instruments**, allowing a competent authority to assess the need for the requested measure, consider whether a less intrusive alternative measure exists and (following consultation with the issuing authority) to decide to withdrawal of a mutual recognition instrument.
- **Consultation procedure between the competent authorities in the issuing and executing member state to be used for EU mutual recognition legal instruments**, creating a standardised procedure whereby the competent authorities in the issuing and executing member state can exchange information and consult each other.
- **Fundamental rights refusal** grounds to be applied to EU mutual recognition legal instruments.
- **Provision on effective legal remedies** applicable to EU mutual recognition instruments.

Source: EP 2014d; van Ballegooij, 2017.

Fundamental rights concerns can inhibit the effective use of the EAW, for example in instances when national judges have not executed EAWs due to concerns that the suspect may be exposed to cruel, inhuman or degrading treatment upon return to a member state, in violation of Article 3 of the ECHR and Article 4 of the Charter of Fundamental Rights of the EU (Tomkin 2017). Assessing this potential gap, it is noted that national legislation and ECtHR and CJEU decisions have somewhat ameliorated this risk in relation to the EAW,<sup>56</sup> which has in general been positively received by legal practitioners and experts (van Ballegooij & Bárd 2016). In relation to the EIO there has been concern about the potential for disproportionate use of intrusive investigatory techniques with the possibility of infringing fundamental rights (for example, the EIO allows home searches, blood testing or wiretapping (Article 30) (Armada 2015; FRA 2011b)). However, there are clear fundamental rights protections envisioned in the EIO, intended to mitigate such concerns, and the recent transposition deadline means it is too early to determine if this risk will materialise.

<sup>56</sup> Most significantly the decision in *Pál Aranyosi and Robert Căldăraru v Generalstaatsanwaltschaft Bremen* (C-404/15 and C-659/15, 5 April 2016).

## Assessment of gaps and barriers

Summary of evidence	Overall assessment
<b>Gaps relating to under-use of mutual recognition instruments</b>	
<p><i>View of interviewees and findings from literature review</i></p> <ul style="list-style-type: none"> <li>- There are calls for increased use of mutual recognition instruments, but interviewees from Europol and Eurojust did not agree they were under-used.</li> <li>- Evidence about impact of under use is not available.</li> </ul> <p><i>Extent to which challenge is specific to terrorism</i></p> <ul style="list-style-type: none"> <li>- The issue is not specific to terrorism cases.</li> </ul> <p><i>Reforms ongoing/ just implemented, or other trends</i></p> <ul style="list-style-type: none"> <li>- Evidence of increasing use of the mutual recognition instruments.</li> </ul>	Somewhat likely to impede pursuit
<b>Gaps relating to fundamental rights concerns about mutual recognition instruments</b>	
<p><i>View of interviewees and findings from literature review</i></p> <ul style="list-style-type: none"> <li>- National legislation and ECtHR and CJEU court decisions have somewhat ameliorated this risk in relation to the EAW.</li> <li>- There are fundamental rights protections envisioned in the EIO, and experience is still being gained in the use of this instrument.</li> </ul> <p><i>Extent to which challenge is specific to terrorism</i></p> <ul style="list-style-type: none"> <li>- The issue is not specific to terrorism cases.</li> </ul> <p><i>Reforms ongoing/ just implemented, or other trends</i></p> <ul style="list-style-type: none"> <li>- Recent court decisions and recent implementation of the EIO mean that fundamental rights implications are not yet known in practice.</li> </ul>	Somewhat likely to impact fundamental rights

## V – Support and capabilities of Europol and Eurojust

This section looks at the support provided to member states in counter-terrorism cases by Eurojust and Europol. The work of these agencies is relevant to addressing the range of terrorist threats in the EU, and can be relevant to all parts of the fight against terrorism – prevention, protection, pursuit and response.

### State of play

Europol has greatly expanded its activity in the field of counter-terrorism in recent years, and this expanded role was stressed by interviewees. The agency's role in counter-terrorism activities in the EU can be summarised as: 'providing secure and standardized channels for various forms of cooperation, disseminating best practices, and developing typologies of terrorist activity and outlining general trends' (Occhipinti 2015). More specifically, some of the most relevant ways in which Europol supports counter-terrorism activities by member states include the following:

- Publishing of the annual **EU Terrorism Situation and Trend Report (TE-SAT)**. This was established in the wake of the 9/11 attacks in the United States (Europol 2017a).
- Hosts the following entities: the **European Counter Terrorism Centre (ECTC)**, created in 2016 (see box below); the **European Cybercrime Centre (EC3)**, set up in 2013; the **Internet Referral Unit (IRU)**, established in 2015 (which has the main task of gathering, sharing and coordinating the sharing of terrorist and violent extremist material online with partners such as governments, privately owned social media companies and online platforms); **FIU.net** (which provides support to financial investigation units by analysing unusual or suspicious financial information and alerting responsible national authorities); the **European Explosive Ordnance Disposal Network** (which facilitates cooperation between Chemical, Biological, Radiological and Nuclear and explosives experts throughout the EU).

### The European Counter Terrorism Centre (ECTC)

Created in January 2016 at Europol but under the authority and direction of the, the ECTC is designed to provide member states with operational support for investigations. It builds further on the established tools and counter-terrorism networks of Europol, but includes a number of new features.

The ECTC prioritises work in the following areas: addressing the issue of returning foreign fighters, sharing of data and intelligence on the financing of terrorism, combatting terrorist and violent extremist propaganda online, illegal arms trafficking and cooperation between international counter-terrorism authorities.

*Source: Europol (2017b).*

- **Hosts databases and information sharing platforms**, such as the EIS<sup>57</sup> and FIU.net, which can be used to support counter-terrorism work. Facilitates information exchange via the Secure Information Exchange Network Application (SIENA), which has created a specialised counter-terrorism area wherein counter-terrorism authorities can send information about suspects of investigations to Europol or directly to other authorities. An interviewee stressed that a strength of the support offered by Europol stemmed from the interoperability of its internal databases.
- **Provides in-depth analysis** via the Analysis Work File (AWF) Terrorism and the Focal Points.
- **Uses tools to track and identify terrorist financing**, including through the TFTP Agreement with the United States, where Europol verifies requests from the United States for data (De Goede & Wesseling 2017).
- Supports the **Organised Crime Policy Cycle** (a number of priorities under the Policy Cycle – for example firearms, facilitated illegal migration, money laundering – are relevant to tackling terrorism).
- Provides **operational support, coordination and expertise** on counter-terrorism cases, for example through the Europol Emergency Response Team, which can be deployed to member states.
- Participates in **Joint Investigation Teams**.
- Facilitates **information sharing with third countries**. Europol, under the authority of the Council, has signed a wide and diverse range of agreements related to counter-terrorism activities with third countries (Casagran 2016). To date, Europol has concluded strategic agreements with China, Russia, Turkey (Europol 2017e) and operational agreements (which have traditionally included exchange of data) with 17 third countries, including Albania, Australia, Bosnia and Herzegovina, Canada, Colombia, the Former Yugoslav Republic of Macedonia, Georgia, Iceland, Liechtenstein, Moldova, Monaco and Montenegro.

An example of the support by Europol, in the case of the 2015 Paris attacks, is provided in the box below. Another capability mentioned by two interviewees was the **Guest Officer Programme**, approved by the Europol Management Board in 2016, which saw the recruitment of specialist officers from across the EU and their deployment in migration hotspots in Greece and Italy to conduct second-line security checks. The features the interviewees felt were particularly effective were that Europol was able to access funding for the programme quickly and able to act responsively. The Guest Officers provided a flexible, additional capacity on temporary contracts.

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<sup>57</sup> The EIS allows member states to directly share and retrieve information on suspects, convicted persons, events and devices connected with serious and organised crime and terrorism. The EIS is a reference system that allows member states to identify whether or not information they are looking for is available from an EU member states, a cooperation partner or Europol. In case of a positive hit, more information may then be requested through the user's Europol National Unit.

#### **Taskforce Fraternité**

Following the November 2015 attacks in Paris and the Brussels attack four months later, Europol set up the Taskforce Fraternité. Europol provided up to 60 support officers, in order to help with the terrorist investigations, determine and analyse online communications, and identify intelligence gaps and counter-terrorism policy implications. In return, Europol received significant, high-value information from the French and Belgian authorities, such as on new targets, associates and phone data. This data amassed to: 19 terabytes of overall information, 2,500 SIENA message exchanges, 1,247 leads from the TFTP, 2,274 other financial messaging leads, and 60 PNR requests. This resulted in 800 intelligence leads and from the 27 requests under the EU-US PNR agreement there was one hit. By the end of 2016, Europol held ten times more data than it had in January 2015. A May 2016 Europol report noted that the information obtained through the Taskforce Fraternité 'corroborates the suspected connection of the Brussels and Paris terror attackers, underlining a profile of terrorist attackers which is related to (organised) criminal networks across multiple EU member states and beyond (e.g. drug trafficking (cannabis, heroin), aggravated thefts, robberies etc.)' (Council of the European Union 2016a ).

*Source: Europol website.*

**Europol was given a new legal basis in May 2017.** Regulation (EU) 2016/794 provides Europol with enhanced powers and bolsters its role as an information hub and its ability to counter terrorism, for example by making it easier for Europol to form specialised units for immediate response to emerging terrorist threats and streamlining rules for the ECTC and the IRU. The Regulation allows for so-called adequacy decisions: whereby if the data protection in a third country is considered to be adequate, personal data or information about suspects may be transferred between Europol and third countries, on the basis of a Commission decision (Europol 2016a). An interviewee noted that the implementation of these new arrangements was still being finalised, but that they should result in a more efficient and effective approach to data sharing with third countries, EU Agencies, EU missions and the private sector.

**These changes are accompanied by additional oversight of Europol.** The handling of personal data is now monitored by the EDPS (Article 43) and member states will designate a national supervisory authority to monitor the exchange of any personal data to or from Europol (Articles 42, 44 and 45). As mentioned in Chapter 3, Section I, a Joint Parliamentary Scrutiny Group now oversees Europol's work (Article 51). This group includes members from the European and national parliaments.

**Eurojust's** competence covers the same types of crimes and offences as that of Europol (Eurojust 2017a) including the field of terrorism, where Eurojust has also increased its work in recent years. The most relevant ways in which Eurojust may support counter-terrorism activities by member states include the following:

- Acts as a **judicial coordination unit** and can assist investigations and prosecutions within or involving member states and non-member states where a cooperation agreement has been signed (Eurojust 2017a). An interviewee highlighted a number of capabilities in relation to coordination: the ability to host **coordination meetings**, at the request of national competent authorities (these bring together national prosecutors, judges and law enforcement agencies to share information, coordinate investigations and facilitate mutual legal assistance); the ability to provide **coordination centres**, which can provide support for common action days involving several member states and third countries, providing real-time connections for information sharing and where Eurojust can provide analysis; and the establishment of **national correspondents for Eurojust for terrorism matters**, an individual in each member state who is responsible for facilitating Eurojust support and ensuring information is passed to the Eurojust case management system.
- Produces a **Terrorism Convictions Monitor** for judges and prosecutors, which provides an overview of terrorism-related convictions and acquittals throughout the EU as well as legal updates and judicial analyses of relevant judgements.
- **Generates classified reports** to share lessons learned from criminal investigations and prosecutions of terrorism cases (EU CTC 2016b). As further explained by an interviewee from Eurojust, the agency undertakes analysis of the experiences of practitioners and shares

findings with prosecutors and magistrates. Information is also shared to provide evidence to policy makers as to the challenges they face in their daily work in terrorism cases (for example differences in member state legislation).

#### **Eurojust Foreign Terrorist Fighters report**

Since 2013, Eurojust has produced an annual report on foreign terrorist fighters, the fourth of which was published in December 2016 and presented to the LIBE Committee in the European Parliament. These reports are not made public and have a limited distribution. The reports update 'EU stakeholders and practitioners on Eurojust's views on the criminal justice response to the foreign terrorist fighters phenomenon, provide an overview of legislative developments in the member states in the field of counter-terrorism, and make recommendations to reinforce the effectiveness of investigations, prosecutions and judicial cooperation with support from Eurojust.' According to Michèle Coninsx, President of Eurojust, the foreign terrorist fighters report 'is one of Eurojust's main tools to support EU member states' authorities in the fight against terrorism'

*Source: Eurojust (2017a; 2017b).*

- Hosts meetings to allow national prosecutors to **share operational experiences**.
- Facilitates **cooperation with third countries**. For example, it is reported that Eurojust is strengthening its cooperation with countries in North Africa and the Middle East, encouraging the appointment of Eurojust contact points, including specifically for counter-terrorism matters, and organising a seminar with the MENA region and focusing on judicial cooperation in counter-terrorism and foreign fighters. Eurojust has contact points in 23 non-member states (Eurojust 2017a).
- Supports the European Judicial Cybercrime Network.
- **Participates in JITs**, including in the setting up of a JIT or supporting member states to set up their own JITs. This support may include evaluating whether a case is suited to the use of a JIT, support to draft the agreement, and other legal, practical or financial support (Eurojust n.d.).

As described above, Europol has recently received a new legal basis and revisions to its data protection regime. Similar reforms to better ensure adequate data protection and appropriate processing of personal data are expected for Eurojust and are already included in a proposed Regulation<sup>58</sup> (Articles 31, 35, 36)). For instance, the EDPS would monitor the handling of personal data at Eurojust and 'take over the tasks of the Joint Supervisory Body established under the Eurojust Council Decision' (EC 2013b).

## **Gaps and barriers**

**Gaps related to limited information sharing with Europol and Eurojust in terrorism cases and under-use of these agencies by member states.** The support offered by Europol and Eurojust relies on information sharing. The Commission's ninth progress report on the Security Union (EC 2017f) noted, for example, that much of the potential of Europol remained untapped despite 'the existence of CT capabilities at Europol and the legal provisions on mandatory exchange of information' (EC 2017f, 18). Academic researchers have noted that Europol's work in counter-terrorism has been affected by 'the unwillingness of security authorities in the member states to share quality counter terrorism intelligence with and through it (Occhipinti 2014)'. However, it is important to note that, as of 2016, the use of EIS was at an all-time high, with the number of objects stored on the database up 34 per cent compared to 2015, and the number of searches up 225 per cent compared to 2015. A similar upward trend is evidenced by the number of foreign terrorist fighters, which has increased rapidly from 18 in 2014 to 1,714 in December 2015 and 3,857 in February 2016 (Europol n.d b; Europol 2017a).

In relation to Eurojust, the EU Counter Terrorism Coordinator has said that 'through sharing of information on all prosecutions and convictions for terrorist offences including the circumstantial

<sup>58</sup> 2013/0256(COD).

information, member states would benefit more from Eurojust's capabilities to detect links between cases, as well as from Eurojust's continuing efforts to centralise and analyse challenges and best practice related to prosecutions for terrorist offences shared with the member states' (EU CTC 2016a). In another example, a report from the Coordinator noted that while actions to counteract terrorist propaganda have increased (e.g. through the work of the EU IRU at Europol and corresponding self-regulatory measures by internet service providers), there is scope to increase the number of referrals (EU CTC 2016b). However, one interviewee reported that, generally speaking, the challenges in dealing with terrorist cases are the same as those experienced in dealing with other forms of serious and organised crime, and interviewees did not agree that support services were necessarily under-used. When asked about the potential under-sharing of information and under-use of agency services, the interviewees stressed that member states were free to select the support services that met their needs and requirements.

**Limited powers to share information with third countries.** It has previously been essential for Operational Agreements to be concluded with third countries to allow the transfer of personal or classified information, which can take years (Disley et al. 2012; Europol 2017d). To conclude such an agreement, Europol is required to examine the data protection regime in countries and organisations outside of the EU. However, as mentioned above, the Europol Regulation<sup>59</sup> contains provisions that accord the right to transfer personal data to an authority of a third country, an international organisation or private parties under certain circumstances without Operational Agreements. Article 25 outlines the basis for the transfer of personal data to third countries and international organisations,<sup>60</sup> and Recital 36 states that 'where a transfer of personal data cannot be based on an adequacy decision [whereby the data protection in a third country is considered to be adequate], an international agreement concluded by the Union or an existing cooperation agreement, the Management Board, in agreement with the EDPS, should be allowed to authorise a set of transfers'. Furthermore, the Executive Director may also, on a case by case basis, authorise the transfer of personal data to third countries or international organisations under certain circumstances outlined in Article 25(5). The importance of Article 25 of the new Europol Regulation was also highlighted in Europol's external strategy included in the agency's draft 2018–2020 Programming Document as a way of strengthening its role as the EU's criminal information hub (Europol 2017f). One interviewee stressed the potential offered by the new mandate for information sharing with third countries. Another interviewee also noted and welcomed the extended mandate, but pointed out that even after its implementation, Europol is still restricted in its ability to share information with and from third countries. The continued existence of limits on the sharing of personal data with third countries were also acknowledged in Europol's 2018 Work Programme presented in its draft 2018–2020 Programming Document, which envisaged that the agency's legal services would '[p]rovide legal advice on new possibilities for case by case cooperation with any third country, in the absence of an agreement or adequacy decision' (Europol 2017f).<sup>61</sup>

**Gaps in collaboration between Europol and Eurojust and Frontex.** Better cooperation between Eurojust and the ECTC was recommended by the EU Counter-Terrorism Coordinator (EU CTC 2016b, 2). A 2014 assessment for the LIBE Committee on interagency collaboration identified three areas for possible improvement in cooperation between Europol and Eurojust (Weyemberg, Armada & Briere

<sup>59</sup> EU 2016/794.

<sup>60</sup> (a) a decision of the Commission adopted in accordance with Article 36 of Directive (EU) 2016/680, finding that the third country or a territory or a processing sector within that third country or the international organisation in question ensures an adequate level of protection ('adequacy decision'); (b) an international agreement concluded between the Union and that third country or international organisation pursuant to Article 218 TFEU adding adequate safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals; (c) a cooperation agreement allowing for the exchange of personal data concluded, before 1 May 2017, between Europol and that third country or international organisation in accordance with Article 23 of Decision 2009/371/JHA.

<sup>61</sup> The work programme also called for an exploration of arrangements to open the liaison officers' network to third countries with which Europol is unable to share personal data.

2014): 1) in the area of coordinating criminal investigations, the assessment noted the existence of tension in cases that are potentially relevant to, and thus could warrant the involvement of, both agencies; 2) there is the possibility of tensions with respect to the establishment of JITs and in particular their funding; and 3) despite gradual improvements over time, potential risks were observed in relation to the sharing of information between the two agencies and their mutual notifications (Weyemberg, Armada & Briere 2014). In assessing this gap, however, interviewees reported examples of collaborations and the literature offers examples of achievements stemming from cooperation and coordination between Europol and Eurojust. Additionally, the newly adopted Europol Regulation expressly acknowledges the need to address interagency cooperation (EU 2016b),<sup>62</sup> as does the proposed Eurojust Regulation (EC 2013b).<sup>63</sup> An interviewee noted that a cooperation agreement between Eurojust and Frontex was in the process of negotiation, and another gave cooperation between Europol and Frontex at migration hotspots as an example of strong cooperation. An interviewee from Eurojust also stressed that, while cooperation is essential, adherence to the rule of law requires separation between police and prosecutors.

**Gaps relating to the ability of Europol to access funding flexibly and rapidly.** An interviewee mentioned that it is important to have the ability to react to or anticipate new threats, by accessing funding or developing new expertise. This requires mechanisms to swiftly approve such moves, which were not necessarily available. An example given by the interviewee was the Europol Guest Officer programme, where funding was accessed relatively quickly (in a matter of months). However, such quick access to funding (even when resources were available) was still said to be a challenge.

Potential barriers, leading to the identified gaps, were suggested in the evidence collected. One is that **requirements to share information are difficult to enforce**. Council Decision 2005/671/JHA on the exchange of information and cooperation concerning terrorist offences mandated member states to collect and share information about ‘criminal investigations and prosecutions/convictions on terrorist offences with Europol and Eurojust respectively, and other member states’.

However, the Commission’s ninth progress report on the Security Union noted that the monitoring and enforcement of this measure had been challenging (EC 2017f).

In addition, the High-Level Expert Group on information systems and interoperability highlighted in May 2017 a number of issues relating to information sharing that should be addressed. These include:

- ‘the need to raise the standard of data quality and data use across all systems;
- the need for criteria to prioritise in order to deal with the huge amount of data;
- the importance to move away from a silo approach
- the need to keep procedures simple for comparing and transmitting data for law enforcement purposes to ensure that available instruments will be used and their potential fully delivered’ (EC 2017f, 90).

Assessing this barrier, interviewees felt that greater use of support services would be achieved by trust building and offering useful services. Enforcement was not raised by interviewees when information sharing was discussed.

**Gaps in knowledge and awareness of Europol and Eurojust** were other potential barriers. As mentioned in Section III, one possible barrier to greater uptake of Europol and Eurojust operational cooperation and information exchange tools by EU member state authorities could be a lack of knowledge, which in turn has a negative effect on appropriate implementation and usage (EC 2017f, 8). In light of this, ‘the role of Cepol to assist member states in developing bilateral and regional

<sup>62</sup> See, for example, recitals 9 and 11.

<sup>63</sup> The Eurojust Regulation was blocked in the European Parliament pending the clarification of the future relationship between Eurojust and the European Public Prosecutors’ Office, which the Parliament gave its consent to on 5 October 2017 and the LIBE Committee adopted a draft report on 19 October. See, for example EP (2016b, 2017c).

cooperation as well as the organisation of thematic training’ for law enforcement authorities has been highlighted as a positive added value (EC 2017f, 8).

## Assessment of gaps and barriers

Summary of evidence	Overall assessment
<b>Gaps related to limited information sharing with Europol and Eurojust in terrorism cases and under-use of these agencies by member states</b>	
<p><i>View of interviewees and findings from literature review</i></p> <ul style="list-style-type: none"> <li>- Statements from the Counter Terrorism Coordinator highlight scope for more information sharing (for example, in relation to foreign terrorist fighters).</li> <li>- However, interviewees stressed the ability of member states to select those services most relevant to them and did not agree that their services were under used.</li> <li>- Data shows increased use of EIS.</li> </ul> <p><i>Extent to which challenge is specific to terrorism</i></p> <ul style="list-style-type: none"> <li>- Problem has a particular relevance to terrorism, where member states may be especially cautious in sharing sensitive information.</li> </ul> <p><i>Reforms ongoing/ just implemented, or other trends</i></p> <ul style="list-style-type: none"> <li>- Evidence that information sharing with Europol is increasing, for example increased use of EIS and SIENA.</li> </ul>	Somewhat likely to impact prevention, protection, pursuit and response
<b>Gaps related to limited powers to share information with third countries</b>	
<p><i>View of interviewees and findings from literature review</i></p> <ul style="list-style-type: none"> <li>- There are still limitations to the ability of Europol to share information with third countries, which was noted in Europol’s 2018 Work Programme and by an interviewee.</li> </ul> <p><i>Extent to which challenge is specific to terrorism</i></p> <ul style="list-style-type: none"> <li>- The issue is not specific to terrorism cases.</li> </ul> <p><i>Reforms ongoing/ just implemented, or other trends</i></p> <ul style="list-style-type: none"> <li>- Europol has recently been given additional powers in this regard, and the impact of these is not yet known in practice.</li> </ul>	Somewhat likely to impact prevention, protection, pursuit and response
<b>Gaps related to relating to collaboration between Europol, Eurojust and Frontex</b>	
<p><i>View of interviewees and findings from literature review</i></p> <ul style="list-style-type: none"> <li>- EU CTC and independent reviews identified scope for additional cooperation.</li> <li>- However, examples of good practice were identified in the literature and by interviewees.</li> </ul> <p><i>Extent to which challenge is specific to terrorism</i></p> <ul style="list-style-type: none"> <li>- The issue is not specific to terrorism cases.</li> </ul> <p><i>Reforms ongoing/ just implemented, or other trends</i></p> <ul style="list-style-type: none"> <li>- Newly adopted Europol Regulation expressly acknowledges the need to address interagency cooperation, as does the proposed Eurojust Regulation.</li> </ul>	Somewhat likely to impact prevention, protection, pursuit and response
<b>Gaps related to the ability of Europol to access funding flexibly and rapidly</b>	
<p><i>View of interviewees and findings from literature review</i></p> <ul style="list-style-type: none"> <li>- Mentioned by one interviewee who outlined instances where the ability to do this had been valuable.</li> </ul> <p><i>Extent to which challenge is specific to terrorism</i></p> <ul style="list-style-type: none"> <li>- This is not specific to terrorism, but might be particularly relevant given rapidly evolving nature of the threat.</li> </ul>	Somewhat likely to impact prevention, protection, pursuit and response

## VI – Action against terrorism financing

The importance of disrupting the financing of terrorism and terrorist groups was recognised in EU legislation and policy following 9/11 (Council of the European Union 2001),<sup>64</sup> but this area has had a controversial history in the EU, in particular in the case of the TFTP agreement with the US, which is described below. Recent attacks in the EU, and elsewhere, have not been expensive to plan or carry out and have involved low-tech weapons (such as vehicles or knives) (Europol 2017a). This change in the threat landscape is relevant to understanding the role that action against terrorist financing might play in terrorism prevention, detection, pursuit and response, and we return to this point in Chapter 5 when assessing the impact of the identified gaps and barriers.

### State of play

In tackling terrorist finance, the EU mirrors the approach set out by the Financial Action Task Force (FATF) and its Nine Special Recommendations (FATF 2009), consisting of **transaction identification and tracking** and **asset freezes**. The existing principal mechanisms in each of these two areas are discussed in turn below. The EU and its institutions also participate in **international bodies and mechanisms** intended to tackle terrorism financing. For example, the EU is a signatory to the Council of Europe Convention on the Prevention of Terrorism. The Commission (as well as the Secretariat General of the Council of the European Union) are observers at the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL), which assesses compliance with international standards to counter money laundering and the financing of terrorism, as well as the effectiveness of their implementation (CoE 2017).

### Transaction identification and tracking

In the area of detecting and tracking financial transactions, the EU has followed FATF's principles, primarily via the adoption of four successive anti-money laundering directives.<sup>65</sup> Other relevant legislation includes two regulations on fund transfers<sup>66</sup> and the cash control regulation.<sup>67</sup>

At the national level, an important role in tackling terrorist finance is played by **Financial Intelligence Units** (FIUs) (Europol n.d. a). The first national FIUs were established in the 1990s and their role has been increasingly recognised in new iterations of EU and international policy documents. While the first EU anti-money laundering directives as well as FATF recommendations (e.g. Council of the European Communities 1991; FATF 1990) made general reference to national competent authorities, FIUs were explicitly mentioned in the third EU anti-money laundering directive (EP & Council of the European Union 2005) and the 2003 iteration of the FATF recommendations (FATF 2003). Importantly, over the same period of time, the scope of financial intelligence underwent a dramatic change, reflecting the developing understanding of the mutual relevance of anti-money laundering and countering terrorism financing. Originally, money laundering measures were predicated on the existence of a previous offence as the source of the money in question, but this changed in the early 2000s in light of the association between money laundering and the financing of terrorism (Amicelle & Chaudieu 2017; EP & Council of the European Union 2005). Under this redefinition, financial intelligence was expected to examine not only the origin of money but also its destination, even if its origin was perfectly legal. As a result of this

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<sup>64</sup> Subsumed by Council Framework Decision 2002/475/JHA on combatting terrorism, subsequently amended in 2008.

<sup>65</sup> Council Directive 91/308/EEC of 10 June 1991, Directive 2001/97/EC of 4 December 2001, Directive 2005/60/EC of 26 October 2005 and Directive (EU) 2015/849 of 20 May 2015, OJ L 166, 28.6.1991, 77–82.

<sup>66</sup> Regulation (EC) No 1781/2006 of 15 November 2006, repealed and replaced by Regulation (EU) 2015/847 of 20 May 2015, OJ L 345, 8.12.2006, 1–9.

<sup>67</sup> Regulation (EC) No 1889/2005 of the European Parliament and of the Council of 26 October 2005 on controls of cash entering or leaving the Community, OJ L 309, 25.11.2005, 9. The regulation introduces the requirement to declare the possession of cash or equivalent in excess of €10,000 when entering or exiting the EU's territory.

development, FIUs evolved from tools for fighting the proceeds of crime (namely drug trafficking) to mechanisms to track illicit money and financial crime in general (Amicelle & Chaudieu 2017).

In every member state, unusual or suspicious transactions must be reported to the national FIU, which then analyses the information received. If the FIU concludes criminal activity may have been involved (i.e. money laundering or financing of terrorism), it alerts relevant law enforcement agencies (EC 2016g). To facilitate the cross-border exchange of information among FIUs, the Commission funded the development of a decentralised network, FIU.net (Wensink et al. 2017).<sup>68</sup> In 2016, FIU.net was integrated within Europol, in order to offer national FIUs the possibility of analysing FIU.net's financial intelligence in combination with other criminal intelligence data held by Europol (Europol 2016b) and to allow Europol to act as an information hub and facilitate the exchange of information between FIUs, should they decide not to exchange information directly between each other. Furthermore, by subsuming FIU.net under Europol and its budget, it became no longer reliant on Commission grants (Europol n.d. a).

One of the most notable, and controversial, tools for tracking terrorist finances at the EU's disposal is the **TFTP**, an agreement with the United States concluded in 2010. The programme began as a US initiative in the aftermath of the 9/11 attacks as a covert form of data gathering from the SWIFT payment system. The existence of the TFTP was made public in 2006, prompting serious data protection and privacy concerns within the EU as well as in the United States (Wesseling 2013). Debates and negotiations resulted, and after a series of interim steps and arrangements the 2010 EU-US agreement was concluded, setting out the conditions of the programme's operation (Wesseling 2016). Under the agreement, payment messages and associated information sought for the purpose of 'prevention, investigation, detection, or prosecution of terrorism or terrorist financing' (Article 1) are transferred to the United States and, if relevant, subsequently shared with competent authorities in the EU (member states, Europol, Eurojust). In addition, in accordance with Article 10 of the agreement, competent member state authorities as well as Europol and Eurojust may request that the US Treasury run a search for information in the TFTP (EU 2010).

In accordance with Article 13, the implementation of the agreement is periodically reviewed jointly by both parties. To date, four joint review reports have been published, all of which have found the TFTP to be a helpful source of information and investigative leads. The latest joint review, published in January 2017, concluded that the agreement remained 'an important instrument to provide timely, accurate and reliable information' (EC 2017u, 4). In particular, the review noted that the EU had been able to increase the benefit it derives from the instrument as a result of an increase in the use of the agreement's two provisions: the US authorities have spontaneously provided large amounts of information to the EU (Article 9) and Europol has made good use of the ability to request data from the United States (Article 10). Interviewees lent support to this, reporting that the EU-US TFTP arrangement was very useful to Europol and member states.

Trends in the volume of information transmitted under these two provisions are shown in Table 6 below. As a by-product, the latest joint review noted that increased use had resulted in greater awareness of the agreement on the part of EU authorities, prompting in turn their greater use of the agreement.

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<sup>68</sup> FIU.net became operational in 2002 and received Commission funding until 2015.

**Table 6. Trends in information sharing under the EU-US TFTP (number of instances of information provided (Art 9) and number of information requests (Art 10))**

	2011	2012	2013	2014	2015
Article 9	9	1	4	47	50
Article 10	75	47	51	64	142

*Note: The table does not provide information on the number of intelligence leads. The number of leads more than doubled between the third and fourth review periods of the EU-US TFTP. Source: EC (2017n).*

As outlined in the joint review reports (EC 2013a, 4–8; 2017n, 41–45), information shared via the EU-US TFTP has been instrumental in a range of terrorism-related investigations. One interviewee stressed that it had been used in relation to recent attacks, with information providing leads for investigation. The following is a selection of notable high-profile examples where data retrieved via the EU-US TFTP was claimed to have added value, although it is not possible for these claims to be further investigated or verified:

- **Investigation of the 2015 Charlie Hebdo attacks.** Europol received 600 TFTP-originated leads from the Treasury through an examination of the financial activities of the perpetrators, the Kouachi brothers.
- **Investigation of the November 2015 Paris attacks.** Europol and other authorities received in excess of 900 TFTP-originated leads based on data on the financial activities of the perpetrators.
- **Investigations of terrorist recruiters.** TFTP-derived information was used during the investigations into recruiters for terrorist organisations such as ISIL (e.g. the Al Andalus Brigade recruitment ring), Sharia4Belgium and the Al Nusra Front.
- **Investigation of the 2007 European bomb plot targeting US military installations and American citizens in Germany.** TFTP-derived information was used to track the activities of an individual implicated in the plot, who is also believed to have been responsible for the distribution of detonators to members of the Islamic Jihad Union.

**The possibility of establishing an EU-only tracking system** has received considerable attention since the EU-US agreement was signed in 2010 (Amicelle 2013), and cooperation with a future EU system is explicitly addressed in Article 11 of the EU-US Agreement (EU 2010).<sup>69</sup> In 2013, the Commission delivered a Communication and an impact assessment of possible options for an EU system and concluded that it was ‘increasingly difficult to justify the necessity and proportionality of an additional system’ (Becker 2013, 34). The impact assessment highlighted two reasons in particular for this conclusion. Firstly, the growing uptake of the TFTP and its individual provisions, in particular the ability of European authorities to request a ‘reciprocal’ search of the system, was likely on its own to contribute towards meeting the objectives of any European system. Secondly, the baseline option of not introducing an EU system did not give rise to any new fundamental rights concerns such as personal data protection issues.

The issue was raised again in the 2016 Action Plan for strengthening the fight against terrorist financing (EC 2016d), which called for a new analysis of the need for a European system that would cover transactions excluded under the existing EU-US TFTP agreement and thus work in a complementary way. In December 2016, the Commission delivered a brief appraisal concluding that such a system could provide benefits such as a more complete overview of relevant financial transactions as well as the ability to cross-check information held at the national level (EC 2016f). The stated rationale for the divergence from the conclusion of the 2013 impact assessment was the evolution in the financing of terrorism towards smaller sums, the use of transit systems not covered

<sup>69</sup> The Article states that during the course of the EU-US agreement, the EU will study the possibility of establishing its own system. If the decision is to go ahead, the United States will provide assistance and cooperation. The Article also notes that an EU system may have implications for the EU-US agreement, so the EU and United States will cooperate and discuss whether the agreement needs to be amended and will cooperate to ensure the complementarity of the two systems.

by the EU-US TFTP, as well as the proliferation of new means of payment. However, the Commission stressed that these benefits and the added value of any potential new system need to be examined further. A feasibility study and impact assessment is ongoing at the time of writing (January 2018).

### Freezing of assets

With respect to the freezing of assets, the EU's current procedures have been developed through a series of legislative acts.<sup>70</sup> Article 75 TFEU confers on the Commission competencies to adopt additional freezing measures, although in December 2016 the Commission appraised the need to take such action in the area of freezing assets linked to terrorism and concluded there was no such need at the time (EC 2016f).

### Current initiatives

In February 2016, the Commission published an Action Plan against terrorist financing, which outlined a series of steps intended to advance EU policy in this area (EC 2016d). With respect to EU legislation, the Action Plan called on member states to accelerate the transposition of the fourth anti-money laundering directive by bringing forward the transposition deadline to the end of 2016. The Commission followed the Action Plan with a series of legislative proposals – all of which are still under discussion at the time of writing:

- **Fifth anti-money laundering Directive (July 2016)** (EC 2016j). The directive is intended to enhance the existing anti-money laundering framework by addressing the following areas: 1) the effectiveness of the EU's listing of 'high-risk' third countries;<sup>71</sup> 2) virtual currency platforms;<sup>72</sup> 3) anonymous prepaid instruments; 4) access by FIUs to information held by obliged entities; and 5) access by FIUs to beneficial ownership information. Trilogue negotiations are currently ongoing (EP 2018b).
- **Directive on countering money laundering by criminal law (December 2016)** (EC 2016k). This directive is intended to implement relevant FATF recommendations and the Warsaw Convention on the financing of terrorism,<sup>73</sup> although in some instances the scope of the proposed Directive extends beyond these international requirements.<sup>74</sup> The Council agreed its position in June 2017 and the LIBE Committee adopted its report in December 2017 (EP 2018a).
- **Regulation on controls of cash entering or leaving the EU (December 2016)** (EC 2016t). This directive is intended to strengthen the current regulatory regime and in particular address the following gaps: 1) gaps in the scope of cash controls<sup>75</sup>; 2) a possibly outdated definition of 'cash' which may not be suited to novel means of financial transfers; and 3) the limited scope of exchange of information between relevant authorities. The Council agreed its position in June 2017, while in December 2017 the Parliament adopted a joint report by the ECON and LIBE Committees (EP 2018b).

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<sup>70</sup> Common Position 931/2001, Regulation 2580/2001, Council Decision 2580/2001 and Regulation 881/2002, Council Decision 1693/2016 and Council Regulation 1686/2016.

<sup>71</sup> High-risk countries are those that the EU has designated as having significant deficiencies in the area of money laundering or countering terrorism financing. Transactions with economic operators based in these countries need to undergo an enhanced level of due diligence. However, the concrete form of this enhancement was not legally defined.

<sup>72</sup> This is aimed at addressing the absence of a mechanism to identify and report suspicious transactions with virtual currencies, in contrast with existing arrangements in the 'traditional' banking system. See, for example, FATF (2015).

<sup>73</sup> Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism of (2005), CETS No 198.

<sup>74</sup> Examples of such areas include the introduction of minimum levels of maximum penalties and the criminalisation of self-laundering. The list of predicate offences is also longer than those provided for in FATF recommendations and the Warsaw Convention, e.g. cybercrime.

<sup>75</sup> The current control system leaves out of its scope cash crossing EU borders in the form of post, freight or courier shipments, i.e. unaccompanied cash.

- **Regulation on the mutual recognition of freezing and confiscation orders (December 2016)** (EC 2016q). This Regulation is intended to build on existing EU legislation in the following areas: 1) the limited scope of existing EU legislation; 2) the existence of multiple applicable instruments and issues with their transposition; 3) complexity, lack of clarity and delays in processing orders; and 4) lack of protections for victims' rights. The Council adopted its approach in December 2017, but the LIBE Committee has not adopted its report yet (EP 2018a).<sup>76</sup>

According to the impact assessment accompanying the legislative proposals outlined above, the potential benefits to be achieved through the adoption and implementation of the proposed measures are as follows (EC 2016a):

- Monitoring of transactions involving high-risk countries will be enhanced as entities will be obliged to apply a consistently high level of enhanced customer due diligence measures.
- The transparency of virtual currency transactions and their linkages to identity will be enhanced as the directive designates virtual currency exchange platforms and custodial wallet providers as reporting entities. At the same time, the directive allowed more time to consider the introduction of voluntary self-identification for users of virtual currencies, which was also an option preferred in the impact assessment.
- The extent to which anonymous prepaid instruments are misused is likely to be reduced through the suppression of anonymity for their use online (bringing them in line with debit and credit cards) and by lowering the threshold for their face-to-face use.
- FIUs' access to information held by obliged entities will be improved by aligning the text of the directive with existing international standards on accessing additional information and will clarify that this access is not conditioned on a prior report of a suspicious transaction.

FIUs' access to beneficial ownership information will be enhanced through the establishment of an automated central mechanism at the level of member states, which would provide FIUs (and possibly other relevant authorities) with direct access to relevant information.

No impact assessment accompanied the proposal for a Directive on countering money laundering by criminal law, on the grounds that the Directive mainly covers existing international obligations and standards (EC 2016k). However, the text of the proposal anticipates that the Directive will lead to improvements in cross-border cooperation and information exchange. The introduction of minimum rules to define money-laundering as a criminal offence, along with the application of this definition to terrorist offences, is expected to help prevent criminals from taking advantage of existing differences in national legislation. The proposed Directive would also have the effect of implementing international standards and requirements stemming from FATF and the Warsaw Convention, which remains unratified by nine EU member states (of whom two have not signed the Convention at all) and the EU (CoE n.d).

According to the impact assessment accompanying the Cash Regulation proposal (EC 2016u), its adoption would result in a more effective functioning of the cash control regime due to, inter alia, the following features:

- Clarified and streamlined procedures for the exchange of data
- Expanded scope of the control regime to include unaccompanied cash (e.g. sent via parcels)
- Updated definition of cash.

With respect to the confiscation and freezing order Regulation, the accompanying impact assessment (EC 2016c) concluded that the proposed measures are likely to result in an increase in the volume of assets confiscated and frozen. Specifically with respect to the gaps listed above:

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<sup>76</sup> A draft report was presented to the committee in October 2017. In addition, the ECON and JURI committees adopted their opinions on the proposal.

- Gaps in the scope existing legislative framework will be closed by extending the remit of EU legislation to cover third-party and criminal non-conviction-based orders. The impact assessment noted that including civil and administrative non-conviction-based confiscations in addition would be the most effective option; however, the Commission proposal noted that limiting the scope of the Regulation to criminal non-conviction-based orders is likely to be more acceptable to member states (EC 2016q).
- Transposition issues will be mitigated through the introduction of a single directly applicable legal instrument with standardised certificates and forms.
- Complexity, lack of clarity and long processing times will be addressed by the establishment of deadlines for the recognition and execution of orders and the use of standardised forms.
- Victims' rights are protected by codifying their priority over claims by the issuing and executing states.

## Gaps and barriers

**Gaps related to data protection and privacy concerns.** Screening of financial transactions in principle represents a loss of privacy (Geiger & Wunsch 2007; Unger et al. 2013). Chapter 3, Section III, highlighted the threats posed to data protection and fundamental privacy rights by a number of counter-terrorism measures. **Concerning the EU-US TFTP**, the disclosure of the existence of the US programme to intercept SWIFT messages was met with a vigorous response and strong concerns over the protection of personal data, not least from the European Parliament (EP 2006, 2007b). The Parliament reiterated its concerns in its rejection of the first iteration of the EU-US TFTP and only consented to a revised version following the inclusion of additional safeguards (EP 2010). Following Edward Snowden revelations regarding the National Security Agency surveillance programme in 2013, however, the EP called for the EU-US TFTP agreement to be suspended (EP 2013a). The same position was reiterated in 2014 by the LIBE Committee following the conclusion of its in-depth inquiry into the National Security Agency surveillance programme (EP 2014b). **Concerning the operations of FIUs**, there is flexibility afforded to national FIUs with respect to access to data by third parties and data retention periods, resulting in variation across member states (Mitsilegas & Vavoula 2016). Data protection concerns have been voiced in relation to sharing information with third countries<sup>77</sup> as well as between EU FIUs. The expansion of the definition of reporting entities to include non-financial institutions and professions has also given rise to some controversy, in particular with respect to the inclusion of lawyers (see also Scherrer 2017).

**Ambiguity and variation in the relationship between FIUs and law enforcement authorities.** Across the EU the institutional nature of national FIUs and their links to law enforcement and judicial authorities varies (Amicelle & Chaudieu 2017; Mitsilegas & Vavoula 2016). The primary function of FIUs is the analysis of suspicious transactions and the transmission of data to relevant enforcement authorities. This activity should be distinct from investigations and prosecution, which are undertaken by law enforcement and prosecutors. However, a report by the EU FIUs' Platform (2016) noted that the two tasks are not clearly separated in all member states. Besides potential fundamental rights implications, the lack of clear distinction between intelligence and investigation can also negatively impact inter-FIU collaboration, for instance in cases where the international transfer of information may be impeded by the existence of an investigation/prosecution in a country that has received a request for information (EU FIUs' Platform 2016).

**Gaps related to transaction types not recorded in terrorist tracking systems.** Existing mechanisms for the identification and tracking of suspicious financial activities leave certain types of transactions out of scope. For instance, there is currently no requirement at the EU level and in most member

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<sup>77</sup> In this context it is worth recalling the finding in *Schrems*, which found data sharing with third countries in the absence of an assessment of the extent to which their data protection arrangements are adequate to be incompatible with the Charter.

states to report **suspicious transactions related to virtual currencies** (EC 2016a).<sup>78</sup> Existing regulation of prepaid cards does not mandatorily cover anonymous non-reloadable cards of relatively low nominal values (below €250) and the use of pre-paid cards online (EC 2016a). **The EU-US TFTP only includes messaging data passing through one payment system** (SWIFT) (Wesseling 2016), leaving services such as PayPal and money transfer businesses (EC 2016f) and intra-EU payments (including payments in euros to countries such as the UK or Switzerland that do not use the euro) in euros out of scope (EU CTC 2016b). The impact of these gaps, however, is not clear. As noted above, the Commission's 2013 impact assessment concluded that the benefits of an extended version of the TFTP were not clear and could have significant implications for privacy and data protection. However, an interviewee reported that, although the impact was hard to quantify, the lack of visibility of these financial transactions in the TFTP did hamper law enforcement. Another interviewee felt it was important for all money services to be included within the TFTP. At the same time, the interviewee felt that, increasingly, financial intelligence data from the banking sector was most important in terms of the fight against terrorism.

**Gaps related to obtaining and analysing information.** Some national FIUs face hurdles in gaining access to potentially relevant information. In some countries, national FIUs can only obtain information from reporting entities if the entity has previously reported a suspicious transaction; in others, FIUs do not have direct access to information held by reporting entities and must instead rely on a third party (e.g. prosecutors) to provide access it.<sup>79</sup> This may negatively impede not only the work of the FIUs themselves but also any collaboration with other FIUs, for example by affecting their ability to respond to a request for information (EC 2016a). A separate information access problem, suggested by academics working in this field, is that private financial entities may both under- and over-report potentially suspicious transactions as part of their approach to compliance, the latter resulting in a volume of information that is too large for competent authorities to process (Amicelle & Chaudieu 2017; Bures 2015).

Linked to this, one interviewee stressed the need to analyse a large volume of suspicious transactions data and discussed the necessity for increasingly intelligence-driven methods to do so. In addition, the transactions that might characterise current terrorist activity could involve small sums and would not necessarily be considered suspicious using existing definitions. A barrier that could contribute to both under- and over-reporting is **variation in feedback and training for reporting institutions**. The final report of the ECOLEF project<sup>80</sup> published in 2013 found that while some form of formal contact and feedback mechanism between FIUs and reporting entities existed in all member states, its scope and content varied substantially (Unger et al. 2013). Large differences across countries were also observed with respect to the provision of training to reporting entities by national FIUs (which was non-existent in some member states).

**Limited evidence on the effectiveness of existing arrangements.** The effectiveness of existing counter-terrorist financing measures remains unclear. Despite the reported value of the TFTP and the conclusions of the joint reviews, an assessment of its added value remains problematic. It is impossible to determine how many attacks have been prevented thanks to the TFTP. This is due both to the inherent difficulty of proving a negative and because information is not publicly available (Baruch et al 2016; Bures 2015; Tzanou 2017; Wesseling 2016). De Goede & Wesseling (2017) argue that the 'absence of public information on the means and methods of the TFTP renders an assessment of its effectiveness as yet impossible.'

<sup>78</sup> However, some transactions are reported voluntarily.

<sup>79</sup> In some countries where FIUs are embedded within law enforcement agencies, access to data held by reporting entities in the absence of a previous report of suspicious transactions may require the opening of a formal investigation.

<sup>80</sup> The Economic and Legal Effectiveness of Anti-Money Laundering and Combating Terrorism Financing (ECOLEF) project conducted an assessment of anti-money laundering policy in 27 member states. It was funded under the EC's Prevention of and Fight Against Crime programme.

**Profiling and avoidance of some countries or organisations.** Participants at a workshop organised to inform the study by Wensink et al. (2017) stressed that private institutions are faced with potentially costly and burdensome compliance regulations. This may make them risk averse and reluctant to engage in certain countries and/or encourage them to adopt discriminatory assessment practices, such as profiling of customers (Wesseling 2014). Fundamental rights concerns are raised about profiling, which involves assessing the risk posed by individuals based on pre-defined characteristics. As the FRA notes, surveillance of a specific group or profiling of potential suspects based solely or mainly on ethnicity or religion creates the risk of unacceptable discriminatory treatment, and needs to be proportionate (FRA 2015a). An interviewee expressed concerns that financial regulations could be used by some governments to restrict access to funding for civil society organisations.

## Assessment of gaps and barriers

Summary of the evidence	Overall assessment
<b>Gaps related to data protection and privacy concerns</b>	
<p><i>View of interviewees and findings from literature review</i></p> <ul style="list-style-type: none"> <li>- The collection of financial intelligence and the TFTP has generated considerable concern, including by the EDPS and the Parliament.</li> </ul> <p><i>Extent to which challenge is specific to terrorism</i></p> <ul style="list-style-type: none"> <li>- This challenge is specific to terrorism.</li> </ul> <p><i>Reforms ongoing/ just implemented, or other trends</i></p> <ul style="list-style-type: none"> <li>- Commission impact assessment into possible creation of EU TFTS expected soon.</li> </ul>	Very likely to impact fundamental rights and data protection
<b>Gaps related to ambiguity and variation in the relationship between FIUs and law enforcement authorities</b>	
<p><i>View of interviewees and findings from literature review</i></p> <ul style="list-style-type: none"> <li>- A review by FIU.net identified intelligence and investigation/prosecution are not always adequately separate.</li> <li>- FRA report identified fundamental rights concerns in relation to anti-money laundering Directives, which appear applicable to FIU's operation.</li> <li>- However, no evidence collected in this study as to the impact of close relationships between FIUs and law enforcement.</li> </ul> <p><i>Extent to which challenge is specific to terrorism</i></p> <ul style="list-style-type: none"> <li>- This challenge is not specific to terrorism.</li> </ul>	<p>Somewhat likely to impede protection</p> <p>Very likely to impede pursuit and response</p>
<b>Gaps related to transaction types not recorded in terrorist tracking systems</b>	
<p><i>View of interviewees and findings from literature review</i></p> <ul style="list-style-type: none"> <li>- Literature and interviewees reported examples where the EU-US TFTP was said to be valuable in investigation and intelligence stages (although evidence is somewhat anecdotal).</li> <li>- However, recent attacks in the EU have not been high-cost to plan and organise, so TFTP-type arrangements are not likely to allow planned attacks to be identified and prevented. Key benefit appears to lie in investigation.</li> </ul> <p><i>Extent to which challenge is specific to terrorism</i></p> <ul style="list-style-type: none"> <li>- This challenge is specific to terrorism.</li> </ul> <p><i>Reforms ongoing/ just implemented, or other trends</i></p> <ul style="list-style-type: none"> <li>- Commission assessment into possible creation of an EU TFTS expected soon.</li> </ul>	<p>Somewhat likely to impede protection</p> <p>Very likely to impede pursuit and response</p>
<b>Gaps related to obtaining and analysing information</b>	
<p><i>View of interviewees and findings from literature review</i></p> <ul style="list-style-type: none"> <li>- These gaps impose limitations in the current mechanisms that could result in under-reporting of relevant financial intelligence, as well as potential reporting of high quantities of data that require analysis.</li> </ul> <p><i>Extent to which challenge is specific to terrorism</i></p> <ul style="list-style-type: none"> <li>- This challenge is not specific to terrorism.</li> </ul> <p><i>Reforms ongoing/ just implemented, or other trends</i></p> <ul style="list-style-type: none"> <li>- Current anti-money laundering legislation under implementation, new anti-money laundering Directive and related proposals under consideration (fifth anti-money laundering Directive, Directive on countering money laundering by criminal law, Regulation on controls of cash entering or leaving the EU Regulation on the mutual recognition of freezing and confiscation orders.)</li> </ul>	Somewhat likely to impede protection, pursuit and response
<b>Gaps related to limited evidence about the effectiveness of existing arrangements</b>	
<p><i>View of interviewees and findings from literature review</i></p> <ul style="list-style-type: none"> <li>- Consensus in the literature about the limitations of the existing evidence base.</li> <li>- Given the extensive debate about how to obtain financial intelligence and the use of programmes such as the TFTP, it is important to generate an evidence base to inform</li> </ul>	Very likely to impact fundamental rights and data

policy making and inform decisions about the justifications for fundamental rights risks.	protection
<u>Extent to which challenge is specific to terrorism</u>	Very likely to
- This challenge is specific to terrorism.	impede
	protection,
	pursuit and
	response

### Gaps related to relating to profiling and avoidance of some countries by financial institutions

<u>View of interviewees and findings from literature review</u>	Somewhat
- Mentioned as a risk in the literature.	likely to impact
- However, little evidence collected in this study as to the extent to which this is happening and it's impacts.	fundamental
<u>Extent to which challenge is specific to terrorism</u>	rights and data
- This challenge is not specific to terrorism cases, but could be relevant to all forms of financial intelligence collection.	protection
<u>Reforms ongoing/ just implemented, or other trends</u>	
- New anti-money laundering Directive and related proposals under consideration.	

## VII – Chapter summary, key findings and synthesis of gaps

This chapter has described the state of play in relation to a number of areas of operational cooperation and the gaps and barriers in European cooperation and action in the fight against terrorism.

Perhaps the most important conclusion is the extent to which there are extensive, ongoing proposals for reform and implementation of reform. In many cases the proposals for reform and the changes being implemented are intended to address the identified gaps and barriers.

With the extensive current reform in mind, the following gaps and barriers were highlighted in this chapter:

### Counter-radicalisation programmes

- Gaps in the evidence base and monitoring of counter-radicalisation programmes
- Gaps in coordination and exchange of knowledge
- Gaps in the involvement of some relevant stakeholders
- Gaps related to fundamental rights and impacts on community cohesion
- Gaps related to removing online terrorist content.

### Database interoperability

- Limits to the functionality of existing databases and systems
- Data not currently collected in any database
- Databases are not interoperable
- Concerns about data protection and privacy in relation to EU databases.

### Information sharing

- Gaps from possibilities for greater information sharing
- Gaps related to variable levels of information sharing
- Gaps related to analytical capacity
- Barriers relating to lack of trust and/or awareness
- Barriers relating to legal and institutional differences between member states and EU agencies
- Barriers stemming from implementation of existing systems at the national and agency level.

### Mutual recognition instruments

- Gaps related to under-use of mutual recognition instruments
- Fundamental rights concerns about mutual recognition instruments.

#### Europol and Eurojust

- Gaps related to information sharing with Europol and Eurojust in terrorism cases
- Limited powers to share information with third countries
- Requirements to share information are difficult to enforce.

#### Terrorism financing

- Gaps related to data protection and privacy concerns
- Gaps related to transaction types not recorded in terrorist tracking systems
- Barriers related to obtaining financial intelligence information
- Over- and under-reporting of suspicious transactions
- Variation in feedback and training for institutions reporting suspicious transactions
- Limited evidence about the effectiveness of existing mechanisms for monitoring and tracking terrorist finance
- Fundamental rights risks of financial institutions refusing services to individuals and avoiding some countries, on the basis of profiling.

## Chapter 5: Policy options

This chapter addresses our fourth research question: are there potential options for action at the EU level that could address these gaps and barriers and what are their potential costs and benefits?

### Key findings:

- This chapter sets out eleven ideas for potential policy options to address the gaps and barriers identified in Chapters 3 and 4.
- The majority of the policy ideas, drawn from the literature, interviewees and analysis by the research team, primarily involve stepping up the use of existing measures and powers, or ensuring full implementation of changes and measures already proposed (and in some cases underway).
- The majority of the ideas would not need new legislation, but instead propose a coordinating and monitoring role for the EU.

Possible policy options for action at the EU level that might address the gaps outlined in Chapters 2, 3 and 4 were identified through the literature review and interviews. The policy options are grouped into six themes, one relating to the cross-cutting gaps and barriers discussed in Chapter 2 and five relating to each of the six sections in Chapter 3. They are summarised in Table 7.

In formulating the policy options, comments from interviewees were born in mind. One interviewee stressed that the EU provides a supporting function in the fight against terrorism, with most of the responsibility at the national level, and that terrorism is a sensitive area where trust is essential. Thus policy developments in the field proceed best with an evolving, step-by-step approach. None of the interviewees identified significant new policy measure that they felt were needed above and beyond measures already under discussion. All pointed to the need to fully implement and make use of existing measures.

For each policy option in turn we set out: a) the gaps it might possibly address; b) a description of what the option entails; c) the possible EU added value stemming from the option; and d) the challenges and limitations of the option.

In our assessment of the EU added value associated with each option, we have followed the principles in the Better Regulation Toolbox (EC 2017e), in particular the European added value test applicable in the subsidiarity analysis of a new initiative. This test asks whether the objectives of the proposed actions can be better achieved at Union level. In other words, EU added value may exist if EU action is likely to yield greater benefits in comparison with action at the member state level. Such benefit might stem from scale of effort or greater effectiveness and/or efficiency.

**Table 7. Overview of identified potential options for action at the EU level**

Policy area and gaps	Potential policy options
<b>Policy process</b>	
1. Fundamental rights, accountability, oversight and evidence-based policy	1a. Strengthen coordination, consultation and oversight using <u>new</u> mechanisms and better use of some <u>existing</u> mechanisms. 1b. Increase scrutiny of decisions regarding the use of <u>existing</u> methods of <i>ex ante</i> and <i>ex post</i> assessment in the policy-making process.
<b>Operational cooperation</b>	
2. Countering radicalisation	2a. Create <u>new</u> coordination and cooperation mechanisms. 2b. Enhance <u>existing</u> support for research and strengthen monitoring in the field of countering radicalisation.
3. Interoperability of information systems, information sharing	3a. Support the implementation and utilisation of <u>existing</u> information systems and <u>planned new</u> information systems. 3b. Adopt <u>already proposed</u> or <u>agreed new</u> measures to enhance the functionality, coverage and interoperability of information systems.
4. Cooperation tools and mutual recognition instruments	4a. Support and monitor the implementation of <u>existing</u> cooperation instruments by national-level authorities using <u>existing</u> mechanisms.
5. Support from Europol and Eurojust	5a. Advertise and increase the utility of <u>existing</u> analytical and operational support to member states using <u>existing</u> mechanisms.
6. Action against terrorism financing	6a. Adopt and implement <u>existing</u> EU legislation on money laundering and mutual recognition of confiscation and freezing orders. 6b. Develop <u>new</u> guidance for private reporting entities. 6c. Review effectiveness of the TFTP with a view to inform a decision about a potential EU TFTP using <u>existing</u> mechanisms.

## I – Fundamental rights, oversight and the policy process

### Option 1a: Strengthen coordination, consultation and oversight using new mechanisms and better use of some existing mechanisms

<p>This policy option could potentially address the following gaps:</p> <ul style="list-style-type: none"> <li>- Gaps related to consultation in EU policy making.</li> <li>- Gaps related to the oversight of EU agencies.</li> </ul> <p>Concrete steps that could be taken in this area:</p> <ul style="list-style-type: none"> <li>- Introduce <u>new</u> standing mechanisms to review the implementation of counter-terrorism policy in the EU.</li> <li>- Ensure early engagement of all relevant stakeholders in the EU policy-making and review process, using <u>existing</u> mechanisms.</li> <li>- Implement <u>existing</u> proposals to expand joint parliamentary scrutiny approaches to Eurojust, building on experience of their use at Europol.</li> <li>- Develop a <u>new</u> framework for the EP to access classified data.</li> </ul>
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#### What could this option involve?

**Introduce new standing mechanisms to review the implementation of counter-terrorism policy.** Modifications and additions to existing coordination and review mechanisms have been put forward in the literature. The SECILE report noted that the EU's 2005 Counter-Terrorism Strategy suggests that a 'high-level political dialogue on counter-terrorism' between the Council and the European Parliament is needed. The researchers suggested that these EU institutions should meet every half-year to discuss inter-institutional relations in the fight against terrorism (de Londras & Doody 2014). De Londras (2016) suggested three possible actions to strengthen the review of EU counter-terrorism policy. Firstly, the EU could establish an independent office tasked with the execution of annual reviews. A somewhat similar suggestion was made by Wensink et al. (2017, 65), who advocated the appointment of an independent reviewer comparable to the one in the UK. Secondly, member states

could be invited to produce regular reports on the implementation of EU counter-terrorism policy in their countries with input (e.g. shadow reports) by civil society organisations. Thirdly, in an option considered most practicable by the author, national oversight mechanisms (typically parliaments and their committees) could submit annual reports on the implementation of EU counter-terrorism policies to the European Parliament for assessment. In the context of addressing gaps related to fundamental rights (as discussed in Chapter 2), in each of these three options, reporting could be required to cover specified fundamental rights issues.

**Ensure early engagement of all relevant stakeholders in the EU policy-making and review process, using existing mechanisms.** No significant new policy options were suggested in the literature or by interviewees in relation to consultation, although the possibility of modifying the mandate of the FRA and/or increasing the role of the LIBE committee was suggested in the recent study for the European Parliament (Wensink et al. 2017, 65). In the literature importance was instead placed on ensuring existing platforms and mechanisms for the coordination, oversight and development of EU counter-terrorism policy are properly used and that all relevant stakeholders are engaged on a systematic basis in the policy-making process. In particular, interviewees stressed that *early* stakeholder engagement is crucial for achieving a comprehensive, evidence-based and balanced input to EU legislation. As reported in Chapter 4, interviewees suggested that high-level expert groups had been useful in ensuring a wide-range of technical expertise was brought to bear in the early stages of policy formation in relation to database interoperability, and this model could be used in other policy-making processes. As well as ensuring broad stakeholder engagement, existing mechanisms should ensure the systematic consideration of fundamental rights concerns. In this regard, the FRA has called for the introduction of fundamental rights into the design and operation of security policies (FRA 2015a). Interviewees from the FRA and EDPS stressed that it is important that, culturally, data protection and human rights are seen as facilitators of policy objectives, rather than as barriers to be overcome.

**Implement existing proposals to expand joint parliamentary scrutiny approaches to Eurojust, building on experience of their use at Europol.** Recent reforms to the oversight of Europol (the creation of a Joint Parliamentary Scrutiny Group) are still in the early stages of use. There is the possibility of extending the joint parliamentary scrutiny model of oversight to other JHA agencies – this is already proposed for Eurojust. Early lessons from the new Europol arrangements could be taken into account and, in light of concerns raised that the scrutiny group model could be unwieldy, modifications (such as smaller size or the creation of sub-structures) could be considered to ensure effectiveness (Busuioc 2017).

**Develop a new framework for the European Parliament to access classified data.** Lastly, a possible step that could be taken to enhance the ability of the European Parliament to exercise its various oversight functions, and address barriers stemming from limited ability to review sensitive information, could be the development of a comprehensive framework for the Parliament to receive classified information from EU institutions and agencies (De Londras 2016).

#### **Does it require new legislation? Does the EU have competence to act?**

The new mechanisms and frameworks could be achieved through internal agreements between the different actors.

#### **What is the possible EU added value?**

The added value of this option lies in improvements in the effectiveness and efficiency of EU policy making and implementation through the enhanced coordination of actors and agencies already operating in this field and a review and oversight of their results. This option cannot be undertaken at the member state level as it relates to the process of developing EU policy and ensuring the work of EU actors is coherent.

### What are the possible challenges or limitations to this option?

As noted in Chapter 3, there are already a number of actors involved in making and reviewing counter-terrorism policy, and any new mechanisms could introduce duplication of responsibility. With respect to stakeholder engagement, this is potentially a time-consuming activity and may not be compatible with the reported need to act quickly to respond to new terrorist threats.

### Option 1b: Increase scrutiny of decisions regarding the use of *ex ante* and *ex post* assessment in the policy-making process

This policy option could potentially address the following gap:

- Gaps related to consultation in EU policy making.
- Gaps related to the use of *ex ante* impact assessment.

Concrete steps that could be taken in this area:

- Ensure additional scrutiny of decisions not to use impact assessments and evaluations.

### What could this option involve?

**Ensure additional scrutiny of decisions not to use impact assessments and evaluations.** This option does not propose new measures, but involves greater utilisation of a range of existing types of assessment, undertaken at various stages of the policy-making process:

- **Needs assessments.** Conducted before the drafting of legislative proposals to understand priorities for policy making and existing or expected needs that could be addressed via policy.
- ***Ex ante* impact assessments.** Conducted to inform the development of concrete policy instruments and help appraise relevant policy options.
- ***Ex post* evaluation.** Conducted following the introduction of new policy to monitor, evaluate and understand the impact of policy implementation.

As described in Chapter 3, the Better Regulation Guidelines stipulate when impact assessment and *ex post* evaluation is required (EC 2017d), but this has so far been used only in a minority of cases of counter-terrorism measures. Some interviewees stressed that the need to act quickly made *ex ante* assessment unfeasible, arguing that a lack of impact assessment was mitigated by expert consultation to inform policy making and *ex post* evaluation. Conversely, other interviewees felt strongly that *ex ante* and *ex post* assessment was vital to making effective policy and protecting fundamental rights, and a report from the European Parliament on the fundamental rights situation in the EU pointed out the need to include fundamental rights in impact assessments accompanying all legislative proposals and called for an evaluation of existing counter-terrorism measures (EP 2016d). Carrera et al. (2017) also called for a fitness check of counter-terrorism policies and actors (and their contributions and shortcomings) and a 'regular assessment of current EU policies and their effectiveness and efficiency.'

To take into account these different viewpoints, a policy option could be to ensure greater scrutiny of decisions not to use impact assessments and evaluations.

### Does it require new legislation? Does the EU have competence to act?

This option does not require legislative action. All three types of assessment can be realised within the existing legal framework and the option merely demands fuller justification and reasoning for not undertaking them, and to open that decision to scrutiny.

### What is the possible EU added value?

The intention behind this option is that greater discussion around decisions not to use *ex ante* and *ex post* assessment might result in the greater use of assessment. The use of assessments is likely to

improve the relevance, effectiveness, efficiency, coherence and added value of EU policies, and could have the potential benefit of ensuring protection for fundamental rights. This option cannot be undertaken by member states as it relates to the process of developing EU policy.

#### **What are the possible challenges or limitations to this option?**

The need to produce and discuss justifications could add additional time to the policy-making process, compounding the concerns of some that assessments themselves are potentially lengthy and, if undertaken at the policy development stage, may not be compatible with the need to respond rapidly to newly arisen needs.

## **II – Improving operational cooperation: countering radicalisation**

### **Option 2a: Create new coordination and cooperation mechanisms**

This policy option could potentially address the following gaps:

- Gaps in coordination and exchange of knowledge and gaps in the involvement of some relevant stakeholders.
- Gaps related to fundamental rights and impacts on community cohesion.
- Gaps related to removing online terrorist content.

Concrete steps that could be taken in this area:

- Development of a new overarching policy framework.
- Adoption of new coordinating policies and measures and actors.

#### **What could this option involve?**

**Development of a new overarching policy framework.** One option, suggested in some forms by the EP (e.g. EP 2015c) and the HLCEG-R (HLCEG-R 2017), is to develop a strategy that could serve as an overarching reference document to streamline and provide a steer for action at the EU level (EC 2017f). Such a document could build on previously agreed principles (e.g. in the counter-radicalisation strategy and guidelines (Council of the European Union 2014a, 2014b)) and could provide a framework for action that would address areas such as operational implementation and prioritisation, monitoring and evaluation, and corresponding funding allocations (HLCEG-R 2017b). An example of a similar document recently adopted in a different policy context is the EU Consensus on Development, which was adopted in June 2017 (Council of the European Union, 2017). Along similar lines, a 2015 EP resolution on radicalisation called for the establishment of an action plan for the implementation of the EU strategy for combating radicalisation (EP 2015c).

**Adoption of new coordinating policies and measures and actors.** The literature identifies a number of ideas for better coordination of policy. These would be in addition to the RAN network, which is intended primarily for first-line practitioners and has little scope for the involvement of policy makers and other stakeholders (e.g. prosecutors and judges). By extension, its primary tasks and areas of focus leave out the development of practical guidance, analysis of policy needs and identification of research gaps and priorities. Similarly, the Policy Planner's Network on Polarisation and Radicalisation focuses primarily on exchanges between policy makers in participating member states rather than engaging practitioners and researchers or developing concrete practical outputs.

The following policy options have been identified in reviewed documentation (Bigo, Bonelli et al. 2014; EC 2017f; EP 2015c, 2016d; HLCEG-R 2017b; Wensink et al. 2017):

- **Establishment of a European expert network**, possibly with a data and contact repository, that would gather information and evidence from relevant sources and platforms. The network could include, but go beyond, the RAN and the Policy Planner's Network on Polarisation and Radicalisation.

- **Production of practical guidelines and handbooks**, building on advances in developing the evidence base for counter-radicalisation activities.
- **Support to capacity-building measures** to member state-level practitioners and authorities. Possible steps in this area range from assessments of training needs and gaps to the development of training materials and to financial and/or technical support for the delivery of training sessions.
- **Launch of an EU-level counter- and de-radicalisation communication campaign**, accompanied by the provision of support (particularly financial) to its national variants.
- **Construction of an online database of relevant EU funding instruments**. The objective would be to streamline the funding of projects and research studies and help stakeholders navigate the complex landscape of existing instruments. The database could be expanded to include national-level activities and opportunities.<sup>81</sup>

The HLCEG-R scoping paper includes the following as potential structured cooperation mechanisms:

- **Scaling up of existing initiatives** (RAN, Policy Planner's Network) to cover additional tasks, possibly accompanied by a light-touch coordination and cooperation mechanism such as a Commission task force.
- **Extending indefinitely the mandate of the HLCEG-R**, thereby turning it into a permanent advisory body.
- **Establishing a new not-for-profit organisation/foundation** with a mission focused on preventing radicalisation. Analogous examples in other policy areas include the European Training Foundation and the European Foundation for the Improvement of Living and Working Conditions (Eurofound).<sup>82</sup>
- **Establishing a new EU agency** or amending the mandate of an existing EU agency.

### Does it require new legislation? Does the EU have the competence to act?

The majority of the options listed above involve scaling up existing initiatives and capacity-building measures, which would not necessarily require new legislation. A Commission decision could be sufficient to extend the mandate of the HLCEG-R. Only the establishment of a new EU agency would require legislative action, and this is not yet identified as a preferred option – it is merely on the list of ideas considered by the HLCEG-R.

### What is the possible EU added value?

The EU added value associated with this policy option lies in the potential for increased effectiveness (through better sharing of effective practices) as well as efficiencies resulting from a coordinated approach to counter-radicalisation. Structured cooperation at the EU level can also help prevent duplication of effort in a complex and fragmented field.

### What are the possible challenges or limitations to this option?

While increased coordination and cooperation at the EU level is likely to contribute to the increased effectiveness of counter-radicalisation initiatives and programmes, this positive impact is dependent on actual implementation by national- and local-level stakeholders. In this regard, it is necessary to keep in mind that responses to the challenge of radicalisation need to be tailored to the context in which they are implemented. This includes a consideration of the type of extremism in question as

<sup>81</sup> According to the HLCEG-R scoping paper, DG HOME is currently involved in a mapping effort that may inform such a database.

<sup>82</sup> In another proposal for a new institution, Bigo, Bonelli et al. (2014) recommended the creation of an 'Observatory of conflict, security and freedom', which could be tasked with cross-disciplinary analysis and research as well as regular assessments of implemented initiatives and policies.

well as a host of national, local and individual factors. For that reason, there is no one-size-fits-all approach to countering radicalisation that could be agreed on at the EU level. Nevertheless, cooperation and coordination at the EU level can help aggregate and make available relevant resources and information in support of activities designed at the national and local level.

Similarly, while action at the EU level can develop infrastructure for the exchange of information, best practices, etc., it is up to the intended recipients to make use of these tools. As such, the effectiveness of EU action is linked to the ability and willingness of relevant stakeholders to share information (EP 2015c).

Lastly, while substantial resources have been made available at the EU level in the fight against radicalisation, some of the options presented here would require additional investment, which may or may not be available. This is particularly the case for considerations surrounding the establishment of more robust structured coordination mechanisms, such as a dedicated foundation or a new EU agency.

### **Option 2b: Enhance existing support for research and strengthen monitoring in the field of countering radicalisation**

<p>This action could address in particular the following gaps:</p> <ul style="list-style-type: none"> <li>- Gaps in the evidence base and monitoring of counter-radicalisation programmes.</li> <li>- Gaps related to fundamental rights and impacts on community cohesion.</li> <li>- Gaps related to removing online terrorist content.</li> </ul> <p>Concrete steps that could be taken in this area:</p> <ul style="list-style-type: none"> <li>- Step-up <u>existing</u> support for radicalisation research.</li> <li>- Strengthen <u>existing</u> monitoring mechanisms of actions by member states and collect <u>new</u> monitoring data.</li> </ul>
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#### **What could this option involve?**

**Step-up existing support for radicalisation research through funding and sharing findings.** As noted in Chapter 3, the EU has provided substantial funding to research projects on radicalisation. A large number of these, as pointed out by an interviewee, are currently underway. The results of the projects, as well as continuation of funding for further research in this area, will provide an important contribution to the improved understanding of what may be effective in preventing and countering radicalisation. Beyond the provision of funding to individual studies, additional steps may be helpful in sharing learning and findings so that synergies are identified, increasing the utility of research efforts and their contribution to the effectiveness of counter-radicalisation initiatives. These steps are closely linked to efforts to increase coordination and cooperation and include:

- Make research findings easily available (e.g. in a central repository, through expert networks).
- Synthesise research findings in a way that could inform project implementation (e.g. through the organisation of topical events and workshops).
- Strengthen ways to feed research findings back into the design of new calls for research proposals (e.g. through advisory boards or expert networks).
- Identify scope for synergies across existing funding instruments (e.g. through a unified database of funding programmes, advisory boards).

Greater coordination of research efforts could also help to address deficiencies identified in the gap analysis by the RAN Centre of Excellence (Pisoui & Ahmed 2016). Systematisation and coordination of research can help prevent research questions from being overly broad, not innovative enough or lacking in focus. Greater coordination of resources can help support improvements in the methodological rigour of undertaken research and contribute to conceptual clarity across different contexts and forms of radicalisation. Greater coordination of research can also help bridge the gap between basic and applied research as well as practice.

**Strengthen existing mechanisms for monitoring actions by member states and collect new monitoring data.** A need has been identified to collect information on measures undertaken at the member state level and their results (EP 2015c; Pisoui & Ahmed 2016). As suggested by Wensink et al. (2017), one option to address this gap would be to introduce a reporting duty for national authorities, requiring them to provide information to EU institutions on the initiatives and policies put in place to prevent radicalisation. At a minimum, such reporting would gather information on the implementation process and its results. Data on the effectiveness of individual measures and policies could also be required to include information on compliance with fundamental rights standards and steps taken to mitigate any risks or negative impacts on community cohesion. Similarly, the RAN Centre gap analysis recommends embedding evaluation in the implementation of policies and programmes from the very beginning, setting benchmarks for subsequent outcome assessments (Pisoui & Ahmed 2016). The EU can provide support to national authorities by developing guidelines and performance measures for the evaluation of individual initiatives as well as recommendations on how to systematically embed evaluation in national-level programming of counter-radicalisation initiatives (HLCEG-R 2017b). The EU-level guidelines can in turn be continually revised in light of data reported by national authorities.

#### **Does it require new legislation? Does the EU have the competence to act?**

This option does not require legislative action.

#### **What is the possible EU added value?**

The EU added value lies in increased efficiencies through the possibility of strengthening cross-border synergies between various research programmes and implementation efforts. Action in this area can also result in greater effectiveness of counter-radicalisation efforts through improved coordination and sharing of evidence collection.

#### **What are the possible challenges or limitations to this option?**

The process of radicalisation is very context specific and it may be challenging to establish widely transferable ‘what works’ lessons. Furthermore, time lags in research further complicate the building of an evidence base, since it may take several years before there is sufficient evidence of impact. This may not be compatible with the timeframe for policy design.

With respect to the monitoring and evaluation of national-level initiatives, systematic data collection would require a reasonable degree of member state compliance with EU guidelines and reporting duties. The EU may be in a position to address this challenge by tying reporting and evaluation requirements to financial support and by conducting its own evaluations. However, this may still leave out a substantial number of measures and initiatives executed at the national level. In response, greater levels of member state compliance may be encouraged by demonstrating the value of collected data, for example through the production of timely analyses, syntheses and other products.

### **III – Improving operational cooperation: information sharing**

#### **Option 3a: Support the implementation and utilisation of existing or approved information systems**

This policy option could potentially address the following gaps:

- Limits to the functionality of existing databases and systems.
- Data not currently collected in any databases or systems.
- Gaps from possibilities for greater information sharing.
- Gaps related to variable levels of information sharing.
- Gaps related to analytical capacity.
- Concerns about data protection and privacy in relation to EU databases.

Concrete steps that could be taken in this area:

- Support the implementation of existing capabilities in Prüm, PNR and EES.
- Initiate infringement proceedings where appropriate, using existing powers.
- Undertake additional trust-building activities to encourage greater information sharing.

### What could this option involve?

**Support the implementation of existing capabilities in Prüm, PNR and EES.** Chapter 4 outlined the implementation gaps related to these databases. The first policy option relates to the implementation of existing databases, and is therefore not a new activity. This support could be in the form of continued provision of financial and technical support to relevant national authorities (EC 2016e).

**Initiate infringement proceedings where appropriate, using existing powers.** In some instances, the Commission has the option to initiate infringement proceedings against countries with continued implementation issues. For instance, the Commission's communication on stronger and smarter information systems explicitly acknowledged this option in connection with the implementation of the Prüm framework (EC 2016e). Over the course of 2017, the Commission sent Reasoned Opinions to three member states in connection with Prüm implementation (EC 2017x).

**Undertake additional trust-building activities to encourage greater information sharing.** One way of addressing cultural barriers to information sharing is to develop and deepen trust-building mechanisms, with the objective to foster collaborative approaches and willingness to share information among relevant authorities. Initiatives that could perform such a role and that have been suggested in the reviewed literature (EC 2017f; Wensink et al. 2017) include:

- **Permanent HLEG on interoperability/information sharing.** The expert group could be responsible for the organisation of conferences, seminars, workshops and other engagements bringing together relevant stakeholders from multiple member states.
- **Europol-led working sessions.** Instead of a Commission-led expert group, Europol could organise a series of working sessions. This initiative could be combined with the provision of technical and analytical support to participating agencies.
- **Twinning projects.** The purpose of twinning projects would be to establish partnerships between pairs or groups of agencies from various member states with the objective to share experience and good practices and foster mutual working relationships. Twinning projects undertaken in the context of neighbourhood and enlargement policy may offer a model to emulate (EC n.d.).
- **A network like the European Judicial Network.** The establishment of a network for law enforcement professionals (akin to the European Judicial Network for judicial authorities) and the subsequent organisation of mutual engagement events may also provide an avenue for the enhancement of mutual trust.

### Does it require new legislation? Does the EU have the competence to act?

Supporting the use of existing information does not require new legislation. Some of the trust-building activities outlined in this option may require legislative action, others do not. HLEGs, for example, are established by the Commission. A network like the European Judicial Network, however, would require a legal basis, including in order to regulate data exchange and ensure compliance with data protection rights and principles.

### What is the possible EU added value?

With respect to action to support the implementation of existing capabilities, EU added value could be assumed from the fact that efforts at the member state level have not been fully successful. With respect to infringement proceedings, only action at the EU level is possible. The added value of EU

action in trust-building activities lies in greater efficiencies and more effective assistance coordinated at the EU level and made available to multiple member states.

### What are the possible challenges or limitations to this option?

The provision of technical and financial support, as well as the enforcement of national implementation, may not be able to address cultural barriers to information sharing. The effectiveness of this option requires achieving cultural change, which may be difficult. The number of relevant authorities that could benefit from various engagement initiatives likely dwarfs the resources available at the EU level. The full implementation of existing databases has potential implications for fundamental rights – these were described in Chapter 4, Section II.

### Option 3b: Adopt already proposed or agreed new measures to enhance the functionality, coverage and interoperability of information systems

<p>This option particularly addresses the following gaps:</p> <ul style="list-style-type: none"> <li>- Data not currently collected in any databases or systems.</li> <li>- Databases are not interoperable.</li> <li>- Concerns about data protection and privacy in relation to EU databases.</li> </ul> <p>Concrete steps that could be taken in this area:</p> <ul style="list-style-type: none"> <li>- Implement already proposed updates to SIS and Eurodac.</li> <li>- Implement already proposed quality control systems.</li> <li>- Proceed with creation of already proposed new databases – ETIAS and ECRIS-TCN.</li> <li>- Proceed with already proposed eu-LISA initiatives to enhance the interoperability of existing centralised information systems.</li> </ul>
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### What would this option involve?

The literature and interviews did not give rise to policy options in addition to those already proposed for improving the functionality, coverage and interoperability of information systems.

#### *Functionality*

**Implement already proposed updates to SIS and Eurodac.** As explained in Chapter 4, there are proposals to update SIS with the creation of new alerts, new types of checks, expanded use of biometrics, expanded access by law enforcement authorities and widened participation by Europol and Frontex. In relation to Eurodac, there are proposals to provide access to law enforcement authorities.

**Implement already proposed quality control systems.** A simultaneous effort consists of developing data quality control systems under the auspices of eu-LISA, as described in Chapter 3.

#### *Coverage*

**Proceed with creation of already proposed new databases – ETIAS and ECRIS-TCN.** Action in this area revolves around the creation and implementation of information systems that would complement the existing information landscape and close some of the gaps in information collection. As described in Chapter 4, two new centralised information systems have been proposed by the Commission and are under consideration by the co-legislators: the **European Travel Information and Authorisation System (ETIAS)**, which would collect data from visa-exempt travellers in advance of their arrival to the EU; and the **ECRIS-TCN**, a centralised database intended to improve the exchange of information on third-country nationals and stateless persons.

#### *Interoperability*

**Proceed with already proposed eu-LISA initiatives to enhance the interoperability of existing centralised information systems.** Specifically, the initiatives are the creation of a single search

interface, shared biometric matching service, common identity repository and a multiple-identity detector.

### **Does it require new legislation? Does the EU have competence to act?**

The updates to SIS and Eurodac, as currently proposed, require amending the existing implementing legislation. The development of quality measures also requires amending eu-LISA legislation, and the creation of a new centralised database (ECRIS-TCN, ETIAS) requires adopting new legislation. Improving interoperability of available information systems through the eu-LISA initiatives is highly rights sensitive and may require amending core elements of the legislation setting up these information systems and addressing related data protection and data security issues. This requires legislative actions, which have been included in Commission proposals.

### **What is the possible EU added value?**

This option revolves around either existing or new EU centralised systems. This action cannot be undertaken at the member state level.

Regarding steps to improve functionality, all the options described above are expected to result in improved functionalities of the individual information systems through several channels. Expansion of access will enable a greater population of users to access information stored in the systems. Increased functionalities can be presumed to lead to greater effectiveness of information exchange. Lastly, a more robust data quality control system is likely to contribute to improvements in data accuracy as well as completeness, further enhancing the utility of existing systems as well as helping to mitigate the risk of fundamental rights violations owing to inaccurate data.

Regarding steps to improve coverage, these steps would enable the collection of information that is currently not available to relevant agencies within the EU. As such they would contribute to more effective information exchange within the EU. Regarding steps to improve interoperability, the eu-LISA initiatives could be expected to contribute to a more effective regime of information sharing across the EU.

### **What are the possible challenges or limitations to this option?**

The first limitation is that modifications to existing information systems and the creation of new ones have strong data protection and fundamental rights implications. The issues related to each database were described in Chapter 4 and touched upon in Chapter 2. The latest EP report on fundamental rights in the EU called on the Commission to monitor the compliance of proposals related to surveillance capabilities with relevant provisions of the Treaties (EP 2016d).

Secondly, improving the functionality of existing systems does not automatically mean that this will result in more effective information exchange – uptake of new functionalities by end users is required. Similarly, the impact of the roll-out of new information systems will depend on the degree to which member states put in place the appropriate infrastructure to enable their use, as well as the willingness of relevant authorities to actually use them. Action in this area may thus continue to be hampered by non-technical obstacles to information sharing. The impact of introducing greater interoperability functions depends on users' willingness and ability to avail themselves of the new capabilities and, more fundamentally, on the availability of relevant and accurate information in the information systems.

Lastly, this option covers only centralised systems. As a result, information collected through decentralised systems will not be available through the interoperability tools discussed above.

## IV – Improving operational cooperation: the use of cooperation tools and mutual recognition instruments

### Option 4a: Support and monitor the implementation of cooperation instruments by national-level authorities

This policy option could potentially address the following gaps:

- Gaps related to under-use of mutual recognition instruments.
- Fundamental rights concerns about mutual recognition instruments.

Concrete steps that could be taken in this area:

- Provide additional assistance to national-level authorities to support their implementation of cooperation instruments.
- Continue to monitor implementation and collect better information about use in terrorism cases using existing mechanisms.
- Consider new legislative amendments to mutual recognition instruments.

#### What would this option involve?

**Provide additional assistance to national-level authorities to support their implementation of cooperation instruments.** This option would involve stepping up measures already being undertaken by Cepol and the European Judicial Network. The recent Commission Comprehensive assessment provides some ideas for such assistance, which could take the following forms:

- Development of handbooks and other formal guidelines for the utilisation of cooperation tools and mutual recognition instruments. This type of product is already available for the EAW in the form of a Handbook, which was recently updated on how to issue an EAW (EC 2017b).
- Creation and subsequent improvements of repositories of relevant information, for example best practices and contact information for relevant authorities, practitioners and experts. Such a repository may also serve as a platform for the mutual provision of information. The European Judicial Network and its e-Justice portal could provide a model for such an effort.

**Continue to monitor implementation and collect better information about use in terrorism cases.** In tandem with the provision of technical assistance, the Commission, in cooperation with Europol and Eurojust, should monitor the implementation of applicable cooperation tools and mutual recognition instruments. In particular, given the fact that these tools are intended for a wide range of contexts, collection of data and monitoring specifically focused on terrorism-related cases would be desirable. This will in turn enable the publication of data and information on the utilisation of cooperation tools for the purposes of the fight against terrorism, which currently tends not to be available. Increased monitoring will also help collect information on persistent gaps and needs related to the implementation of cooperation instruments, which can in turn be used to inform technical assistance initiatives. Following the model of the production of classified reports by Eurojust to share lessons learned from criminal investigations and prosecutions of terrorism cases, it could be that not all monitoring data is made publicly available.

**Consider new legislative amendments to mutual recognition instruments.** In addition to the steps above that would have direct impact on operational cooperation, broader amendments to existing mutual recognition instruments would help to address the gaps identified in Chapter 4.

The EU can develop a handbook, guidelines, best practices and training sessions without having to adopt a specific legislative basis for such actions. Changes to mutual recognition instruments would require a legislative amendment.

### What is the possible EU added value?

The potential for EU added value stems from the efficiencies and effectiveness of a coordinated approach to the provision of technical and other forms of assistance. In addition, the EU is particularly well placed to compile information, data and contacts and store these in a centralised repository. Amendments to mutual recognition instruments can result in their more effective utilisation as well as strengthened protections of fundamental rights.

### What are the possible challenges or limitations to this option?

Numerous ongoing efforts already exist in this area. Therefore, this option represents a continuation and intensification of current activities. It remains uncertain how much this continuation and intensification can contribute to the desired outcomes.

The success of monitoring and data collection efforts depends at least partly on cooperation from member states and their timely provision of information. One option to address this limitation is to systematically tie reporting requirements to technical and financial assistance initiatives. Outside of the scope of assistance programmes, however, the ability to encourage member states' compliance remains limited.

## V – Improving operational cooperation: support from Europol and Eurojust

### Option 5a: Advertise and increase the utility of analytical and operational support to member states

This policy option could potentially address the following gaps:

- Gaps related to limited information sharing with Europol and Eurojust in terrorism cases and under-use of these agencies by member states.
- Limited powers to share information with third countries.
- Gaps in collaboration between Europol and Eurojust and Frontex.
- Gaps related to the ability of Europol to access funding flexibly and rapidly.

Concrete steps that could be taken in this area:

- Intensification of existing Europol and Eurojust awareness-raising activities.
- Further improvements in the existing portfolio of services offered by Eurojust and Europol.

### What could this option involve?

Policy options here involve the stepping up of existing activities rather than new measures.

**Intensification of existing Europol and Eurojust awareness-raising activities.** In addition to promoting Europol and Eurojust's services, outreach initiatives could help familiarise national-level stakeholders with reporting obligations and thus contribute to better data collection on a range of topics and represent a networking and trust-building opportunity among practitioners, which is likely to enhance mutual trust.

**Further improvements in the existing portfolio of services offered by Eurojust and Europol.** These agencies could continue to improve the portfolio of services offered to member state authorities and the range of resources national stakeholders are able to draw on. Examples suggested in the reviewed literature (EC 2017f; Wensink et al. 2017) include:

- **The establishment of technical Centres of Excellence.** These thematic-based bodies could represent a source of expertise and technical capacity that national-level authorities (ranging from law enforcement to judicial authorities) could call on to meet any arisen need. Examples of suitable areas include cyber forensics and encryption.<sup>83</sup>

<sup>83</sup> An example of an already existing initiative in this area is the European Judicial Cybercrime Network, convened by Eurojust (Eurojust 2016b).

- **The establishment of platforms for pooling resources across member states.** Europol and Eurojust may be able to help member states coordinate approaches to pool resources, drawing on existing capacities across the EU-28.
- **Integration of threat assessments by Europol and the European Union Intelligence and Situation Centre.** Currently, these two sources are developed in parallel. Their integration is likely to result in a product of enhanced utility.
- **Deepening of the analytical component of Europol reports.** This suggestion responds to an observation that Europol's reports do not always offer much beyond a compilation of data provided by member states. Boosting the analytical input would likely offer added value to the intended audiences.

#### **Does it require new legislation? Does the EU have the competence to act?**

No legislative action is needed for this option.

#### **What is the possible EU added value?**

The EU added value lies in the potential for increased take-up of the support offered by Europol and Eurojust, greater information sharing with and through those agencies, and therefore the potential to improve the effectiveness of counter-terrorism actions, law enforcement and judicial cooperation in the EU. This option cannot be executed at the member state level.

#### **What are the possible challenges or limitations to this option?**

Activities in this area are already ongoing, and so this option represents a continuation and intensification of current efforts. The extent to which the steps outlined above can contribute to improvements in law enforcement and judicial cooperation generally, and to the fight against terrorism specifically, is difficult to estimate.

The effectiveness of this option also depends on the receptiveness of member state stakeholders and their willingness to make use of services and resources provided by Europol and Eurojust.

## **VI – Improving operational cooperation: terrorism financing**

### **Option 6a: Adopt and implement existing proposals for new EU legislation on money laundering and mutual recognition of freezing and confiscation orders**

This policy option could potentially address the following gaps:

- Gaps related to data protection and privacy concerns.
- Ambiguity and variation in the relationship between FIUs and law enforcement authorities.
- Gaps related to transaction types not recorded in terrorist tracking systems.
- Gaps related to obtaining and analysing information.

Concrete steps that could be taken in this area:

- Adopt and implement already proposed amendments to existing EU money laundering legislation.
- Creation of a new EU-level FIU.

#### **What could this option involve?**

**Adopt and implement already proposed amendments to existing EU money laundering legislation.** As described in Chapter 4, proposals were made by the Commission in July 2016 and in December 2016 (Directive on countering money laundering by criminal law, Regulation for the mutual recognition of asset freezing and confiscation orders, a new Directive to criminalise money laundering, and Regulation on cash controls). These are designed to fill a number of specific gaps, and Chapter 4 set out the potential improvements identified in impact assessments of the proposals.

**Creation of a new EU-level FIU.** The ECON and LIBE committees adopted a report on the cash control proposal, which highlighted two further possible areas for policy action. The report invited the Commission to consider the desirability of establishing an EU-level FIU, as well as the introduction of a proposal coordinating pertinent penalties across all member states, if necessary (EP 2017g).

#### **Does it require new legislation? Does the EU have the competence to act?**

This option is based on the adoption of new legislation. The EU is competent to legislate in the area of cooperation on judicial matters under Article 82(1)(a) TFEU. This covers the Regulation on the mutual recognition of freezing and confiscation orders. The proposal to amend the 4th Directive on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (anti-money laundering Directive proposal) uses the same legal basis as the other Directives did (Articles 114 and 50 TFEU – see also Appendix A).

#### **What is the possible EU added value?**

Action at the EU level may result in positive impacts through greater harmonisation and coordination of efforts to disrupt terrorist financing, and the addressing of gaps in the types of financial transactions not currently monitored. The full range of expected benefits, as identified in impact assessments for several of the proposed legislative reforms, were set out in Chapter 4. Coordination at the EU level is particularly desirable due to the cross-border dimension of the challenge, which renders EU action more efficient than efforts at the member state level.

#### **What are the possible challenges or limitations to this option?**

The effectiveness of the new anti-money laundering rules will continue to rely to a considerable extent on the participation of reporting entities. And while the anti-money laundering Directive proposal addresses some areas that pertain to the transmission of information from obliged entities to FIUs, the existence of challenges such as risk aversion on the part of reporting institutions are likely to persist in the absence of complementary action (see Option 6b).

In connection with access to data held by private institutions, the EDPS also raised concerns of proportionality over selected provisions of the anti-money laundering Directive proposal (EDPS 2017a). One area concerns FIUs' access to additional information, which would henceforth not be required to be based on suspicious transactions but could flow from FIUs' own analysis (i.e. moving from investigation-based inquiries to intelligence-based ones). The EDPS also raised questions regarding the proposed expansion of access to beneficial ownership information.

Furthermore, it is possible that even the expanded remit of anti-money laundering Directive provisions (e.g. lowered threshold for face-to-face use of pre-paid instruments) does not encompass financial transaction channels that may be used for terrorist financing, particularly in light of the fact that terrorist incidents do not have to be very costly and therefore may not require substantial financing (Wensink et al. 2017). An alternative approach for reporting entities would be to make greater use of risk-profiling assessments; however, these may raise concerns over discrimination and continuity of provision of financial services in high-risk territories. Similarly, the adoption of legislation and its subsequent implementation necessarily lag behind the development of new technologies and financing tools. As such, it is possible that at least some terrorist activity will continue to be financed through means not covered by the new legislative framework.

## Option 6b: Develop guidance for private reporting entities

This action could address in particular the following gaps:

- Gaps related to data protection and privacy concerns.
- Gaps related to obtaining and analysing information.
- Profiling and avoidance of some countries by financial institutions.

Concrete steps that could be taken in this area:

- Develop new instructions and guidelines for private sector institutions.

### What would this option involve?

**Develop new instructions and guidelines for private sector institutions.** An option suggested in the 2017 report for the European Parliament (Wensink et al. 2017) is that, in addition to the adoption and implementation of existing legislative proposals with implications for the fight against terrorism financing, the Commission could develop instructions and guidelines for private sector institutions with the obligation to report suspicious financial transactions to relevant authorities. The benefit of such an action would be increased clarity on the part of reporting agencies with respect to their responsibilities, which can be expected to mitigate the issues of under-reporting (e.g. due to lack of understanding) and over-reporting (e.g. due to risk aversion). Preventing the latter would result in decreased burden on both reporting entities and receiving authorities. Another area that could fall under the remit of the guidelines would be safeguards against profiling and any other discriminatory practices by reporting entities. The guidelines for the reporting of suspicious financial transactions could be developed in a sector-specific manner to reflect the specificities of each type of financial institution (Wensink et al. 2017).

### Does it require new legislation? Does the EU have the competence to act?

The Commission can adopt instructions and guidelines, including for the private sector, on how existing legislation should be understood and given effect without the need to adopt additional legislative measures.

### What is the possible EU added value?

It is intended that more clarity, and a consequent reduced reporting burden, would lead to greater reporting of suspicious transactions and better-quality reporting. In turn, it is hoped that this would lead to an enhanced ability to disrupt terrorism financing. The added value of EU action in this area stems from greater efficiencies and effectiveness associated with harmonisation and standardisation across all EU member states.

### What are the possible challenges or limitations to this option?

A principal limitation of this option is the possibility that private sector guidelines may not be fully effective in influencing private sector behaviour. This is particularly the case with respect to oversharing of data owing to risk aversion and fears of non-compliance, as reporting entities may continue to take a conservative approach to information provision. Alternatively, reporting entities may, in response, adopt more robust approaches to risk-profiling, which raises concerns about discriminatory practices and infringements of fundamental rights and may lead to reluctance to serve certain territories (Wensink et al. 2017). In this regard, while it may be possible to verify whether reporting entities have put in place required anti-discrimination safeguards, it may be much more difficult to assess whether these are being followed in practice.

## Option 6c: Review the effectiveness of the TFTP with a view to inform a decision about a potential EU TFTS

This action could address in particular the following gaps:

- Gaps related to data protection and privacy concerns.
- Gaps related to transaction types not recorded in terrorist tracking systems.
- Limited evidence about effectiveness of existing arrangements.

Concrete steps that could be taken in this area:

- Assess the effectiveness of the TFTP and consider the desirability of establishing an EU TFTS using existing mechanisms.
- Make available information on which the TFTP can be assessed.

### What would this option involve?

**Assess the effectiveness of the TFTP and the desirability of establishing an EU Terrorist Finance Tracking System (TFTS).** In relation to the current gaps in the TFTP and the potential creation of an EU TFTS, this study does not offer new policy options. As mentioned in Chapter 4, the Commission is currently undertaking an impact assessment of the possible option of creating an EU TFTS. This is not yet published at the time of writing. The literature discusses this option extensively, and interviewees indicated that the next steps would be taken in light of the impact assessment. As discussed in Chapter 4, due to relevant data not being publicly available, it is not possible to verify claims of the TFTP's effectiveness. An option to address this gap is for the TFTP's regular reviews to substantially enhance their discussion of the programme's results, accompanied with corroborating evidence.

**Make available information on which the TFTP can be assessed.** A second possible step is to intensify pressure by oversight bodies (e.g. the EP, the Ombudsman) to make more data publicly available, on the basis of which it would be possible to better ascertain the *actual* (as opposed to *claimed*)<sup>84</sup> effectiveness of the programme. Although not mentioned in the literature or by interviewees, the new Europol regulation may represent an opportunity in this regard, given the new oversight arrangements for an agency and the role of the EP, EDPS<sup>85</sup> and Europol Joint Parliamentary Scrutiny Group.

The ability to better assess the effectiveness of the TFTP is crucial for decisions about its continuation and potential modifications as well as about any need to establish an EU TFTS, which may contribute to a closing of gaps in the coverage of existing tracking instruments.

### Does it require new legislation? Does the EU have the competence to act?

The Commission's mandate to explore the development of an EU TFTS is provided for in the EU-US TFTP agreement. EU action in this area is based on Articles 82 and 87 TFEU.

### What is the possible EU added value?

The added value of EU action in this area lies in the verification of the effectiveness of existing tracking mechanisms, which would in turn yield information for future policy making in this area. The review of the TFTP and the establishment of an EU TFTS cannot be undertaken at the national level.

<sup>84</sup> The discrepancy between claims of effectiveness and inability to verify these claims is discussed in De Goede & Wesseling (2017).

<sup>85</sup> One interviewee noted that the EDPS has already conducted one inspection of Europol, although the results are not publicly available.

### **What are the possible challenges or limitations to this option?**

The principal limitation of this policy option is that it may be difficult to achieve greater transparency for the TFTP. This is exemplified by the fact that US as well as some EU authorities have successfully resisted oversight-related requests even in the face of the European Parliament's calls for the programme to be suspended (Wesseling 2016).

With respect to the establishment of an EU TFTS, it is possible that it does not meet the necessity and proportionality test regarding infringements of fundamental rights. In other words, the objectives of a European tracking system may be met by other means or the benefits of an EU TFTS may not be proportionate to the level of effort and cost required. The privacy and data protection concerns were discussed in detail in Chapter 4, but it is worth reiterating that a 2013 assessment did not find the need to establish such a system (Becker 2013). Any eventual reversal on that front will have to clearly demonstrate how the underlying considerations have changed. In the absence of more data on the functioning and effectiveness of the TFTP, there is a risk that a decision regarding an EU TFTS will be made without due scrutiny and oversight.

## **VII – Summary**

This chapter has set out eleven potential options to address the gaps identified in Chapters 3 and 4. The majority of the policy ideas, drawn from the literature, interviewees and analysis by the research team, primarily involve stepping up the use of existing measures and powers, or ensuring the full implementation of changes and measures already proposed (and in some cases underway).

The majority of the policy options would not need new legislation and simply involve a coordinating and monitoring role for the EU. This reflects the fact that interviewees did not call for major new initiatives or changes, as well as the fact that there are already a significant number of reforms ongoing that may mitigate or partially address the gaps identified.

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## Appendix A: EU competencies

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As a general rule, under the principle of conferral (Article 5(1) TEU) the Union can only act within its competences and when it does not have competence, the member states do (Article 4(1) TEU). In the present context Article 4(2) TEU is relevant: the Union ‘shall respect’ the member states’ ‘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.’ Specifically with regard to internal security, Article 72 TFEU sets out that ‘[the Title on the Area of Freedom Security and Justice] shall not affect the exercise of the responsibilities incumbent upon member states with regard to the maintenance of law and order and the safeguarding of internal security.’ These provisions confirm that the use of coercive measures in order to enforce measures adopted under the Area of Freedom, Security and Justice is a reserved competence of the member states, in particular as regards arrest, detention and the use of force (Peers 2011, 27). The principle of sincere cooperation may even oblige member states to take enforcement measures that the Union cannot.<sup>86</sup> However, other more specific and express limitations of Union competence on security issues in the Treaties confirm that Article 72 TFEU should not be read as excluding specific Union actions in the absence of such a specific limitation.<sup>87</sup> Article 73 further expresses that member states may organise cooperation on matters of national security amongst themselves. This provision only preserves a *parallel* competence of the member states. It does not exclude cooperation measures adopted by the Union regarding national security.<sup>88</sup>

The rest of this appendix sets out the Union’s competences to legislate, conclude international agreements, adopt frameworks for member state cooperation, and set up common capabilities and systems that support the member states in their efforts as well as the institutional capacities to oversee the Union counter-terrorism strategy.

The Treaties vest the Union with a number of **legislative competences** that allow it to adopt specific legal acts that either specifically address counter-terrorism or may at least also serve the fight against terrorism. Firstly, pursuant to **Article 83(1) TFEU**, the EU is competent to adopt directives defining criminal offences and sanctions in the areas of particularly serious crimes, including terrorism and organised crime. An example is the Directive on combating terrorism,<sup>89</sup> which replaces the existing Council Framework Decision 2002/475/JHA with regard to those member states bound by this Directive.

Secondly, **Articles 75 TFEU and 215(2) TFEU** are two specific legal bases that allow the Union to adopt restrictive measures (counter-terrorist sanctions). For the past 15 years, the Union has been adopting both autonomous counter-terrorist sanctions and transposing UN freezing measures (Eckes 2009).<sup>90</sup> Until now all EU sanctions, whether autonomous or giving effect to UN Security Council Resolutions, have been based on Article 215 TFEU and its predecessor.<sup>91</sup> Article 75 TFEU has thus never been used as a legal basis for the adoption of counter-terrorist sanctions. In 2010, Parliament challenged the choice of Article 215 TFEU for EU sanctions giving effect to UN Security Council Resolutions.<sup>92</sup> It argued that the correct legal basis would have been Article 75 TFEU, which provides

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<sup>86</sup> C-186/98, *Criminal proceedings against Maria Amélia Nunes, Evangelina de Matos*.

<sup>87</sup> See also Peers (2011), 28.

<sup>88</sup> Ibid.

<sup>89</sup> (EU) 2017/541, OJ L 88, 31.3.2017, 6–21

<sup>90</sup> For more recent developments see Eckes (2014; 2018, forthcoming).

<sup>91</sup> The express competence for restrictive measures against persons rather than third states was introduced by the Lisbon Treaty, but the Union had been adopting such sanctions on the state sanctions competence before.

<sup>92</sup> Case C-130/10, *Parliament v. Council*, Judgment of 19 July 2012.

for the adoption of counter-terrorist sanctions as part of the Area of Freedom, Security and Justice and pursuant to the ordinary legislative procedure. A textual analysis of the Treaties does not allow a clear delimitation between the two possible legal bases for EU counter-terrorist sanctions (Eckes 2012, 120-23). However, much speaks in favour of using Article 75 TFEU, with its stronger democratic legitimisation through the involvement of the Parliament, in particular for autonomous EU counter-terrorism sanctions.

Thirdly, the Union can adopt legislative acts that also serve the fight against terrorism based on its competences to adopt rules on the internal market (**Article 114 TFEU**, in combination with a specific legal basis in Part III of the TFEU). An example is Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing.<sup>93</sup>

Fourthly, **Articles 82 and 87 TFEU** are legal bases that allow the Union to adopt legislative measures that also govern situations relevant to the fight against terrorism. **Article 82(2) TFEU** allows the Union to adopt minimum rules for judicial cooperation in criminal matters. Article 82(2) (c), for example, vests the Union with the competence to establish minimum rules concerning the rights of victims of crime, including terrorist acts. The Union has in different contexts expressed its particular concern for procedural safeguards in the context of terrorism cases.<sup>94</sup> The Commission further adopts Action Plans (EC 2016d), which set out its own agenda to put forward both legislative and soft measures and calls on member states to take particular action.

The EU is therefore competent to harmonise substantial criminal law, for example the definition of offenses (Article 83(1) and (2) TFEU), and procedural standards, for example procedural rights (Article 82(2) TFEU).<sup>95</sup>

Beyond this, the EU is also competent to create a **legal framework for cooperation**, to facilitate member state cooperation. **Article 82(1) TFEU** allows the Union to adopt measures that facilitate judicial cooperation between member states, including with a view to fighting terrorism. Cornerstones of judicial cooperation are the European Arrest Warrant (EAW) and the European Investigation Order (EIO), both of which are relevant to terrorism investigations. A prominent example for an **Article 87 TFEU** measure facilitating cooperation of police authorities is the EU Passenger Name Record (PNR) Directive, which is the legal basis for systematic collection, use and retention of airline passengers' personal data, including travel dates and itineraries, contact details and payment information.<sup>96</sup>

The EU is further competent to adopt **international agreements** pursuant to the procedure in Article 218 (6)(a)(v) TFEU in combination with the specific substantive legal bases mentioned above. This includes agreements aimed at fighting the financing of terrorism. A prime example is the EU-US agreement on access to transfer of financial data in the framework of the US Terrorist Finance Tracking Program (the 'TFTP Agreement'), which entered into force in 2010, and the Passenger Name Records agreements with the US, Canada and Australia.

Moreover, the EU is competent to set up common capabilities and systems, notably including data information systems. Core examples are SIS, VIS, EU PNR, and Eurodac. The EU must respect the existing legal frameworks for these information systems, including their specific rules on data protection, access for competent authorities, separate purpose limitation for each category of data and dedicated data retention. Within these existing legal frameworks, the EU is competent to take measures aimed to improve the effectiveness of the information systems, including their

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<sup>93</sup> See also the Commission proposal to amend the existing legislation (EC 2016j).

<sup>94</sup> See, for example, the Commission's Green Paper on the Presumption of Innocence (EC 2006).

<sup>95</sup> See, for example, Directive (EU) 2016/343 of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings (OJ 2016 L 65/1).

<sup>96</sup> The PNR Directive is based on a combined legal basis of Articles 82(1)(d) and 87(2)(a) TFEU.

interoperability. As a matter of principle, the Union is also competent to adopt legislation that makes mandatory the uploading of data into common systems.<sup>97</sup>

The EU is further competent to provide **financial support** to member states to improve internal security, such as via the Internal Security Fund, and this support can be used to fight terrorism. Other examples of support that feature a counter-terrorism element include the Radicalisation Awareness Network, ATLAS (a network of rapid intervention forces) and Airpol (the airport police network). The EU also works together with member states and stakeholders in expert groups covering, for example, chemical, biological, radiological and nuclear threats, and precursors.

More generally, the Union is competent and required to **consider internal security matters in all policy areas**, whether or not it takes legislative actions. Examples of policies in which this particularly pertinent are transport and energy.

Finally, **EU agencies** such as Europol and Eurojust, as well as threat assessment bodies, notably IntCen (the EU Intelligence and Situation Centre, now part of the European External Action Service) have the competence and mandate to support member states in their efforts to counter terrorism, in particular by acting as hubs for information exchange and making relevant information accessible in a simple and timely manner.

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<sup>97</sup> See, for example, the recent call of the Council on the Commission to adopt such legislation for the database of False and Authentic Documents Online (FADO) in the Conclusions of the Justice and Home Affairs Council, 27-28/03/2017.

## Appendix B: Technical summary of the quantitative analysis

Chapter 2 of this report provides an overview of the different types of impacts of terrorism and counter-terrorism measures at different levels (affecting individuals, communities and countries as a whole). This appendix provides the technical details for the empirical analyses conducted. Based on evidence collected from previous research we developed a quantitative analytical framework, similar to the one established by Sandler et al. (2011), to analyse the current impact of terrorism in Europe. Specifically, the empirical approaches to estimate the following impacts are described in detail:

- Human and physical capital
- Economic
- Psychological
- Public expenditure.

Firstly, using a similar approach to that applied by the Institute for Economics and Peace (IEP) in the calculation of the Global Terrorism Index, we estimate the human cost of terrorism in the form of lost lives and injuries, as well as the loss of physical capital in the form of property damages. Secondly, using econometric modelling techniques we quantify the impact of terrorism on economic output within the EU by looking at the effect on growth of GDP per capita, as well how terrorism may affect the tourism sector. In addition, we examine the relationship between terrorism and FDI. Thirdly, even though more difficult to quantify, we analyse the potential psychological effects of terrorism, measured as associations between terrorism and outcome variables such as life satisfaction, general happiness, perceived feeling of security and interpersonal trust. Note that while we focus specifically on these areas due to data availability, that does not imply other impacts are not important. Chapter 2 highlighted that counter-terrorism measures can infringe upon an individual's fundamental rights, but such effects are relatively hard to quantify due to a lack of publicly available data; nevertheless, Chapter 2 describes the various impacts in a qualitative manner. Finally, given the lack of publicly available data on public expenditure on counter-terrorism measures for most of the countries of the EU, we apply a rough estimation using parameters for the United States.

For the empirical analysis we draw on a variety of different data sources. Most importantly, to assess the impact of terrorism we rely on one specific indicator of terrorist activity. In what follows we describe in more detail different publicly available terrorism datasets. This is followed by a technical description of the empirical estimation of the different types of terrorism impact described above.

### I – Terrorism event data

#### How is terrorism measured?

Different datasets are available, covering terrorism events worldwide. In this section we briefly describe these datasets and explain why this study focuses on one dataset specifically, namely the GTD, while highlighting its strengths and limitations.

The first ever terrorism event dataset available publicly to researchers was established in the beginning of the 1980s, the so-called International Terrorism: Attributes of Terrorist Events (ITERATE) project (Duke University Libraries n.d.). ITERATE includes only transnational terrorist attacks, defined as when an incident in the venue country includes perpetrators or victims of another country. For example, if a terrorist attack in the UK is perpetrated by terrorists from another country, then the incident is defined as transnational; and when, for instance, a terror attack in Spain, perpetrated by a domestic terrorist group such as ETA, harms a German citizen, the attack is also classified as transnational. ITERATE covers the years 1968 to 2012 and provides many different variables related to each terror incident, including the attack type, the perpetrators, number of deaths and injuries, etc. The earlier empirical studies on the impact of terrorism were mainly conducted with ITERATE, since it was the most extensive dataset on terrorism events during the 1980s and 1990s.

(Sandler 2015). Another comprehensive dataset on terrorism events used in empirical research is the RAND Database of Worldwide Terrorism Incidents, which currently includes data for the years 1968 to 2009, but has not been updated recently (RAND n.d.). For the years 1968 to 1997, only transnational terror incidents are recorded, but after 1998 the data distinguishes between domestic and transnational incidents.

A third database is the GTD, which also includes both national and transnational terror incidents (Global Terrorism Database, n.d.). Due to its detailed coverage and the inclusion of many different relevant variables, the GTD has become the preferred dataset for empirical research in the area of terrorism and it is the one that this study uses.

The GTD defines a terrorist attack as '*the threatened or actual use of illegal force and violence by a non-state actor to attain a political, economic, religious, or social goal through fear, coercion, or intimidation.*' In essence, in order to consider an incident for inclusion in the GTD, all three of the following attributes must be present:

1. The incident must be intentional, or in other words the result of a conscious calculation on the part of a perpetrator.
2. The incident must entail some level of violence or immediate threat of violence – including property violence, as well as violence against people.
3. The perpetrators of the incidents must be sub-national actors. The database does not include acts of state terrorism.

In addition, at least two of the following three criteria must be present for an incident to be included in the GTD: 1) the act must be aimed at attaining a political, economic, religious or social goal; 2) there must be evidence of an intention to coerce, intimidate or convey some other message to a larger audience than the immediate victims; 3) the action must be outside the context of legitimate warfare activities (for example the act must lie outside the parameters permitted by international humanitarian law).<sup>98</sup>

Generally, the GTD includes systematic data on domestic, transnational and international terrorist incidents that have occurred over the last 45 years (1970 to 2016). The current database lists more than 150,000 terror incidents. For each incident, there is information on date and location, the weapons used and the nature of the target, as well as the number of fatalities, and the group or individual responsible. Statistical information is based on reports from a variety of publicly available media sources; only credible and verified information is added to the database. One problem, however, is that only those terrorist events reflected in official statistics or reported by the media are included, and the media may only pick up and report on larger attacks or events that happen in larger cities or capitals of countries, whereas attacks in more rural areas may be less likely to be reported. Some argue that focusing on transnational terrorism mitigates the issue of reporting bias, as these types of attack tend to be receive more attention. However, the problem of reporting bias is generally more severe in developing countries (Frey et al. 2007).

### **Terrorism indicators applied in the analysis**

It is important to note that the GTD dataset distinguishes between different incidents that might have occurred during a single terror attack.<sup>99</sup> In previous research a frequently used indicator is the number of terrorist incidents, but simply counting the number of incidents serves to lump together events of different magnitudes. For instance, the 9/11 attack on the World Trade Center would be counted as one incident, and a hostage taking would also count as one incident. It is important, therefore, that the varying intensity of terrorist attacks is measured using other indicators such as the number of fatalities or the number of victims (e.g. Sandler 2015).

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<sup>98</sup> Including the prohibition against deliberately targeting civilians or non-combatants.

<sup>99</sup> For example, the attacks in Paris and Saint Denis on 13 November 2015 are listed as eight incidents in total.

For the purpose of this analysis and to check its robustness, we apply a variety of different terrorism indicators: the total number of terror incidents, the total number of civilians killed by terrorism incidents, and a weighted index that takes into account the total number of civilians killed or injured as well as the total number of terrorism incidents, similar to the Global Terrorism Index compiled by the IEP.<sup>100</sup> Besides weighting the severity of specific terrorist events, some studies also distinguish between the impact of domestic and transnational terrorism, arguing that they may have different effects on the behaviour of agents in an economy (e.g. Sandler 2015). Looking at the breakdown of the prevalence and severity of domestic vs transnational terrorism in Europe in Table 2 (in Chapter 2 of this report), it is evident that the prevalence of domestic and transnational terrorism since 2004 is equal but the latter is on average more severe in terms of casualties and injuries. For instance, from 2004 onwards the GTD database contains 982 domestic terrorist incidents and 1,099 transnational incidents; however, more than 500 people were killed by transnational terrorism vs 48 from domestic terrorism. The difference in the number of people injured by domestic and transnational terrorism is also large (237 vs 4,370). Hence, in the analysis when distinguishing explicitly between domestic and transnational terrorism, the latter may always show stronger effects due to the average severity of the attacks. What is more, transnational attacks carried out by jihadists are becoming more prevalent in Europe, but other forms of terrorism may emerge over the coming years which may have equally severe impacts. Against this background, in what follows we report figures for the overall impact of terrorism activity in Europe and do not specifically distinguish between domestic and transnational terrorism activity.

## **II – The impact of terrorism on human and physical capital**

As discussed in Chapter 2, terrorism can have a detrimental impact on individuals, including direct victims of terrorism, but can also cause significant damage to property or infrastructure. This section describes the methodology applied to estimate the cost of lives lost and injuries due to terrorism, as well as the estimated property damage based on terrorism event data from the GTD database. To compute the human and physical capital cost of terrorism we follow closely the approach taken by the IEP, based on their cost from violence computation. Specifically, the total can be broken down into three main parts:

1. Costs related to deaths
2. Costs related to injuries
3. Costs related to property damage.

### **Costs of lives and injuries**

The IEP uses the GTD to calculate the global costs of terrorism. The economic impact of terrorism is calculated using IEP's cost of violence methodology, which includes different types of costs including lost life-time earnings and the cost of medical treatments. The IEP uses parameters on the cost per homicide and cost per injury that stem from previous research. For each country, it uses GDP per capita to scale these costs and then multiplies them by the number of deaths or injuries resulting from a particular attack, enabling the determination of the average cost of a terror attack depending on its type, the income level of the affected country and the likely damage resulting from it. The calculation is based on information from the GTD database on the terror incidents that occurred in the European Union from 2004 to 2016, including information on the number of dead, the number of injured and the type of attack.

To calculate the cost resulting from deaths and injuries, the IEP uses an estimate of the costs attributable to deaths and violence based on studies by McCollister et al. (2010), who used different methods to estimate both the tangible and intangible costs attributable to violence and homicides. Specifically, their analysis used the 'cost-of-illness' and extent of 'jury compensation' to estimate the

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<sup>100</sup> Institute for Economics and Peace (2015), 108. The total number of fatalities are weighted by a factor of 3; the total number of terrorism incidents are weighted by a factor of 1; and the total number of injuries are weighted by a factor of 0.5.

costs of crime in the United States. Because the jury compensation method attempts to comprehensively take into account both the direct costs of violence and its associated pain and suffering, it is considered to be a more comprehensive measure. It is important to stress that the method does not include punitive damages that may be awarded by US courts in civil cases.

A death was assumed to cost \$8,888,692, while each injury cost \$120,622. The costs were estimated in 2008 and were inflated to 2016 dollars. To do this we used Consumer Price Index (CPI), equal to 100 in 2010, from the World Bank and applied:

$$I_{\frac{U}{2}-2} = \frac{C_{(2008=100)}^U}{100} = \frac{C_{(2010=100)}^U}{C_{(2010=100)}^U}$$

Where  $I_{\frac{U}{2}-2}$  is the inflation in the United States between 2008 and 2016,  $C_{(2008=100)}^c$  is the Consumer Price Index (CPI) equal to 100 in 2008 in country c and for year y, while  $C_{(2010=100)}^c$  is the CPI equal to 100 in 2010 in country c and year y.

We then computed the estimates corrected for inflation in every year and country between 2004 and 2016. Following the IEP methodology, we also scaled the estimates using countries' GDP per capita based on purchasing power parity in current international dollars from the World Bank:

$$E_{\frac{U}{2}-2}^c = E_{\frac{U}{2}-2}^c \times I_{\frac{U}{2}-2} \times \frac{G_{\frac{U}{2}-2}^c}{P_{\frac{U}{2}-2}^c}$$

Where  $E_{\frac{U}{2}-2}^c$  is the estimate of the cost of death or injury in country c in year y and  $G_{\frac{U}{2}-2}^c$  is the GDP based on purchasing power parity in country c and year y.

### Costs of property damage

In addition to the number of fatalities and injuries, the GTD database reports for each incident whether there was property damage, and if so, the extent of that damage on the following scale:

- Catastrophic (likely > \$1bn)
- Major (likely > \$1m but less than \$1bn)
- Minor (likely < \$1m)
- Unknown

The database provides information on the value of the property damage, when available. Where applicable, property values reported in foreign currencies are converted to US dollars before being entered into the database. The amount is expressed in US dollars at the time of the incident.

The cost of the damage is likely to vary according to the type of attack, the extent of the property damage and the level of income of the country. The IEP methodology suggests ignoring attacks where information on those three parameters is missing, and then computing the matrix of damages for each by taking the mean of available amounts. In our analysis we used only European Union observations from between 2004 and 2016 and for which property damage values were available. We classified countries by their income as follows:

- Low income: GDP per capita (constant 2010 US dollars) ≤ \$15,000
- Medium income: \$15,000 ≤ GDP per capita (constant 2010 US dollars) ≤ \$35,000
- High income: GDP per capita (constant 2010 US dollars) > \$35,000

We inflated each observation to 2016 dollars to make them comparable. By taking conditional means of available observations we obtained the figures in Table A1, which highlights the estimated cost per type of attack.

Table A1. Estimation of property damages by type of attack

Type of attack	Extent of the property damage	Level of income of the country	Estimate of property damage (\$)	Estimate of property damage (€)
<b>Bombing/explosion</b>	Catastrophic	Medium	\$2,959,980,984.36	€2,675,822,809.86
<b>Armed assault</b>	Major	Medium	\$92,460,673.68	€83,584,449.00
<b>Bombing/explosion</b>	Major	Medium	\$74,954,462.73	€67,758,834.31
<b>Hostage taking (barricade incident)</b>	Major	Medium	\$41,892,632.18	€37,870,939.49
<b>Facility/infrastructure attack</b>	Major	Medium	\$12,666,731.60	€11,450,725.37
<b>Unknown</b>	Major	Medium	\$6,674,906.73	€6,034,115.68
<b>Bombing/explosion</b>	Major	High	\$3,569,789.96	€3,227,090.13
<b>Facility/infrastructure attack</b>	Major	High	\$1,680,937.50	€1,519,567.50
<b>Bombing/explosion</b>	Minor	Low	\$1,011,272.55	€914,190.39
<b>Facility/infrastructure attack</b>	Minor	Low	\$824,548.78	€745,392.10
<b>Facility/infrastructure attack</b>	Minor	High	\$225,404.18	€203,765.38
<b>Facility/infrastructure attack</b>	Minor	Medium	\$212,898.74	€192,460.46
<b>Hostage taking (barricade incident)</b>	Minor	Medium	\$212,667.31	€192,251.25
<b>Hostage taking (kidnapping)</b>	Minor	Medium	\$203,797.69	€184,233.11
<b>Armed assault</b>	Minor	High	\$159,513.82	€144,200.49
<b>Assassination</b>	Minor	Low	\$156,131.47	€141,142.85
<b>Armed assault</b>	Minor	Medium	\$141,230.98	€127,672.80
<b>Bombing/explosion</b>	Minor	Medium	\$139,354.54	€125,976.50
<b>Unknown</b>	Minor	Medium	\$91,675.45	€82,874.61
<b>Hijacking</b>	Minor	Medium	\$83,291.23	€75,295.27
<b>Bombing/explosion</b>	Minor	High	\$75,098.62	€67,889.15
<b>Assassination</b>	Minor	Medium	\$43,926.95	€39,709.97
<b>Armed assault</b>	Minor	Low	\$35,922.31	€32,473.77
<b>Unarmed assault</b>	Minor	Low	\$3,189.24	€2,883.07
<b>Unarmed assault</b>	Minor	Medium	\$621.59	€561.91

We then replaced missing information with the estimates from Table A1 when property damage was acknowledged but no value estimation was available. We used the average exchange rate in 2016 computed by the OECD to convert the total cost from dollars to euros. The cost of property damage was then added to the cost from deaths and injuries to derive an estimate of the costs of terrorism per year and per country.

Table A2. Estimated human and physical capital cost of terrorism in the EU-28

Member state	2004–2016 (€m)			2013–2016 (€m)		
	Cost of fatalities	Cost of injuries	Property damage	Cost of fatalities	Cost of injuries	Property damage
Austria	7.5	1.1	2.4	0.0	0.2	1.0
Belgium	304.1	27.8	0.3	296.5	27.7	0.0
Bulgaria	23.3	1.2	3.9	0.0	0.0	1.8
Croatia	0.0	0.1	1.0	0.0	0.1	0.0
Cyprus	0.0	0.0	76.8	0.0	0.0	1.8
Czech Republic	10.8	1.8	1.6	10.8	0.1	1.6
Denmark	16.1	0.9	0.6	16.1	0.5	0.6
Estonia	4.5	0.0	0.3	0.0	0.0	0.3
Finland	0.0	0.2	3.9	0.0	0.1	3.7
France	1802.9	85.6	45.1	1722.4	81.5	7.6
Germany	251.4	18.2	17.8	209.8	15.8	16.9
Greece	40.5	3.5	80.0	13.4	0.9	18.6
Hungary	7.6	0.1	1.9	0.0	0.1	1.1
Ireland	19.9	0.8	2.9	11.0	0.6	2.2
Italy	19.2	2.2	2.9	6.1	0.8	1.4
Latvia	0.0	0.0	0.0	0.0	0.0	0.0
Lithuania	0.0	0.0	0.0	0.0	0.0	0.0
Luxembourg	0.0	0.0	0.0	0.0	0.0	0.0
Malta	0.0	0.0	0.3	0.0	0.0	0.3
Netherlands	73.2	1.9	2.2	8.1	0.3	1.5
Poland	0.0	0.1	0.0	0.0	0.1	0.0
Portugal	0.0	0.0	0.4	0.0	0.0	0.0
Romania	0.0	0.0	0.0	0.0	0.0	0.0
Slovak Republic	0.0	0.1	0.0	0.0	0.1	0.0
Slovenia	0.0	0.0	0.0	0.0	0.0	0.0
Spain	1178.9	163.7	581.1	0.0	0.4	1.9
Sweden	39.3	0.9	12.6	31.4	0.6	9.6
United Kingdom	523.8	88.5	59.6	92.9	9.2	31.2
EU-28	4323.2	398.5	897.6	2418.5	139.2	103.0

The total costs related to fatalities and injuries caused by terrorism in the EU since 2004 amount to about €4.7bn and the estimated property damage to about €898m. More than half the cost of fatalities and injuries occurred since 2013 (about €2.5bn).

### III – The impact of terrorism on economic output, foreign direct investment and tourism

The aim of this part of the analysis is to investigate the relationship between terror risk and economic growth, as well as to identify the corresponding pathways through which terrorism affects growth. While the effect of terrorist incidents on economic output has been investigated before, even for a sub-sample of Western European countries (Gaibullov & Sandler, 2008), a recent and comprehensive analysis for the EU-28 member states is absent and we aim to bridge that gap. In addition, previous research has identified that terrorism may negatively affect FDI but the effects may be more relevant for countries with a persistent and large-scale terrorism and conflict problem; here we also examine whether the negative effect holds true when solely looking at EU member states. Finally, previous research suggests that specific sectors such as tourism could be hit the hardest by terrorism attacks.

Using data from Eurostat on the number of arrivals of non-residents at hotel and similar accommodations, we empirically investigate this as well.

### The impact of terrorism on economic growth

Similarly to Blomberg et al. (2004), Llusà & Tavares (2010) and Gaibulloev & Sandler (2008), we examine the relationship between terror risk and economic growth using panel data for European countries from a variety of different data sources. Specifically, we complement the GTD data on terrorism activity with country-level economic data provided by the Penn World Tables (PWT). The PWT is one of several workhorse databases in macroeconomic research and they have been applied in previous research that examined the link between terrorism and economic activity (e.g. Gaibulloev & Sandler 2008). It includes economic activity measures such as real GDP at constant prices, population data, the level of investment, government expenditure, as well as household consumption, and so on. For the purpose of this analysis we focus on a balanced panel dataset of 28 EU member states plus Norway, Switzerland and Iceland, for the time period 1990–2014.<sup>101</sup>

In order to examine the impact of terrorism on economic growth, we estimate a growth equation with a country's GDP growth rate per capita as outcome variables for country  $i$  at time  $t$  and measures of terror risk and other control variables that can explain a country's growth rate. Specifically, we consider the following empirical specifications:

$$g_{it} = \beta_0 + \beta_1 h_{it-1} + \beta_2 h_{it-1} \left(\frac{I}{G}\right)_{it} + \beta_3 h_{it-1} \left(\frac{G}{G}\right)_{it} + \beta_4 h_{it-1} \left(\frac{C}{G}\right)_{it} + \beta_5 h_{it-1} o_{it} + \beta_6 T_{it} + \beta_7 X_{it} + \delta_i + \gamma_t + \varepsilon_{it} \quad (1)$$

Where:

- $h_{it-1}$ : represents the initial level of income per capita from the previous year as an essential determinant of economic growth.
- $h_{it-1} \left(\frac{I}{G}\right)_{it}$ : represents the level of private investment as share of total GDP or the so-called investment share. It is generally assumed that higher shares of capital accumulation are needed for economic growth.
- $h_{it-1} \left(\frac{G}{G}\right)_{it}$ : represents the level of government expenditure as share of total GDP.
- $h_{it-1} \left(\frac{C}{G}\right)_{it}$ : represents the level of household consumption as share of total GDP.
- $h_{it-1} o_{it}$ : represents the degree of trade openness as measured by the ratio of the sum of all imports and exports to total GDP.
- $T_{it}$ : represents an indicator of terrorism, such as total number of incidents, fatalities or injuries per capita (million).
- $X_{it}$ : represents a vector of additional control variables that are related to economic growth, including the total number of employed people, a measure of human capital in the economy, level of inflation as well as the level of total factor productivity. It also includes an indicator variable taking the value 1 in the year the country joins the EU.
- $\delta_i, \gamma_t$ : represent country-specific fixed effects and year fixed effects. Both control for time-invariant effects specific to a country and the time effects control for potential macro-trends common across all countries.

Furthermore, in order to account for the impact of terrorism on growth, investment, government expenditure, household consumption and trade, we estimate the following models:

<sup>101</sup> Note that the Penn World Tables data covers the years 1950 to 2014, but comparable and non-missing data for some of the newer member states such as the Czech Republic is only available from 1990.

$$h\left(\frac{I}{G}\right)_{it} = \alpha_0 + \alpha_1 h y_{it-1} + \alpha_2 h\left(\frac{G}{G}\right)_{it} + \alpha_3 h\left(\frac{C}{G}\right)_{it} + \alpha_4 h o_{it} + \alpha_5 T_{it} + \alpha_6 X_{it} + \delta_i + \gamma_t + \varepsilon_{it} \quad (2)$$

$$h\left(\frac{G}{G}\right)_{it} = \alpha_0 + \alpha_1 h y_{it-1} + \alpha_2 h\left(\frac{I}{G}\right)_{it} + \alpha_3 h\left(\frac{C}{G}\right)_{it} + \alpha_4 h o_{it} + \alpha_5 T_{it} + \alpha_6 X_{it} + \delta_i + \gamma_t + \varepsilon_{it} \quad (3)$$

$$h\left(\frac{C}{G}\right)_{it} = \alpha_0 + \alpha_1 h y_{it-1} + \alpha_2 h\left(\frac{I}{G}\right)_{it} + \alpha_3 h\left(\frac{G}{G}\right)_{it} + \alpha_4 h o_{it} + \alpha_5 T_{it} + \alpha_6 X_{it} + \delta_i + \gamma_t + \varepsilon_{it} \quad (4)$$

$$h o_{it} = \alpha_0 + \alpha_1 h y_{it-1} + \alpha_2 h\left(\frac{I}{G}\right)_{it} + \alpha_3 h\left(\frac{G}{G}\right)_{it} + \alpha_4 h\left(\frac{C}{G}\right)_{it} + \alpha_5 T_{it} + \alpha_6 X_{it} + \delta_i + \gamma_t + \varepsilon_{it} \quad (5)$$

In doing so, the estimates of equations (2) to (5) aim to isolate terrorism's role in, for instance, potentially crowding out investment and increasing government spending, which has been demonstrated by Gaibullov & Sandler (2008).

Regarding the measures of  $T_{it}$ , we apply different variables in the analysis. Previous research has often used the number of terrorism incidents per country as the main terrorism indicator. However, that approach does not take into account the severity of the incidents with regard to human costs. For instance, some argue that one could assume that a single incident with 192 fatalities may have a larger effect on the behaviour and reaction of agents in an economy than 10 small-scale incidents without any fatalities. However, nowadays even small-scale attacks are featured prominently to a wide audience through various (social) media channels immediately after the incident. Hence, to accommodate both the severity of attacks and their frequency simultaneously, we use a weighted terrorism index based on the total numbers of civilians killed and/or injured and the total number of incidents per year in each country. Similarly to the Global Terrorism Index (GTI) calculated by IEP, we give the total number of civilian fatalities a weighting factor of 3, the total number of incidents a weighting factor of 1 and the total number of civilian casualties a weighting factor of 0.5. Furthermore, in line with other empirical studies estimating the impact of terrorism (e.g. Lusa & Tavares 2010; Gaibullov & Sandler 2008) the different terror indicators are divided by the population of each country in each year.

### Empirical results

Table A3 reports the findings from estimating equation (1) with ordinary least squares (OLS). Column 1 suggests that the total number of terror incidents by year is adversely associated with economic growth. Each terror incident per million population decreases economic growth on average by 0.16 percentage points in a given year. However, while the point estimate is negative, it is not statistically significant. Column 2 uses the number of civilians killed per million population per year as the terrorism indicator and shows that, on average, as more people are killed by terrorist attacks, economic growth suffers. For every additional person per million population killed, economic growth in a given year is reduced by about 0.13 percentage points. This effect is statistically significant at the 0.01 level.

Table A3. Terrorism and economic growth

	(1)	(2)	(3)	(4)
	Outcome variable: growth GDP per capita			
<b>Incidents</b>	-0.1614			
se	(0.172)			
<b>Fatalities</b>		-0.1321		
se		(0.028)***		
<b>Index</b>			-0.0399	-0.0880
			(0.011)***	(0.043)**
Observations	744	744	744	1,032
R-squared	0.6739	0.6754	0.6754	0.5302

Note: Clustered standard errors in parentheses (country);\*\*\*  $p < 0.01$ , \*\*  $p < 0.05$ , \*  $p < 0.1$ . Outcome variable is growth of GDP per capita and terrorism explanatory variable includes the number of terror incidents per capita (million), the total number of fatalities per capita (million) and a weighted index based on the total number of fatalities, injuries and incidents (=sum of 3\*fatalities, 1\*incidents and 0.5\*injured) index per capita (million). Other control variables included in each model specification are total factor productivity, total employment, investment share, government share, household consumption share, openness, inflation, population growth, a dummy taking the value one in the year the country joins the EU and country and year fixed effects. The parameters presented in columns (1) to (3) are estimated on a sample of 28 EU member states plus Norway and Switzerland. The parameters reported in column (4) are based on a sample of the Council of Europe member countries.

Furthermore, using a weighted terrorism index taking into account the severity and frequency of terror incidents within a given year, column 3 also shows that terrorism is negatively associated with economic growth. For instance, on average, one additional unit increase of the index leads to a reduction in economic growth that year by about 0.04 percentage points, with the effect significant at the 0.01 level. Overall, the parameter estimates reported in columns (1) and (2) are slightly lower in magnitude than those reported in Gaibullov & Sandler (2008) for 18 Western European countries and for an earlier period. In column (4) we extend the sample to include Council of Europe member states; the parameter estimate for the terrorism index also suggests a negative association between terrorism activity and economic growth. However, compared to the parameter estimate presented in column (3), the magnitude of the effect is larger (on average one unit increase in the index leads to a decrease in growth of 0.09 percentage points).

Table A4 reports the same findings but including lags.

**Table A4. Terrorism and economic growth, including lags**

	(1)	(2)	(3)	(4)
Outcome variable: growth GDP per capita				
<b>Index</b>	<b>-0.0399</b>	<b>-0.0399</b>		
se	(0.011)***	(0.011)***		
<b>Index (lag)</b>		-0.0009		
se		(0.013)		
<b>Fatalities</b>			<b>-0.1321</b>	<b>-0.1316</b>
se			(0.028)***	(0.028)***
<b>Fatalities (lag)</b>				0.0063
se				(0.031)
Observations	744	744	744	744
R-squared	0.68	0.68	0.68	0.68

Note: clustered standard errors in parentheses (country);\*\*\*  $p < 0.01$ , \*\*  $p < 0.05$ , \*\*\*  $p < 0.1$ . Outcome variable is growth of GDP per capita and terrorism explanatory variable includes the total number of fatalities per capita (million) and a weighted index based on the total number of fatalities, injuries and incidents (=sum of 3\*fatalities, 1\*incidents and 0.5\*injured) index per capita (million). Other control variables included in each model specification are total factor productivity, total employment, investment share, government share, household consumption share, openness, inflation, population growth, a dummy taking the value one in the year the country joins the EU and country and year fixed effects. The parameters presented in columns (1) to (3) are estimated on a sample of 28 EU member states plus Norway and Switzerland. The parameters reported in column (4) are based on a sample of the Council of Europe member countries.

Interestingly, using various lags of the terrorism indicator variables, similar to previous studies, our findings suggest that the effect of terrorism on economic growth is relatively short term and only applies in the year of the incident. This is, of course, conditional on growth in the previous year. As reported in Table A4, for instance, an attack in the previous year tends not to affect growth in the current year, independent of the terrorism indicator used in the analysis.

#### **Robustness check: instrumental variable approach**

While the model specifications presented in Table A3 already control for many factors that could explain economic growth alongside terrorism activity, there still could be an issue of reverse causality, which would occur if the prevalence of terrorism is spurred by economic growth. While previous research has confirmed that this is unlikely to be the case, for robustness we nevertheless try to address this issue. To that end, we follow previous studies that have applied a so-called instrument variable (IV) approach, which aims to find a variable that is correlated with terrorism but not economic growth and hence exploit exogenous variation for the terrorism indicator (see, for example, Sandler 2014 for more detail) to identify the effect. Generally, it is not straightforward to find suitable instruments in empirical research. We follow closely the IV approach applied in previous research and use previous levels of terrorism in a country as predictor of current terrorism (see, for example, Tavares 2004).

In order to check whether reverse causality is a potential issue when investigating the link between terrorism and economic growth, we estimated equation (1) but reversing terrorism and growth as explanatory or independent variables and find that while terrorism explains variation in growth as reported in Table A3 the reverse does not hold. In addition, we use the 'stock' of terrorism as a potential IV to explain current levels of terrorism. The stock is defined as the cumulative level of terrorism over the last 5 years. Column (1) of Table A5 shows that the stock of terrorism has no direct effect on growth per capita across the countries in our sample.

**Table A5. Terrorism and economic growth across 28 EU member states (instrument variable approach)**

	(1) OLS Growth	(2) IV: First Stage Index	(3) IV: 2SLS Growth
<b>Index (stock)</b>	0.0003	-0.056	
<i>se</i>	(0.0007)	(0.0259)**	
<b>Index</b>			-0.048
<i>se</i>			(0.0025)**
<b>Observations</b>	<b>744</b>	<b>744</b>	<b>744</b>

Note: clustered standard errors (*se*) in parentheses (country);\*\*\*  $p < 0.01$ , \*\*  $p < 0.05$ , \*  $p < 0.1$ . The IV is the 'stock' of previous terrorism activity measured as the cumulative terrorism index over the past 5 years. Column (1) reports the separate effect of the stock of terrorism on growth. Column (2) shows the first stage of the 2SLS regression showing the association between the stock of terrorism and the contemporaneous yearly effect of terrorism activity. Column (3) shows the effect of the instrumented terrorism victim indicator on economic growth. Other control variables included in each model specification are total factor productivity, investment share, government share, household consumption share, openness, inflation, population growth, a dummy taking the value one in the year the country joins the EU and country and year fixed effects. The F-statistics in the first stage is 15.9.

Column (2) shows that the stock of terrorism is statistically significantly correlated with the contemporaneous level of terrorism, conditional on public expenditure, including spending on military and security. Column (3) shows the two-stage least squares (2SLS) IV estimator, which suggests and confirms the findings presented in Table A3– that terrorism reduces economic growth. The parameter suggests that growth of GDP per capita is reduced by roughly about 0.048 percentage points by each unit increase of the terrorism index. Overall, the F-statistic from the first stage regression is 15.9, suggesting that the general problem of weak instruments (e.g. instruments that are not strongly correlated with the endogenous variable) can be neglected (the threshold for weak instruments is assumed to be 15).

Overall, the findings are robust against the issue of reverse causality and terrorism seems to have a tangible but small negative effect on economic growth across EU member states.

#### Pathway for how terrorism affects economic output

Table A6 reports the findings from estimating equations (2) to (5) for the potential pathways for how terrorism might be associated with growth.

**Table A6. Terrorism and the pathways to economic growth**

Outcome variables:	(1) ln(investment share)	(2) ln(consumption share)	(3) ln(government share)	(4) ln(export share)	(5) ln(import share)	(6) ln(open)
<b>Index</b>	-0.0007	0.0002	-0.0000	0.0011	0.0008	0.0013
<i>se</i>	(0.0001)***	(0.0001)*	(0.0001)	(0.0006)*	(0.0005)	(0.0006)**
Observations	744	744	744	744	744	744
R-squared	0.76	0.87	0.92	0.91	0.91	0.92

Note: clustered standard errors (*se*) in parentheses (country);\*\*\*  $p < 0.01$ , \*\*  $p < 0.05$ , \*  $p < 0.1$ . Entries in columns (1) to (6) report main parameter estimates of equations 2 to 5 using OLS. Columns (4) and (5) estimate openness ((exports+imports)/GDP) separately for exports and imports. The explanatory variable is a weighted indicator of the total number of fatalities, total number of terror events and total number of injuries (Sum of 3\*fatalities + 1\*incidents +0.5\*injuries) per million population of a country. Other control variables included in each model specification are total factor productivity, investment share, government share, household consumption share, inflation openness and country and year fixed effects.

Column (1) suggests that one unit increase of the terrorism index reduces the share of private investments. By contrast, column (2) suggests that the consumption share is increasing slightly. These

findings suggest that at least to some extent private investment is negatively affected, whereas consumption stays relatively stable or may even increase.<sup>102</sup> The share of government expenditure is statistically significantly affected, which is not surprising given that in light of terrorism attacks, public spending on defence and security tends not to be reduced or cut back, but instead increased. This substitution into potentially less growth-enhancing defence and security expenditures may even harm growth further in the longer run. However, as outlined in Chapter 2, the empirical evidence on the effects of such public expenditure on growth is ambiguous. Columns (4) to (6) show that terrorism is positively associated with an increase in the export and import share of total GDP, although the latter is not statistically significant.

### **Summary of the GDP cost of terrorism in the EU-28**

Using the parameter estimate reported in Table A3 column (3), we can calculate the overall historical economic cost of terrorism in the EU-28 between 2004 and 2016, which is the latest year the GTD database covers. We follow a similar approach to that taken by Sandler and Enders (2011). The first step is to establish the actual economic growth for each country in each year at baseline and then calculate the counterfactual economic growth in each country and year if there would have been no terrorism using the overall level of the terrorism index in each year and the corresponding parameter estimate from column (3) in Table A3. The total cost in GDP is the aggregate of the total economic output lost due to terrorism over a specific time period. In essence, we estimate how much overall economic output would have been in the absence of terrorism between 2004 and 2016 and between 2013 and 2016 and then compare with the baseline (where terror attacks happened). Table A7 reports the aggregate GDP costs related to terrorism for each of the 28 EU member states.

The overall loss in economic output between 2004 and 2016 across the EU is estimated at around €180bn (or about 0.01% of total EU-28 GDP in 2016), of which about €88bn occurred between 2013 and 2016.

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<sup>102</sup> Note that terrorism could have a positive effect on consumption. For instance, seeing a terrorist attack in the news may heighten awareness of one's own mortality. This may trigger an impulse in individuals to save less and consume more in the present (Dholakia 2015).

Table A7. Aggregate historical GDP cost of terrorism in the EU-28 from 2004 to 2016 and from 2013 to 2016

Member state	2004–2016		2013–2016	
	€m	per capita	€m	per capita
Austria	863.0	103.0	166.7	19.9
Belgium	7,829.4	721.1	7,627.2	702.5
Bulgaria	216.2	29.1	29.9	4.0
Croatia	43.9	10.3	9.9	2.3
Cyprus	862.8	1,071.1	726.8	902.3
Czech Republic	380.6	36.6	176.5	17.0
Denmark	676.8	122.3	551.4	99.6
Estonia	33.9	25.4	22.6	17.0
Finland	481.3	89.9	428.3	80.0
France	43,009.9	665.6	36,089.9	558.5
Germany	19,170.4	234.9	15,567.4	190.7
Greece	10,398.2	945.2	3,403.6	309.4
Hungary	111.2	11.1	28.1	2.8
Ireland	4,339.8	974.0	3,027.0	679.4
Italy	2,212.5	37.4	883.0	14.9
Latvia	0.0	0.0	0.0	0.0
Lithuania	0.0	0.0	0.0	0.0
Luxembourg	0.0	0.0	0.0	0.0
Malta	26.2	63.2	26.2	63.2
Netherlands	1,700.7	102.5	506.7	30.6
Poland	19.1	0.5	19.1	0.5
Portugal	32.7	3.1	0.0	0.0
Romania	8.1	0.4	0.0	0.0
Slovakia	15.2	2.8	15.2	2.8
Slovenia	0.0	0.0	0.0	0.0
Spain	40,798.0	894.9	313.3	6.9
Sweden	2,869.1	306.7	2,397.2	256.2
United Kingdom	43,712.9	699.1	15,784.3	252.4
<b>EU-28</b>	<b>179,811.9</b>		<b>87,800.4</b>	

Note: calculated using parameter estimates on the relationship numbers of victims of terrorism and growth reported in Table A3. The total GDP cost over the specific time period are calculated as the economic output lost at baseline with terrorism compared to a counterfactual scenario where no terrorism attacks would have happened for the specific country under consideration. Note that entries with 0 do not necessarily indicate that no single terror activity was present over the period of 2004 to 2016, but that the activity is not included in the GTD data for some reason.

Generally, the countries most affected by relatively large terrorism attacks, such as Belgium, Spain, France, the UK and Germany, sustain by far the largest losses in GDP. For instance, terrorism has cost Spain, France, and the UK each roughly about €40bn since 2004. Note that these figures include transnational terrorism events, as well as domestic terrorism activity. Whereas for countries like Belgium and France transnational terrorism was mainly responsible for the large cost, for other countries it is mostly domestic terrorism that is relevant. When we look at the loss per capita, for example, countries like Greece, Ireland and Cyprus also sustain relatively larger losses from terrorism, roughly about €1,000 each in total over the 2004 to 2016 period; for all three countries it is mainly domestic terrorism that drives these costs.

At the time the analysis was conducted, the GTD only covered the period up to and including 2016. In 2017, however, there have been a number of high-profile attacks across Europe. For instance, the attacks in Barcelona and Stockholm were extensively covered in the media. In addition, the United Kingdom experienced a wave of severe terror attacks in 2017. But by using information on civilians

killed and injured by attacks provided by media sources and official reports (e.g. for the 2017 Manchester attack, see Chapter 4 for more detail), we have calculated the estimated loss in economic output from terrorism for the UK in 2017.<sup>103</sup> The estimated loss in 2017 caused by five high-profile attacks that were extensively covered in the media (Westminster, Manchester, London Bridge, Finsbury Park and Parsons Green) is estimated to be 0.15 percentage points of economic growth. This corresponds to a loss in economic output of about €3.5bn.<sup>104</sup>

### The effects of terrorism on foreign direct investment

The analysis reported in the previous section showed that terrorism is negatively associated with the investment share. However, existing research has shown that terrorism may be associated specifically with FDI, as a country suspect to a large number of terror events may not be an attractive and secure place to invest. For instance, Abadie & Gardeazabal (2008) have quantified the effect of terrorism on FDI in a cross-sectional analysis including 186 countries. They find that a large increase in terror risk can reduce the net FDI position of a country by up to 5 per cent of a country's GDP on average. To the best of our knowledge no recent analysis has been conducted on the potential impact of terrorism on FDI within the EU.

In order to estimate the associations between FDI and terrorism we use an empirical gravity model. To that end we use the terrorism index applied in the empirical analysis in the previous sub-section based on data from the GTD database, combined with data on bilateral FDI inward flows for each EU member state provided by the OECD for the years 1990 to 2013 (OECD n.d. b),<sup>105</sup> in addition to data from the PWT and an indicator about the depth of free trade agreements (FTAs) between countries from the Design of Trade Agreements (DESTA) Database. Specifically, the analysis is based on the following specification of a gravity model to examine the effect of terrorism on FDI inflows:

$$\ln(I_{i,t}) = \alpha_i + \alpha_t + \beta_1 X_{it} + \beta_2 X_j + \beta_3 C_{i,t} + \beta_4 F_{-d} h_{ij} + \beta_5 T_{it} + \varepsilon_{it} \quad (6)$$

In this equation, the variables are defined as follows:

- $I_{i,t}$  denotes FDI inflows from country  $i$  to country  $j$  at year  $t$ .
- $X_{it}, X_j$  are vectors of characteristics of the host country  $i$  and home country  $j$  at time  $t$ , including being a member of the EU,  $\ln$  GDP (measure for size of national market) and  $\ln$  GDP per capita (measure for a country's wealth).
- $C_{i,t}$  is a dummy variable taking the value 1 if the host country and the home country share the same currency at time  $t$  and zero otherwise.
- $F_{-d} h_{ij}$  is an integer-valued variable for depth of non-EU FTAs based on data from Dür, Baccini & Elsig (2014), called the Design of Trade Agreements (DESTA) Database. This depth-of-trade agreement variable takes on integer values ranging from zero (no FTA) to unity (shallow agreement) to seven (very deep agreement).<sup>106</sup>
- $T_{it}$  is the level of terrorism in country  $i$  measured as the weighted terrorism indicator.

<sup>103</sup> Based on five attacks – Westminster, Manchester, London Bridge and Borough Market, Finsbury Park and Parsons Green – which killed in total 36 civilians and injured 258. As this information does not stem from the GTD database that forms the backbone of the empirical analysis in this study, the results have to be interpreted with caution as there are potentially more terrorism events that have happened during 2017 in the UK that have not gained a high profile in the media.

<sup>104</sup> The total number of civilians killed and injured in the five UK attacks in 2017 under consideration leads to a terrorism index value of 3.7. Together with the estimate of economic growth from Table A3, column (3), this leads to a predicted reduction of economic growth of about 0.15 percentage points. Assuming a 1.5 per cent growth of the UK economy as reported by the Office for Budget Responsibility, this results in an absolute loss of about €3.5bn in 2017.

<sup>105</sup> Note that we include in the data FDI inflows between EU member states as well as inflows to each EU member state from other OECD countries.

<sup>106</sup> The measure of depth represents an additive index combining seven key provisions that can be included in FTAs (see Dür, Baccini & Elsig 2014). The first provision captures whether the agreement foresees that all tariffs (with limited exceptions) should be reduced to zero. The other six provisions capture cooperation that goes beyond tariff reductions, in areas such as services trade, investments, standards, public procurement, competition and intellectual property rights. For each of these areas, it is coded whether the agreement contains any substantive provisions.

- $\alpha_i$  are dyadic fixed effects representing time-invariant country-pair characteristics such as geographical distance and cultural distance (e.g. colonial history, common language).
- $\alpha_t$  are year fixed effects.

Table A8 reports the parameter estimates for  $\beta_5$  estimating equation (6) using OLS. In addition to the contemporaneous terrorism index in the given year we also include one- and two-year lags, as FDI may only adjust with a certain time lag. Overall, the parameter estimates reported in Table A8 columns (1) to (3) suggest that on average there is no statistically significant association between terrorism in the host country  $i$  and inward FDI flows.

**Table A8. The effect of terrorism on FDI**

Outcome variable:	(1)	(2)	(3)
	ln(FDI inflow)		
Index	0.0155 (0.0095)	0.0135 (0.0096)	0.0111 (0.0097)
Index (1 year lag)		0.0101 (0.0095)	0.0082 (0.0093)
Index (2 year lag)			0.0077 (0.0102)
Observations	5,763	5,674	5,572
R-squared	0.81	0.81	0.81

Note: Clustered (country-pair) standard errors (se) in parentheses (\*\*\*)  $p < 0.01$ , \*\*  $p < 0.05$ , \*  $p < 0.10$ ). The model specifications reported in columns (1) to (3) control for country-pair specific fixed effects, year fixed effects,  $\ln(\text{GDP})$ ,  $\ln(\text{GDP per capita})$  for host and home country. In addition, a dummy variable taking the value 1 if two countries share the same currency is also controlled for and a dummy taking the value 1 if the country joins the EU. Zero FDI flows and stocks have been transformed to one plus zero before taking the natural logarithm.

### The effects of terrorism on tourism

As outlined in Chapter 2, tourism has been identified as one of the sectors most adversely affected by terrorism, especially if an attack has been targeted at popular tourism destinations (such as the 2017 Barcelona attack). In order to examine whether the tourism sector in the EU is affected by terrorism, we draw on monthly panel data from Eurostat on arrivals and nights spent of non-residents at tourist establishments, including hotels, holiday and other short-stay accommodation (Eurostat n.d).<sup>107</sup> The data sample includes the years 1990 to 2016 for all EU-28 member states.

Specifically, we examine the association between terrorism and tourism using the following empirical specification:

$$\ln y_{it} = \beta_0 + \beta_1 T_{it} + \alpha_{it} + \delta_m + \varepsilon_{it} \quad (7)$$

Where:

- $\ln y_{it}$  : represents the number of arrivals and nights spend in tourist accommodations of non-residents in country  $i$ , month  $m$  and year  $t$ .
- $T_{it}$  : represents the calculated terrorism index (and corresponding lags) taking into account the number of fatalities, injuries and events in country  $i$  month  $m$  and year  $t$ .
- $\alpha_{it}$  : represents quarter-year ( $qt$ ) effects for country  $i$  which controls for all potential factors that vary by quarter within a specific year, such as quarterly levels of GDP for each country.

<sup>107</sup> We especially use data from *tour\_indm*.

- $\partial_m$ : represents month fixed effects which control for all effects that are common across countries, such as seasonal effects.

Table A9 reports the parameter estimates for  $\beta_1$  using OLS. Column (1) reveals that an increase in terrorism activity (e.g. a one unit increase of the terrorism index) in a given month is associated with a 1.6 per cent reduction of arrivals in tourist accommodations in that month on average, compared to the situation if no terrorism activity had happened. Note that the effect increases along with the severity and/or frequency of the terrorism activity. This drop in arrivals is already lower in magnitude in the following month and vanishes at the latest after 3 months. Thus, in line with previous research, we find that any effect on tourism is short-lived and the situation with regard to arrivals of non-residents normalises within three months on average after any terrorist activity. Column (2) looks not only at the intensive margin (e.g. do people arrive?) but also at the extensive margin (e.g. how long do they stay?) and confirms the findings. There is a drop in nights stayed in the month of the terrorism activity, but the effect slowly fades out and is not prevalent anymore after about three months.

**Table A9. Effect of terrorism on monthly arrivals and nights of non-residents in tourist accommodation (1990–2016)**

Outcome variables:	(1) ln(arrivals)	(2) ln(nights)
Index	-0.0162 (0.0048)***	-0.0228 (0.0072)***
Index (lag month 1)	-0.0078 (0.0054)	-0.0063 (0.0084)
Index (lag month 2)	-0.0012 (0.0050)	-0.0022 (0.0075)
Index (lag month 3)	0.0008 (0.0045)	0.0047 (0.0067)
Observations	6,646	6,811
R-squared	0.9949	0.9906

*Note: clustered standard errors in parentheses (country); \*\*\*  $p < 0.01$ , \*\*  $p < 0.05$ , \*\*\*  $p < 0.1$ . Outcome variable is the total number of arrivals and nights stayed in tourism establishments within a country over time. The terrorism explanatory variable is an index including the total number of fatalities per capita (million) and a weighted index based on the total number of fatalities, injuries and incidents (=sum of 3\*fatalities, 1\*incidents and 0.5\*injured) index per capita (million) in a given month. To take into account other important factors that vary at the quarter-year level for each country such as quarterly GDP, quarterly population or any other specific factors that may vary at the quarterly level within a given country and year we included specific quarter-year by country effects. Other control variables included in each model specification are monthly fixed effects to adjust for seasonality effects of tourism flows. The parameters presented in columns (1) to (2) are estimated on a sample of 28 EU member states for the years 1990 to 2016 using monthly tourism data from Eurostat.*

### Summary of the costs to human and physical capital as well as lost economic output

Based on the empirical approach taken so far we can summarise the overall monetised cost of terrorism to human and physical capital as well as the loss in economic output across the 28 EU member states.

Table A10 summarises the overall cost of terrorism on human and physical capital as well as lost output between 2004 and 2016. In total, EU-28 member states have incurred a loss of about €185bn since 2004, which includes a loss of about €90bn (slightly under half the total figure) since 2013.

Table A10. Estimated total human capital, physical capital and GDP cost by EU member state

Member state	2004–2016 (€m)			2013–2016 (€m)		
	Human and physical capital cost	GDP cost	Total	Human and physical capital cost	GDP cost	Total
Austria	11.0	863.0	874.0	1.2	166.7	167.9
Belgium	332.2	7,829.4	8,161.6	324.2	7,627.2	7,951.3
Bulgaria	28.4	216.2	244.6	1.9	29.9	31.8
Croatia	1.1	43.9	45.0	0.1	9.9	10.0
Cyprus	76.8	862.8	939.5	1.8	726.8	728.6
Czech Republic	14.2	380.6	394.8	12.5	176.5	189.0
Denmark	17.5	676.8	694.4	17.2	551.4	568.6
Estonia	4.8	33.9	38.7	0.3	22.6	22.9
Finland	4.1	481.3	485.4	3.8	428.3	432.1
France	1,933.6	43,009.9	44,943.5	1,811.5	36,089.9	37,901.4
Germany	287.4	19,170.4	19,457.8	242.4	15,567.4	15,809.8
Greece	124.1	10,398.2	10,522.3	33.0	3,403.6	3,436.5
Hungary	9.6	111.2	120.9	1.2	28.1	29.3
Ireland	23.6	4,339.8	4,363.4	13.8	3,027.0	3,040.8
Italy	24.2	2,212.5	2,236.7	8.3	883.0	891.3
Latvia	0.0	0.0	0.0	0.0	0.0	0.0
Lithuania	0.0	0.0	0.0	0.0	0.0	0.0
Luxembourg	0.0	0.0	0.0	0.0	0.0	0.0
Malta	0.3	26.2	26.5	0.3	26.2	26.5
Netherlands	77.3	1,700.7	1,777.9	10.0	506.7	516.6
Poland	0.1	19.1	19.2	0.1	19.1	19.2
Portugal	0.4	32.7	33.1	0.0	0.0	0.0
Romania	0.0	8.1	8.2	0.0	0.0	0.0
Slovak Republic	0.1	15.2	15.3	0.1	15.2	15.3
Slovenia	0.0	0.0	0.0	0.0	0.0	0.0
Spain	1,923.7	40,798.0	42,721.7	2.3	313.3	315.6
Sweden	52.8	2,869.1	2,921.9	41.6	2,397.2	2,438.8
United Kingdom	671.8	43,712.9	44,384.7	133.3	15,784.3	15,917.6
<b>EU-28</b>	<b>5,619.3</b>	<b>179,811.9</b>	<b>185,431.2</b>	<b>2,660.6</b>	<b>87,800.4</b>	<b>90,461.0</b>

Note: based on own calculations.

#### IV – Psychological effects of terrorism: life satisfaction, happiness and trust

Aside from the economic impact and human cost of terrorism, we examine how the prevalence of terrorist attacks may affect individuals, especially those not directly affected by attacks themselves. In order to assess the wider psychological effects of terrorism on European citizens, we draw on information covered in two large survey datasets, the ESS for the years 2002 to 2015, and the WVS for the years 1990 to 2015. From both surveys we only use information from citizens living either in one of the EU-28 member states or Switzerland, Norway or Iceland.

Using similar econometric regression methods (OLS) to those used to estimate the parameters in equations (1) to (7), we investigate the associations between terrorism activity and the average levels of reported life satisfaction, happiness and trust (interpersonal and in institutions) within EU member states. Table A11 reports the findings from the regression analysis. Similar to Frey et al. (2007), the parameter estimates reported in columns (1) and (2) suggest that the more victims of terror attacks in

a given year, the lower the average self-reported life satisfaction of EU citizens. This association holds in both datasets and is adjusted for a large set of control variables including demographic factors such as age, gender, income, education, occupation, employment and marital status, as well as regional and year fixed effects, which capture regional time-invariant factors as well as common trends over time.

Columns (3) and (4) show that the same applies for a general happiness indicator, suggesting that terrorism is lowering average levels of happiness among the wider population. Similarly to Blomberg et al. (2011), we find that the more terror within a country (measured by each additional victim of an attack), the less likely EU citizens report that they can trust another person (column (1)).

**Table A11. Associations between terrorism and individual level outcomes**

Outcome variables:	(1) Life satisfaction	(2) WVS	(3) Happiness	(4) WVS	(5) Interpersonal trust	(6) Trust in institutions
Survey:	ESS	WVS	ESS	WVS	WVS	ESS
Index	<b>-0.0129</b> (0.0051)*	<b>-0.7626</b> (0.049)***	<b>-0.0101</b> (0.0028)**	<b>-0.5689</b> (0.021)***	<b>-0.0875</b> (0.010)***	<b>-0.0018</b> (0.0009)*
Observations	195,151	52,179	195,151	52,017	52,289	195,151
R-squared	0.35	0.38	0.32	0.27	0.18	0.24

Note: clustered standard errors (se) in parentheses (country);\*\*\*  $p < 0.01$ , \*\*  $p < 0.05$ , \*  $p < 0.1$ . Data stems from two large survey datasets (European Social Survey, ESS; World Values Survey, WVS). The parameters reported in columns (1) to (6) stem from regression specifications that adjust for a large number of control variables on the respondent level, as well as on the regional or country level, including, among others, gender, age, education, (household) income, employment status, regional fixed effects, year fixed effects, country fixed effects as well as country level measures of the employment rate and GDP per capita (from PWT). The main explanatory variable is a weighted terrorism index ( $3 \times \text{fatalities} + 1 \times \text{incidents} + 0.5 \times \text{injured}$ ) per million population of a country. Life satisfaction is measured in both the ESS and WVS on a scale from 1 (not satisfied) to 10 (fully satisfied); happiness is measured on a scale from 1 (extremely unhappy) to 10 (extremely happy) in the ESS and from 1 (Not at all happy) to 4 (Very happy) in the WVS; interpersonal trust is measured as a binary indicator in the WVS by the question 'most people can be trusted' and trust in institutions is a summary indicator measuring trust in a country's parliament, legal system, police and politicians (from 1 'no trust at all' to 10 'complete trust').

Furthermore, using information from the ESS we show that each additional victim of terror also on average lowers on citizen's trust in national political institutions such as parliament and politicians in general, the legal system and the police. It is important to stress that the parameter estimates reported in Table A11 represent associations and not necessarily causal effects. Nevertheless, these soft measures paint an interesting picture, confirming that terrorism not only directly affects victims but also potentially has a wider psychological effect on all EU citizens that are witnesses of such attacks through different media channels. Measures such as life satisfaction could also be affected by the fact that terror and subsequent counterterrorism policies (e.g. heightened security checks at airports or borders) can impair the day-to-day life of ordinary citizens by affecting their fundamental rights of freedom, for instance.

Overall, these empirical findings confirm previous research that has examined other regions or only a specific subset of European countries, and that shows that terrorism can have detrimental effects on people's overall well-being. However, it is worth keeping in mind that these effects tend to be rather short-lived.

## V – National public expenditure on counter-terrorism measures

Due to a lack of comprehensive publicly available data on what countries spend on counter-terrorism measures, we have made estimations based on figures for the United States. It is thought that in 2013 the United States spent about \$16.6bn on counter-terrorism, which is about 0.1 per cent of US GDP (Pew Research Centre 2013). It is likely that, compared to European countries, this is a high figure, as the United States generally tends to spend more on defence and security relative to its GDP than most

EU member states. In addition, since 9/11 the United States has increased its spending on homeland security substantially (see Chapter 2).

Nevertheless, we can use the US figures to try to predict roughly what the EU-28 spends on counter-terrorism. In essence, we use the 0.1 per cent spend of GDP but weight this with what each member state spends relative to the USA on defence and security. This is publicly available information, e.g. from the government expenditure by function (COFOG) database provided by the OECD (OECD n.d. a) or Eurostat (Eurostat, 2017).<sup>108</sup> To give an example, if the USA spends 5 per cent of its GDP on defence and security, but a European member state spends 2.5 per cent, then we assume that the member state also only spends half of the 0.1 per cent on counter-terrorism measures (i.e. 0.05 per cent). In the absence of better evidence, it is also assumed that expenditure on counter-terrorism measures is directly related to defence and security expenditure. Of course, this is a very strong assumption and hence the figures provided in Table A12 should be read with caution; they serve only to give a crude estimation of what member states may spend in total on counter-terrorism measures.

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<sup>108</sup> Note that we use the total spend on defence and public order and safety.

**Table A12. Estimated annual counter-terrorism spend by EU member states**

Member state	% GDP	€m (2015)
Austria	0.04%	124.4
Belgium	0.05%	202.7
Bulgaria	0.08%	36.1
Croatia	0.07%	29.2
Cyprus	0.06%	10.4
Czech Republic	0.05%	85.7
Denmark	0.04%	108.5
Estonia	0.07%	14.3
Finland	0.05%	99.5
France	0.06%	1,409.3
Germany	0.05%	1,498.5
Greece	0.09%	160.3
Hungary	0.05%	54.2
Ireland	0.03%	73.1
Italy	0.06%	968.0
Latvia	0.06%	13.9
Lithuania	0.06%	20.6
Luxembourg	0.02%	12.9
Malta	0.04%	3.5
Netherlands	0.06%	376.7
Poland	0.07%	310.5
Portugal	0.06%	109.1
Romania	0.06%	100.6
Slovakia	0.07%	52.3
Slovenia	0.05%	17.6
Spain	0.06%	612.9
Sweden	0.05%	205.1
United Kingdom	0.08%	2,011.1
<b>EU-28</b>		<b>8,720.9</b>

*Note: based on the Eurostat government expenditure by function (COFOG) database. In order to roughly estimate expenditure by member state for counter-terrorism measures, the 0.1 per cent of GDP spend on counter-terrorism for the United States has been weighted for each EU member state with the total spend in defence and public safety and order relative to GDP for the US. It is important to stress that the figures presented are estimates based on the assumption that the spend in each country is related to the spend in the United States; they are not based on official figures.*

## Appendix C: Topic guides for interviews

Interviewees were sent the following guides in advance of their interview.

### ISSUES FOR DISCUSSION WITH THE EUROPEAN COMMISSION, COUNCIL OF THE EU, COUNCIL OF EUROPE, FRA

#### The policy making process in relation to terrorism at the EU level

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Our research has so far identified that impact assessments have not always been conducted for key counter-terrorism measures, and that there are few evaluations of existing measures. This is because of the need for policy making to respond to urgent changes in the threat landscape.

- To what extent has there been enough focus on impact assessment and evaluation of EU counter-terrorism policy? [G/B]<sup>109</sup>
- To what extent, if any, have any gaps in the use of impact assessment and evaluation impacted on the effectiveness, relevance and added value of EU-level databases created, new legislation adopted, etc.? [IMPACT]
- Are there examples where evaluation and impact assessment has added value to EU terrorism policy?
- How can EU actors balance the demand to react swiftly to terrorist incidents with the need for evidence-based policy? To what extent would you like to see impact assessment and evaluation for future measures? [POLICY]

Our research covers debates and discussions about the levels of oversight of EU counter-terrorism policy, given the potential for action in this field to infringe upon fundamental rights.

- To what extent is counter-terrorism policy at the EU level adequately accountable and scrutinised, at EU level and at MS level? [G/B]
- To what extent have the current mechanisms for accountability had impacts on the effectiveness of the fight against terrorism? [IMPACT]
- Are there examples where accountability and scrutiny mechanisms have worked well to enhance the effectiveness of measures (in terms of MS acceptance of measures, willingness of practitioners to use them, protection of fundamental rights, etc.)?
- Are there examples where gaps in accountability and scrutiny mechanisms have damaged trust or resulted in a lack of appetite to make use of EU-level measures?
- Are there examples where gaps in accountability and scrutiny mechanisms led to measures or implementation steps that infringe fundamental rights or are not fit for purpose?
- What, if any, measures or changes are feasible and desirable in relation to the scrutiny and accountability of EU policy, in order to enhance the EU added value of that policy?
- What impact would these steps have? What are the limitations of these steps? [POLICY]

#### Database interoperability

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A particular focus of the study is the interoperability of key databases, such as SIS, Prüm, PNR and ECRIS.

- What are the key gaps and barriers in the area of interoperability of databases? [G/B]
- For example, in terms of technology, the extent to which MS actors use databases as intended, threats to privacy and fundamental rights, lack of resources to utilise information contained in the databases.

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<sup>109</sup> These codes indicate the research question to which each interview question relates: gaps and barriers [G/B], state of play [SoP], ideas for policy measures [POLICY] and the impact of gaps/barriers [IMPACT].

- Are there examples where effective interoperability of databases has led to positive impacts in terms of operational cooperation? Are there examples where lack of interoperability has led to negative impacts in terms of operational cooperation? [IMPACT]
- What, if any, measures or changes are feasible and desirable in this regard? What impact would you expect these steps to have? What are the limitations of these steps? [POLICY]
- What significant threats, if any, are posed to fundamental rights by the use of databases such as SIS, Prüm, PNR and ECRIS in the fight against terrorism? [G/B]
- What significant threats, if any, might be posed to fundamental rights by moves to enhance the interoperability of databases such as SIS, Prüm, PNR and ECRIS? [G/B]
- What, if any, measures or changes are feasible and desirable to ensure that fundamental rights are protected AND data essential to the fight against terrorism is available to law enforcement? What impact would you expect these steps to have? What are the limitations of these steps? [POLICY]

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### Information sharing

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The literature in this field stresses the need for greater (or at least more effective) information sharing between MS, with third countries and with private sector actors.

- Thinking about information sharing between MS (and third countries and the private sector) for counter-terrorism purposes, is this increasing in volume and becoming more effective? Or is there no change? Or are there signs of reducing levels or effectiveness of information sharing? [G/B]
- To what extent does the current EU Data Protection framework facilitate the lawful and proportionate sharing of information for the purposes of counter-terrorism? [G/B]
- What are the most important factors that may be preventing a more effective exchange of information between MS (and third countries and the private sector)? [G/B]
- Are there examples where information sharing between MS has led to effective operational cooperation? Are there examples where lack of information sharing has led to negative impacts in terms of the fight against terrorism? Could you describe these negative impacts? [IMPACT]
- To what extent can the effectiveness of information sharing between MS (and third countries and the private sector) be improved by EU measures such as: [POLICY]
  - Improving the usability of information-sharing databases/platforms.
  - Legislation requiring MS to share information.
  - Awareness-raising about the possibility of sharing information and the value of doing so.
- What other measures or changes are feasible and desirable in this regard? [POLICY]
- For the steps you have suggested may be feasible and desirable, what impact would you expect them to have? What are the limitations of these steps?
- From the perspective of protecting fundamental rights, are there any significant risks in calls for greater information sharing between MS (and third countries and the private sector) for counter-terrorism purposes? [G/B]
- To what extent does the current EU Data Protection framework facilitate the lawful and proportionate sharing of information for the purposes of counter-terrorism? [G/B]
- From the perspective of protecting fundamental rights, what other measures or changes are feasible and desirable in relation to information sharing? [POLICY]
- For the steps you have suggested may be feasible and desirable, what impact would you expect them to have? What are the limitations of these steps?

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### Making best use of cooperation tools, mutual recognition, Europol and Eurojust

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Our research so far indicates that the scope for European added value lies in increased and more effective use of existing measures (such as the EAW, EIO and JITs) and agencies (such as Eurojust and Europol), rather than the creation of new powers.

- To what extent is there room for greater use of existing measures, tools and agencies? [G/B]
- Are there any tools/measures that are particularly under-used and that would enhance the EU added value in the fight against terrorism?
- What is the trend in relation to the extent to which these measures are used? What are the underlying drivers of this trend?
- Why are existing tools under-used? Why are existing tools used?
- In situations where existing tools and agencies are used, are they employed to the full extent of their possible contribution and added value? If not, why not? [G/B]
- What do you think are the impacts on the effectiveness of operational cooperation of under-use or ineffective use of existing tools? [IMPACT]
- What, if any, policy measures or changes do you think are feasible and desirable in this regard? What impact would you expect them to have? What are the limitations of these steps? [POLICY]
- What steps are Cepol and other actors taking to encourage more effective use of existing measures and agencies? How could these be enhanced? [POLICY]
- From the perspective of protecting fundamental rights, are there any significant risks in calls for greater use of these tools for counter-terrorism purposes? [G/B]
- From the perspective of protecting fundamental rights, what other measures or changes are feasible and desirable in relation to making best use of cooperation tools? [POLICY]
- For the steps you have suggested may be feasible and desirable, what impact would you expect them to have? What are the limitations of these steps?

### **Terrorist finance tracking**

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We understand that the Commission is working on the issue of terrorist finance tracking.

- To what extent, if at all, do you think that the lack of a dedicated EU TFTP has inhibited the effectiveness of the fight against terrorism? [IMPACT]
- What, if any, policy measures or changes are feasible and desirable in this regard (we understand that there is currently activity in this regard)? What impact would they have? What are the limitations of these steps? [POLICY]
- From the perspective of protecting fundamental rights what, if any, policy measures or changes are feasible and desirable in relation to TFTP in the EU (we understand that there is currently activity in this regard)? [POLICY]
- What impact would they have in terms of protecting fundamental rights?
- What are the limitations of these steps?

### **Radicalisation and counter-radicalisation**

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The study looks at where the EU may add value in terms of enhancing the effectiveness of measures to prevent and counter radicalisation.

- What are the most effective measures currently being taken at the EU level in terms of counter-radicalisation? What would make these measures more effective? [G/B; IMPACT]
- Can you comment on the RAN network, its strengths, areas for development and its role in the future?
- What opportunity is there for greater EU added value? Where is the EU not acting effectively? [G/B; IMPACT]
- What, if any, policy measures or changes are currently under discussion at EU level? [POLICY]
- What, if any, policy measures or changes are feasible and desirable in this regard? What impact would they have? What are the limitations of these steps? [POLICY]
- What are the arguments for and against the development of a Centre of Excellence for counter-radicalisation?
- From the perspective of protecting fundamental rights, are there any significant risks in calls for greater cooperation and coordination in relation to counter-radicalisation? [G/B]

- From the perspective of protecting fundamental rights, what other measures or changes are feasible and desirable in relation to counter-radicalisation? [POLICY]
- For the steps you have suggested may be feasible and desirable, what impact would you expect them to have? What are the limitations of these steps?

### **Closing questions**

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- Is there anything not covered in our discussion so far that you think is a major gap in or barrier to EU added value in relation to the fight against terrorism?
- If you could implement three EU-level measures (either legislative or 'soft' measures), what would they be? Why? What gaps are, in your opinion, the most important ones to close?

## **TOPICS FOR DISCUSSION: EUROPOL**

### **Understanding Europol's offer and value added in the field of terrorism**

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While we appreciate the wide scope of Europol's mandate, we highlight the following as the key ways in which Europol supports MS in the fight against terrorism: providing support/services specific to terrorism (TE-SAT, hosting the ECTC and EU IRU, etc.); hosting databases and information-sharing platforms (EIS, SIS II etc.) that can be used to support counter-terrorism work; supporting the Organised Crime Policy Cycle (a number of priorities – for example firearms, facilitated illegal migration, money laundering – are relevant to tackling terrorism); hosting FIU.net; and providing operational support, coordination and expertise.

- Are there other ways in which Europol offers support to MS in the fight against terrorism that are not captured in the summary above? [SoP]
- What additional support and services can Europol offer in the fight against terrorism as a result of the 2017 Regulation? [SoP]
- What other services of kinds of support could or should Europol offer to MS in the fight against terrorism in the future? [G/B; POLICY]

### **Making best use of Europol: information sharing**

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There is evidence of increased information sharing using Europol's systems in relation to terrorism. For example, Europol reported that 'information sharing on counter-terrorism, across European countries as well as through and with Europol, had reached an all-time high by the end of 2016'. Experts giving evidence to the recent LIBE committee hearing were of the view that the exchange of information at senior levels is increasingly effective.

At the same time, it is argued that not enough information is shared between MS and with Europol, Eurojust and other agencies. It is argued that additional information sharing would have benefits and fill intelligence gaps; for example, the EU Counter-Terrorism Coordinator reported 'significant gaps' in relation to data on foreign terrorist fighters entered in the EIS in April 2016 and the same was highlighted in relation to Europol's Focal Point Traveler Database.

Nuancing this argument, it has been argued by some commentators that better-quality information sharing is more important than a greater quantity of information sharing and that some information which is shared might not be able to be used because, for example, it cannot be admitted as evidence in court, or it does not meet procedural requirements relating to the way the information was collected.

- To what extent have there been improvements in the quantity and quality of information shared in the fight against terrorism (using Europol platforms or otherwise)? [SoP]
- What are the most important factors preventing more effective exchange of information between MS (and third countries and the private sector) in the fight against terrorism? [G/B]
- Are there examples where information sharing between MS has led to effective operational cooperation in the fight against terrorism? Are there examples where lack of information

sharing has led to negative impacts in terms of the fight against terrorism? Could you describe these negative impacts? [IMPACT]

- To what extent can the effectiveness of information sharing between MS (and third countries and the private sector) in the fight against terrorism be improved by EU measures such as: [POLICY]
  - Improving the usability of information-sharing databases/platforms.
  - Legislation requiring MS to share information.
  - Awareness-raising about the possibility of sharing information and the value of doing so.
- What other measures or changes are feasible and desirable in relation to improving information sharing in the fight against terrorism? [POLICY]
- For the measures or changes you have suggested, what impact would they have? What are the limitations of these measures or changes?
- From a practitioner's point of view, what added value can the EU bring to their day-to-day work in relation to information sharing? [G/B; IMPACT]

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#### **Making best use of Europol's support and services**

- Other than information sharing, to what extent is there room for greater use by MS of the main services/support offered by Europol in the fight against terrorism? [G/B]
- Are there any services that are particularly under-used and that would enhance EU added value in the fight against terrorism?
- Why are existing services used or under-used? What are the barriers or facilitators?
- In situations where services are used, are they employed to the full extent of their possible contribution and added value? If not, why not?
- What are the impacts on operational cooperation of under-use or ineffective use of the services Europol offers in the fight against terrorism? [IMPACT]
- What, if any, policy measures or changes are feasible and desirable in terms of enhancing the use of Europol services in the fight against terrorism? What impact would they have? What are the limitations of these measures or changes? [POLICY]

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#### **Scrutiny and oversight of Europol**

- What are the strengths and weaknesses of the oversight and accountability of Europol in relation to its role in the fight against terrorism? [G/B]
- To what extent do current mechanisms for accountability impact (positively or negatively) on the effectiveness of the fight against terrorism? [IMPACT]
- What changes to the scrutiny and oversight of Europol would enhance the Agency's added value in the fight against terrorism? [POLICY]

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#### **Cooperation between Europol, Eurojust, Frontex and other agencies**

- What are the main strengths of Europol's cooperation relationships with other EU agencies in relation to the fight against terrorism? What areas are in need of improvement? [G/B]
- For those areas in need of improvement, what are the impacts of the current gaps? [IMPACT]
- What, if any, policy measures or changes are feasible and desirable in regard to Europol's cooperation with other agencies in the fight against terrorism? What impact would they have? What are the limitations of these measures or changes? [POLICY]

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#### **Making best use of cooperation tools and mutual recognition instruments**

Our research so far indicates that the scope for European added value may lie in increased and more effective use of existing measures, such as the EAW, EIO and JITs, rather than the creation of new powers.

- To what extent is there room for greater use of these existing measures and tools in the fight against terrorism? [G/B]

- Are there any tools/measures that are particularly under-used and that would enhance EU added value in the fight against terrorism?
- What is the trend in relation to the extent to which these measures are used in the fight against terrorism? What are the underlying drivers of this trend?
- Why are existing tools used or under-used?
- In situations where existing tools and agencies are used in the fight against terrorism, are they employed to the full extent of their possible contribution and added value? If not, why not? [G/B]
- What are the impacts on operational cooperation in the fight against terrorism of under-use or ineffective use of existing tools? [IMPACT]
- From a practitioner's point of view, what added value can the EU bring in terms of making best use of cooperation tools and mutual recognition instruments in the fight against terrorism? [G/B; IMPACT]
- What, if any, policy measures or changes are feasible and desirable in this regard? What impact would you expect them to have? What are the limitations of these measures or changes? [POLICY]

### **Database interoperability**

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A particular focus of the study is the interoperability of key databases, such as SIS, Prüm, PNR and ECRIS.

- What are the key gaps and barriers in the area of interoperability of databases? [G/B]
- For example, gaps in terms of technology, the extent to which MS actors use databases as intended, threats to privacy and fundamental rights, lack of resources to utilise information contained in the databases.
- Are there examples where effective interoperability of databases has led to positive impacts in terms of operational cooperation in the fight against terrorism? Are there examples where lack of interoperability has led to negative impacts in terms of operational cooperation? [IMPACT]
- From a practitioner's point of view, what added value can the EU bring to their day-to-day work in relation to the interoperability of databases in the fight against terrorism? [G/B; IMPACT]
- What, if any, measures or changes are feasible and desirable in this regard? What impact would these measures or changes have? What are the limitations of these measures or changes? [POLICY]

### **TFTP**

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We understand that the Commission is working on the issue of terrorist finance tracking.

- Are there any aspects of the current finance tracking arrangements with the US that impact on the effectiveness of operational cooperation in relation to the fight against terrorism (either positively or negatively)? [G/B]
- From a practitioner's point of view, what added value can the EU bring to their day-to-day work in relation to terrorist finance tracking? [G/B; IMPACT]
- To what extent, if at all, does the lack of a dedicated EU TFTP inhibit the effectiveness of the fight against terrorism? [IMPACT]
- What, if any, policy measures or changes are feasible and desirable in this regard? What impact would they have? What are the limitations of these measures or changes? [POLICY]

### **Closing questions**

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- Is there anything not covered in our discussion so far that is a major gap/barrier to Europol's added value in relation to the fight against terrorism?

- If you could implement three measures (either legislative or 'soft' measures) relating to Europol's role and activities in the fight against terrorism, what would they be? Why? What gaps are the most important ones to close?

## **TOPICS FOR DISCUSSION: EUROJUST**

### **Understanding Eurojust's offer and value added in the field of terrorism**

In addition to case work, our research highlights a number of services and products produced by Eurojust to support MS in the fight against terrorism, including: the Terrorism Convictions Monitor;<sup>110</sup> classified reports to share lessons learned from criminal investigations and prosecutions of terrorism cases;<sup>111</sup> hosting meetings to allow national prosecutors to share operational experiences and to facilitate cooperation with third countries; cooperation with countries in North Africa and the Middle East; encouraging the appointment of Eurojust contact points, including specifically for counter-terrorism matters; and supporting the European Judicial Cybercrime Network.

- Please could you provide an overview of the main objectives of Eurojust's casework in the field of terrorism? [SoP]
- What are the main ways in which Eurojust casework can add value to the efforts of MS?
- Other than casework, what would you say are the main services and kinds of support Eurojust offers to MS (or at the EU level) in the fight against terrorism? [SoP]
- What other services or kinds of support do you think Eurojust could or should offer to MS in the fight against terrorism in the future? [G/B]

### **Making best use of Eurojust support and services**

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We note that Eurojust's casework in the area of terrorism increased in 2016, as did the number of occasions on which terrorism-related information was transferred to Eurojust. The EU Counter-Terrorism Coordinator noted evidence of increased use of the services offered by Eurojust.

At the same time, there are many examples where Eurojust is not involved in terrorism cases when it could be. The Counter-Terrorism Coordinator called on MS to continue to increase information exchange with Eurojust, since they 'would benefit more from Eurojust's capabilities to detect links between cases, as well as from Eurojust's continuing efforts to centralise and analyse challenges and best practice related to prosecutions for terrorist offences'.

- To what extent do you think there is room for greater use by MS of the main services and kinds of support offered by Eurojust in the fight against terrorism? [G/B]
- Are there any services and kinds of support that you think are particularly under-used and that would enhance EU added value in the fight against terrorism?
- Why are existing services/support used or under-used? What are the barriers or facilitators?
- In situations where services and support are used, are they employed to the full extent of their possible contribution and added value? If not, why not?
- What do you think are the impacts on the effectiveness of operational cooperation of under-use or ineffective use of the support Eurojust can offer in the fight against terrorism? [IMPACT]
- What, if any, policy measures or changes do you think are feasible and desirable in terms of enhancing the use of Eurojust support in the fight against terrorism? What impact would you expect them to have? What are the limitations of these steps? [POLICY]

### **Making best use of cooperation tools and mutual recognition instruments**

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<sup>110</sup> Eurojust (2016c).

<sup>111</sup> Council of the European Union (2016a).

Our research so far indicates that the scope for European added value may lie in increased and more effective use of existing measures, such as the EAW, EIO and JITs, rather than the creation of new powers.

- To what extent do you think there is room for greater use of these existing measures and tools in the fight against terrorism? [G/B]
- Are there any tools/measures that you think are particularly under-used and that would enhance EU added value in the fight against terrorism?
- What is the trend in relation to the extent to which these measures are used in the fight against terrorism? What, in your opinion, are the underlying drivers of this trend?
- Why are existing tools used or under-used?
- In situations where existing tools and agencies are used in the fight against terrorism, are they employed to the full extent of their possible contribution and added value? If not, why not? [G/B]
- What do you think are the impacts on the effectiveness of operational cooperation in the fight against terrorism of under-use or ineffective use of existing tools? [IMPACT]
- From a practitioner's point of view, what added value can the EU bring in terms of making best use of cooperation tools and mutual recognition instruments in the fight against terrorism? [G/B; IMPACT]
- What, if any, policy measures or changes do you think are feasible and desirable in this regard? What impact would you expect them to have? What are the limitations of these steps? [POLICY]

#### **Eurojust's cooperation with Europol, Frontex and other agencies**

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We note that an operational agreement was signed between Eurojust and Frontex in 2015. Better cooperation between Eurojust and the ECTC has been recommended.

- In what ways does Eurojust cooperate with other EU agencies in the fight against terrorism? [SoP]
- What are the main strengths of Eurojust's cooperation relationships in relation to the fight against terrorism? What areas are in need of improvement? [G/B]
- For those areas in need of improvement, what do you think are the impacts of the current gaps? [IMPACT]
- What, if any, policy measures or changes do you think are feasible and desirable in regard to Eurojust's cooperation with other agencies in the fight against terrorism? What impact would you expect them to have? What are the limitations of these steps? [POLICY]

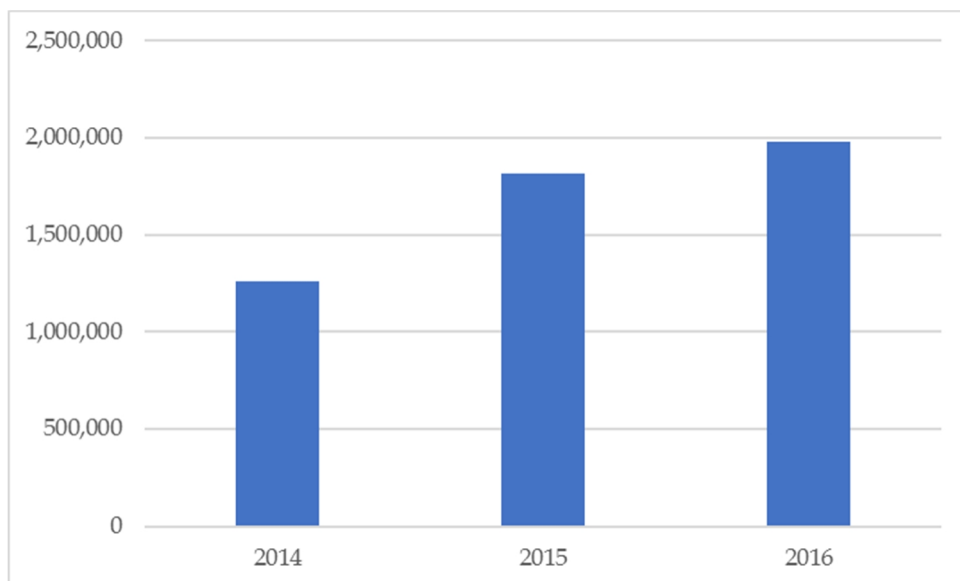
#### **Closing questions**

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- Is there anything not covered in our discussion so far that you think is a major gap in or barrier to Eurojust's added value in relation to the fight against terrorism?
- If you could implement three measures (either legislative or 'soft' measures) relating to Eurojust's role and activities in the fight against terrorism, what would they be? Why? What gaps are in your opinion the most important ones to close?

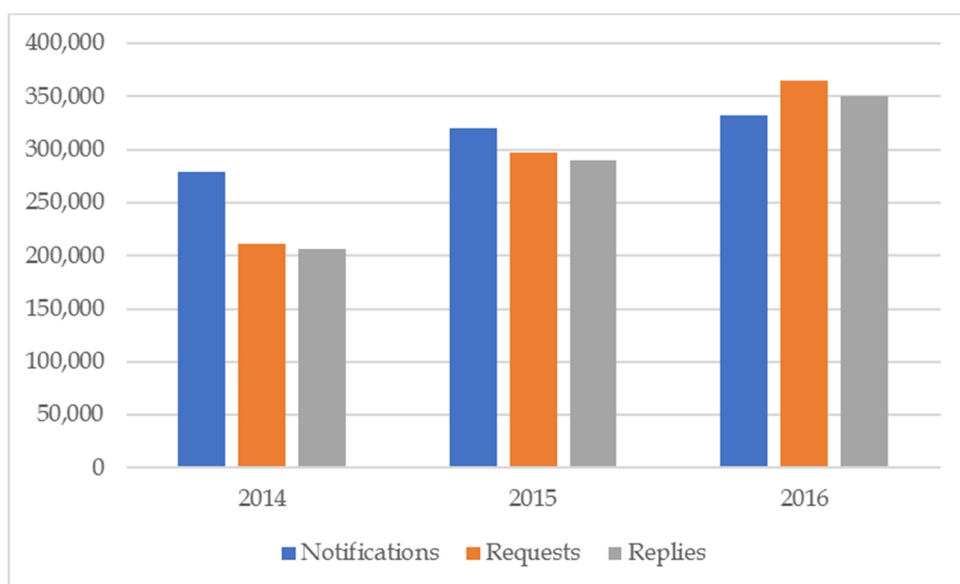
## Appendix D: Information exchange

### ECRIS messages exchanged by all interconnected member states



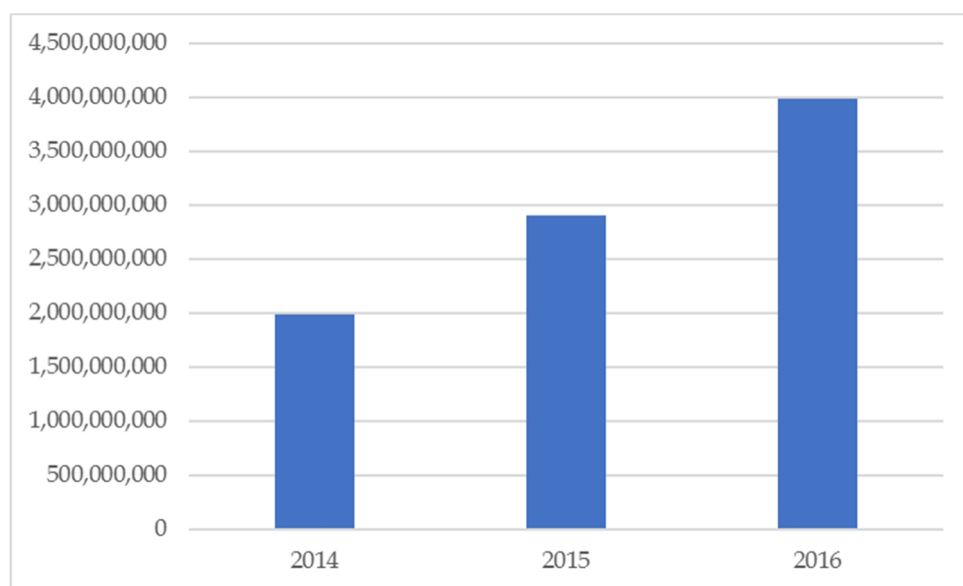
Source: EC (2017s).

### ECRIS notifications, requests and replies



Source: EC (2017s).

**SIS total access (queries and transactions intending to create/update/delete (CUD) an alert)**



Source: eu-LISA (2015, 2016, 2017).





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Significant benefits could be achieved by the EU and its Member States by addressing the gaps and barriers in the area of the fight against terrorism, notably by developing an evidence-based EU criminal policy cycle involving the European Parliament and national parliaments. In this context, EU institutions should conduct comprehensive ex-ante assessments and ex-post evaluations of counterterrorism measures, in line with better law-making principles. The effectiveness and fundamental rights compliance of counter-radicalisation programmes should continue to be monitored. The framework for countering terrorism requires further refinement.

A European law enforcement culture with full respect for fundamental rights needs to be fostered in which relevant information is shared and analysed, judicial cooperation tools are properly utilised and seeking the support of EU agencies becomes a natural reflex. This also requires the allocation of significant resources aimed at training and exchanges.

Beyond resulting in more relevant, coherent, effective and efficient action in the fight against terrorism, such measures could increase the wellbeing of the population, reduce the material and immaterial impacts of terrorism, and ensure protection of fundamental rights when impacted by counterterrorism measures.

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