



Report to the Presidents at 18 May 2022

Observatory President: Pierre Berthelet, PhD

Latest version: 5 May 2022

1. Main takeaways

- Europol's latest annual report on the terrorist threat in the EU (TE-SAT 2021) highlights the permanence of terrorism as a threat for the EU and its Member States
- The Europol annual threat assessment reveals an growing importance of far-right terrorism. A 2021 assessment of Directive (EU) 2017/541 of 15 March 2017 on combating terrorism by means of criminal law considers that EU law is not suited to the threat posed by the violent far right.
- In addition, the terrorist threat morphs into a permanent insecurity in the public space. Eu Council conclusions of June 2021 promote an increasing use of the "security by design" strategy concerning public spaces. In parallel, another EU Council set of conclusions warns against the fact that the current crisis generated by the Covid-19 pandemic and similar disruptive crises to come, create systemic security problems. It stresses a continuum between hate speeches and disinformation on one hand, and violent extremism and terrorism on the other.
- In the wake of the Christchurch attacks, a European regulation was adopted on April, 2021 aimed at removing terrorist and extremist contents from the Internet. In addition, a set of guidelines, presented by the EU Commission in 2021, aimed to strengthen the European code of conduct that compiles best practices against the uncontrolled disinformation growth.
- A European Parliament resolution approved on the 9th March 2022 points up the blatant and worrying structural lack of moderation carried out by the platforms.
- Europol flagged the fact that nowadays, "3D hybrid weapons" pose a significant threat. About the updated European Directive 91/477/EEC on firearms control, it comes out that few States have fully transposed it and the text still needs to be modernised in the light of the developments observed, in particular "3D hybrid weapons".
- With respect to terrorist financing, the European Commission has launched a major reform project. A legislative package has been presented composed of four texts of which the main measure, put out on the July 20th 2021, is the



creation of a European Union AML/CFT Authority (the Authority for anti-money laundering and countering the financing of terrorism (AMLA)).

2. The fight against terrorism carried out by the EU – An institutional and legislative point of view

The fight against terrorism is based on the EU Counter-Terrorism Program of 9 December 2020. This document can be viewed as the roadmap for EU action in this area. Founded on the observation that terrorism is an actual and dreadful danger, it recommends to 1. better anticipate the existing and emerging threats in Europe by increasing the information sharing and by establishing a culture of multidisciplinary cooperation 2. prevent terrorism by acting on the process of radicalization 3. act on vulnerabilities, whether in public spaces, the critical infrastructures or the external borders of the EU 4. have a better reaction to attacks by strengthening the legal framework in the field of criminal law. 5. Foster the international collaboration.

Among the recommended measures, we can find: 1. A revision of the directive on advance passenger information (API); 2. The creation of a network of financial investigators in the field of the fight against terrorism 3. A support provided for Member States for a better usage of intelligence collected in the theatre of operations to better detect foreign terrorist fighters that come back from the Middle East ("returnees") 4. An intensification of cooperation with third countries in the Western Balkans, in the fight against firearms; 5. The negotiation of agreements between Europol and the EU southern neighbouring countries, to facilitate the exchange of personal data; 6. The strengthening of cooperation in certain key African regions (particularly the Sahel and the Horn of Africa).

Fight against terrorism remains a priority at the top of the EU political agenda given the seriousness of the phenomenon. Europol's latest annual report on the terrorist threat in the EU (TE-SAT 2021) highlights the permanence of this danger, that sweeps from the far right and from the extreme left. It indicates that in the EU, 21 deaths and 54 people injured (9 are due to an extreme right-wing terrorist attack and 12 to 6 jihadist attacks) are accounted for the attacks. In 2020, 449 people were arrested for terrorism. Although Europol indicates that despite the fact that this figure is significantly lower than in previous years, this does not mean that terrorist activities have decreased.

The number of jihadist attacks has increased, whereas the number of foiled attacks is constantly decreasing. As for the propaganda produced by IS, it seems to be on the wane, both in quantity and quality. Similarly, few attempts for Europeans to come back from conflict areas are recorded (phenomenon of "foreign fighters"). Moreover, only 1/5th of these fighters who left for Iraq and Syria have effectively returned in the EU. This decline should not mask a change in the terrorist phenomenon. In this regard, for some years now, TE-SAT reports have revealed an growing importance of far-right terrorism. It indicates that in 2020, 3 Member States were affected by 4 attacks. 34 people were arrested in 8 EU Member States. According to Europol, terrorism and far-right extremist movements are characterized by 1. Combat training and access to weapons 2. The use of video games to disseminate propaganda, especially among young people.



This growing threat of far-right movements clearly emerges from a 2021 assessment of Directive (EU) 2017/541 of 15 March 2017 on combating terrorism by means of criminal law. The Directive can be deemed as the cornerstone of Member States' criminal justice measures to counter terrorism. This directive aims to 1. bring the definitions of terrorist offenses closer together, 2. establish minimum rules concerning the definition of criminal penalties. On the one hand, the report notes that the transposition of the directive had led the Member States to revamp their criminal justice system in the face of terrorist threat. On the other, it considers that EU law is not suited to the threat posed by the violent far right. In particular, some national judicial authorities come up against legal obstacles, for example the demonstration of the terrorist intent (*mens rea*) or the evidence gathering that is located outside the national territory.

The terrorist threat morphs into a permanent insecurity in the public space. Thus, the Bavarian city of Würzburg witnessed a knife attack committed on June 25, 2021, whereby three people died and five were injured. In the light of this rampant threat, the EU Council approved shortly before, on 7 and 8 June 2021, some conclusions containing a series of measures to better protect public spaces in addition to those provided for in the EU Counter-Terrorism Program. In the wake of the 2017 action plan approved after the 2015 attacks of Nice and which focuses on the protection of public spaces, the 27 ministers of Interior take a set of measures including 1. the integration of Europol and the network ATLAS (which is the European network of special police forces), in the management of crisis situations (by strengthening the ability of first response personnel to detect suspicious behaviour and objects in a crisis situation) 2 a better use of new technologies to protect public spaces, in particular those allowing the detection of threats and the analysis of large datasets (for example through the EU Innovation Hub for internal security, as an observatory of the evolution of new technologies, in particular those relating to the development of techniques for detecting explosives, or protection against drones) 3. An increasing use of the "security by design" strategy concerning public spaces.

In parallel, the Council of the EU approved a new set of conclusions on 7 and 8 June 2021 relating to Europol's innovation hub, as an observatory of the evolution of new technologies. In these conclusions, the ministers show their deep concern about the development of violent extremism online, whether far left, far right or Islamist inspiration. He indicates that the COVID-19 pandemic has contributed to an ever-increasing propaganda and recruitment activity. In this regard, these conclusions point to the rise of disinformation on the pandemic and the attempts by terrorist groups to take advantage of this situation in the development of their narratives. To combat the process of radicalization online, the EU Council recommends a set of measures aimed at better understanding the phenomenon of the crisis exploitation by violent extremist groups, by having recourse of tools such as 1. The innovation hub Europol, as an observatory of the evolution of new digital technologies 2. The impact assessment by INTCEN and Europol on the COVID-19 pandemic on terrorist operations.

On the same day, the EU Council approved another set of conclusions indicating that the current crisis generated by the Covid-19 pandemic and similar disruptive crises to come, create systemic security problems. It highlights that this type of crisis brings about vulnerabilities compounded by the proliferation of misinformation. The ministers of the 27



Member States are concerned about the proliferation of fake news about COVID-19 and hate speech, especially on social media. This situation leads the EU to build up a new legislation aimed at cracking down on hate speech. More specifically, the Commission proposes, on the 9th December 2021, a criminal harmonisation among the Member States about this type of speech as well as hate crimes. To this end, it is suggested, in a communication accompanied by a proposal for a decision, to list these speeches and hate crimes as common criminal offences. In doing so, the EU Commission intends to tackle the trivialisation of those speeches targeting specific people or social groups on social media.

The observation made by the conclusions can be summarised as a continuum between hate speeches and disinformation on one hand, and violent extremism and terrorism on the other. Whether it is jihadism violence, or right and left extremism, all tend to promote the polarization of civil societies in the EU. More precisely, the rapid dissemination of such discourse is explained by 1. the disinhibiting effect on the Internet and existing possibility by which these discourses are swiftly relayed and amplified 2. the proliferation of these discourses on social networks, contributing to normalizing and trivializing them 3. the lack of an adequate public response among the population that allows hate speech to spread like wild fire 4. The exploitation of resentment by some extremist movements. These four factors combined highly contribute these extremist movements to efficiently promote their ideology on the web. Indeed, the prevalent tone on social medias paves the way for an “no hold barred” proliferation of false information online. This happens through certain economic factors, such as containment measures linked to the pandemic, favours public receptivity to such discourse, as the conclusions state, combined with the lack of any real control of the platforms. A European Parliament resolution approved on the 9th March 2022 points up the blatant and worrying structural lack of moderation carried out by the platforms.

In the face of the situation, the EU has already put in place a set of control mechanisms initiated as part of the efforts made, in particular the guidelines of the European Commission. These guidelines, presented on June 26, 2021, aim to strengthen the European code of conducts that compiles best practices against the uncontrolled disinformation growth. They plan to fight more effectively against manipulative behaviours used to spread elements of misinformation. This effort to control hate speech is combined with those to regulate the major platforms more strictly. The so-called “DSA regulation” is intended to update European law about information society services. It targets digital platforms in particular by applying on them obligations of vigilance and moderation. This regulation, which mainly concerns GAFAMs, imposes on them a set of obligations, for example algorithmic transparency or a facilitated flagging procedure, to better stem the virality of certain illegal contents. In other words, this text, for which an agreement was reached on 24th March 2022 between the European Commission, the European Parliament and the Council of the European Union, is a new element of the legislative bloc through which the EU is aiming at dismantling the existing online ecosystem favourable to the division and polarization of society. Taking an additional step towards the responsibility for any content published on their social media, the text also intends to tackle disinformation by requiring major platforms to invest more in their effort to curb the virality effect of fake news that is posted on social networks.

Already, following the Christchurch attacks, a European regulation was adopted on April 29, 2021 aimed at removing terrorist and extremist contents from the Internet. This regulation,



EWG32 - Observatory on anti-terrorism

intended to combat the dissemination of terrorist propaganda online, requires major platforms, and more generally, hosting service providers, to remove content following a removal order. Such an injunction is issued by a national authority, either administrative or judicial. The withdrawal injunction is bracketed in time limits of up to one hour, and penalties attached to the regulation compliance can be stiff.

As for firearms control, a report was issued by the Commission on the 27th October 2021, on the updated European Directive 91/477/EEC. This text regulates the acquisition, possession and trade within the EU of firearms for civilian use. However, the results are not up to par according to this report. Firstly, few States have fully transposed this directive, which was reinforced after the terrorist attacks of 2015. Secondly, the text still needs to be modernized in the light of the developments observed, in particular “3D hybrid weapons”. Europol flagged the fact that nowadays, “3D hybrid weapons” is an easy task and therefore, poses a significant threat. For instance, an attack in Halle in Germany in 2019 was carried out using weapons made using a 3D printer. Moreover, Europol notes a slow but steady increase in the number of seizures of this type of weapon.

With respect to terrorist financing, notable developments are taking place with the presentation of a legislative package by the European Commission on July 20, 2021. According to Europol, around 1% of the annual gross domestic product of the EU is involved in suspicious financial activity. However, the current legal framework proves to be inadequate. In its special report 13/2021 published on the 28th June 28 2021, the European Court of Auditors considers that efforts are fragmented and the application of European measures proves to be insufficient. More precisely, the legislation is complex and it is implemented too slowly by the Member States. It also points to the fact that the EU does not have an independent list of high-risk third countries, i.e. countries posing a serious AML-CFT (anti-money laundering and counter terrorist financing) threat.

As a result, the European Commission has launched a major reform project, even though the fifth AML/CFT Directive was adopted on the 30 May 2018, and the deadline for transposition was set for the 10 January 2020. Indeed, in July 2019, following a number of major suspected money laundering cases involving credit institutions in the EU, the Commission adopts a series of documents analysing the effectiveness of the EU regime in AML/CFT matters. As a consequence of that, a legislative package has been presented composed of four texts of which the main measure, put out on the July 20th 2021, is the creation of a European Union AML/CFT Authority (the Authority for anti-money laundering and countering the financing of terrorism (AMLA)). The purpose of this brand-new agency is to carry out a direct and indirect supervision of some specific identified entities (“obliged entities”) that are suspected to not fully comply with the AML/CFT legislation. In this regard, this new body is endowed with extensive powers to ensure that this legislation is enforced (including the possibility to withdraw approvals if necessary). In addition, this agency plays a support and coordination role for the Financial Intelligence Units (FIUs) (for example, by hosting the FIU.NET platform which is the secure communication network between the FIUs).



Still, in this effort to “put in place a single body of AML/CFT rules at European level”, according to the European Commission, the anti-money laundering directive is transformed into a regulation and the existing system it contains is reinforced. For example, the proposed regulation provides for an EU-specific blacklist. It extends the volume of due diligence obligations of obliged entities and increases their number. In addition, with regard to the FIUs, it provides for a common ground aimed at bringing their operation closer, for example, by defining a minimum set of information to which the FIUs should be able to access.

The last noteworthy measure is the reform of the framework of the European agency Eurojust. This agency specialised in judicial cooperation is tasked with facilitating transnational investigations, including those relating to the fight against terrorism. Its legal framework had been modified by the regulation establishing the Eurojust agency (EU) 2018/1727 approved in December 2019, in the context of the entry into operation of the brand new European public prosecutor. However, it is not adapted to its European counter-terrorism judicial register, the CTR, which is not founded on an adequate legal basis. This judicial register (Counter-Terrorism Register) is a database bringing together information transmitted by the Member States on legal proceedings for terrorist offences, to efficiently cross-check the information. A proposal for a regulation is submitted on the 1st December 2021 aimed at ensuring this adequate legal basis. At the same time, it modernises the Council Decision 2005/671/JHA on the exchange of information on terrorist offences. Indeed, it turns out that the information exchange is not carried out in an optimal way between Eurojust and the judicial national authorities. To patch this up, this proposal sets out the cases in which Member States are required to provide information on criminal investigations and judicial proceedings in relation to terrorist offences.

3. Footnote on recent UK terrorism-focused legislation

Three UK government bills, the Counter-Terrorism and Sentencing Act 2021¹, the Police, Crime, Sentencing and Courts Bill 2022², and the Nationality and Borders Bill 2022³ are changing the way that the United Kingdom pursues terrorists. The increasing threat from far right actors and a resurgence in Northern Ireland tensions, triggered by Brexit and the accompanying political paralysis at Stormont, means that new legislative tools had to be adopted to adapt to a changing threat landscape post-Brexit. Timely information-sharing agreements have yet to be restored or renegotiated, and the current government has in part followed through on its promise to do things differently outside the EU, all while attempting to maintain a minimum of co-operation.

All three bills are partially intended as a counter to recent upwards trend in terrorism tensions, even as the threat rating in the UK is downgraded to from Severe to Substantial. While the PCSC bill has a far wider scope than terrorism, it may be read as an accompanying document to the CTS Act. The Nationality and Borders bill contains language directly relevant to how the UK intends to treat those suspected of terrorism offences.

Amongst other changes, the CTSA imposes more severe penalties for young offenders at a time when the PREVENT arm of the UK's CONTEST counter-terrorism strategy is under particular scrutiny. PREVENT aims to deflect potentially vulnerable young people onto safer



behavioural pathways and nudge them into making better life choices. A recent study by the University of South Wales has found that as an early intervention tool, PREVENT is being hamstrung by a lack of referrals by stakeholder organisations such as local councils, schools, and youth clubs – and where these referrals are made, the process is not “smooth”⁴. The reasons given range from fear that a PREVENT referral will mark a young person for life, or otherwise hinder their chances, through to outright distrust in the strategy itself. The bill does give credit for guilty pleas, but is overall marked by an increase in sentencing time, less consideration for mitigating factors such as youth, stricter delineation of offences, and a general tightening of the screws of the justice apparatus of the state. Other types of offences including CNBRE – assisted attacks are now more fully integrated into supporting legislation, and Schedule 12 amends the Serious Crime Act 2007 to make provision conferring powers on chief officers of police to apply for serious crime prevention orders in terrorism-related cases. Time – and the vigilance of law enforcement agencies - will tell if these new powers are effective in countering a broader and more fluid terrorism landscape than has previously existed up until the present.

The Police, Crime, Sentencing and Courts Bill is a different animal altogether. It deals more closely with the minutiae of policing work and as such is limited to changes in the limits within which prisoners serving terrorism related sentences may be released (on license or otherwise) or repatriated to other (home) countries. It also rolls certain categories of offence into existing counter-terrorism legislation, making these more severe.

The overall effect of both bills is to broaden the scope of the state’s powers by extending the umbrella of CT legislation into spheres where it previously did not reach. Many good arguments can be made that doing so “fills in the gaps” in existing powers (legislation being the messy business that it is) to better protect innocent citizens – and equally good ripostes exist upon the other side where yet another encroachment on the public space in the name of public safety via the state’s power to detain, charge, and imprison looks like abuse and overreach.

The Nationality and Borders Bill goes one step further, in granting the possibility of denial of refugee status to anyone who is suspected of terrorism offences, and in allowing citizenship to be revoked without notification (potentially rendering the subject stateless), retroactively if necessary. The compatibility of this legislation with existing Human Rights legislation in the UK is yet to be tested through jurisprudence, and legal challenges are sure to follow.

Crime (and especially counterterrorism) is a moving target, and CT agencies must be properly equipped before the fact – not afterwards. Avoiding the truism that hard cases make bad laws is almost impossible in this sphere – terrorism cases are some of the hardest that law enforcement will ever come across, and if the response of the legislative apparatus is to make ever more severe laws in the face of failing preventative measures, it is arguably a natural instinct to safeguard a society against the worst that can happen to it. LE agencies have limited input, and can but follow.

That terrorism *keeps* happening is a clue that legislation alone is not enough. One cannot legislate ones way out of terrorism – whatever else it may be, it is not a legislative problem. Whether the EU or the UK choose to co-operate in the future, and at what level, is still very much open to negotiation, and it may be that the UK’s approach has now diverged sufficiently to be incompatible with EU rights norms.

¹<https://www.legislation.gov.uk/ukpga/2021/11/contents/enacted>



2<https://bills.parliament.uk/bills/2839#timeline>

3<https://bills.parliament.uk/bills/3023>

4: Hoovering up referrals: agency competition in the delivery of Prevent in Wales
competition in the delivery of Prevent in Wales

Bethan Davies (Cardiff University)

Prof. Martin Innes (Cardiff University)

4. Items to watch

- The new TE-SAT report that should be delivered this semester in the light of the current terrorist situation centered around a two-pronged threat : djihadism and far-right terrorisms
- A growing trend of radicalism across the EU fueled by social medias, terrorist propaganda and hate speech
- A EU legislative evolution focused on social media regulation and fight against hate speech
- A transformation of terrorism "from projected threat to endogenous threat" movement (Intelligence Comity of the French Parliament)
- A possible merging trend of radicalism and crime characterised by a strong link between social unrest and criminal gangs (eg. riots in Sweden of April 2022)
- An increasing tendency of supremacism and survivalism that could spawn many subcultures (ecofacism) and create specific current thereby merging with some others (eg. ecoterrorism), and be susceptible to be a prevalent trend in the future (Intelligence Comity of the French Parliament)
- Recent United Kingdom bills as part of the wider post-Brexit security environment - summary above