

EU Counterterrorism Policy: A Paper Tiger?

Written by Oldrich Bures

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OLDRICH BURES, AUG 22 2013

The Treaty on European Union stipulates that one of the key objectives of the European Union (EU) is to provide citizens with a high level of safety within an area of freedom, security and justice. When it comes to the measures taken to combat terrorism following the September 11, 2001 (9/11) attacks in the United States, however, the EU has not lived up to this promise thus far.

On paper, the post-9/11 EU counterterrorism policy looks impressive. Already in November 2001, the European Council adopted an Action Plan on Combating Terrorism and an EU Counterterrorism Strategy was agreed in December 2005, following the terrorist attacks in Madrid and London. In December 2003, the European Council also adopted a European Security Strategy, where terrorism heads the list of threats facing the Member States and which proclaims that concerted European action against terrorism is “indispensable.” Despite the relatively limited competences for fighting terrorism at the supranational EU level, a March 2007 Commission memorandum listed 51 adopted and 33 proposed pieces of legislation as well as 22 Communications and 21 reports under the heading of the fight against terrorism. Thus, although “counterterrorism” is not yet a clearly defined area in its broadest and fullest sense, it already spans across a number of other policy areas across all of the EU’s former three pillars. Moreover, many senior EU officials have publicly expressed their conviction that the EU counterterrorism measures have made a difference in the fight against terrorism and the first EU Counterterrorism Coordinator Gijs de Vries even argued that the fight against terrorism is changing “the role and functioning of the European Union” insofar as it adopts an increasingly operational role.

Several scholarly analyses have, however, challenged such overly optimistic conclusions by scrutinizing the actual implementation, utilization, and impact of the key legal and institutional innovations that have been adopted since 9/11 to bolster the nascent EU’s counterterrorism capabilities. The former include the adoption of a common definition of terrorism, the introduction of the European Arrest Warrant, and a series of legal measures designed to freeze terrorist financial assets. The latter include the strengthening of the counterterrorism mandates and capacities of Europol and Eurojust, as well as the creation of the post of the EU Counterterrorism Coordinator. The results of these analyses suggest that in many areas, the EU’s counterterrorism policy is more of a paper tiger than it is an effective counterterrorism device. Key legal EU counterterrorism instruments, including the common definition of terrorism, have not been fully and timely implemented at the national level. Some also appear to be refurbished pieces of pre-9/11 anti-crime legislation, which raises important normative questions concerning their effectiveness, appropriateness, and proportionality, especially due to their potential for undermining the existing standards of civil liberties, democracy, accountability, and the rule of law. In the fight against terrorist financing, the EU has adopted external models that do not always reflect the contemporary terrorist threats in Europe. In other areas, including the efforts to tackle the so-called “root causes” of terrorism and radicalization, both abroad and in Europe itself, the EU’s role has been limited due to the lack of relevant competences and tools. Similarly, the capabilities of EU agencies in the area of counterterrorism remain rather weak and the EU Counterterrorism Coordinator does not have any real powers apart from persuasion. Long-standing bilateral and/or non-EU multilateral arrangements are still clearly preferred by EU Member States’ national agencies tasked with counterterrorism and a similar preference can often be traced at the political level.

On a more positive note, the findings of some of the more recent scholarly analyses also suggests that at least in some aspects and areas, the EU counterterrorism policy is, albeit slowly and inconsistently, becoming a real tiger. To

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begin with, the EU now possesses a common definition of terrorism, thus eliminating a crucial shortcoming of the global counterterrorism efforts that are still hampered by bitter “one man’s terrorist is another man’s freedom fighter” debates. This has allowed for the introduction of several legal instruments, such as the European Arrest Warrant in 2004, which have already produced some impressive results that are gradually changing the opinions of national counterterrorism practitioners concerning the value added coming from Brussels. Similarly, Europol and Eurojust’s reputation in the area of counterterrorism has gradually risen along with the increases of both the quantity and quality of their case workload in the recent years. Moreover, albeit undoubtedly far from being ideal, the EU Counterterrorism Strategy is light years away from the initial floundering which characterized Europe in the weeks after 9/11 when it was by no means granted that a specific EU response to terrorism will emerge. In this respect, it is important to keep in mind that within the broader context of the European integration process, the EU’s difficulties in countering terrorism are neither unique nor surprising – the history of expansion of EU competence into new policy areas has always been characterized by disputes between Member States and EU institutions about the effective and desirable locus of policy making. The more recent developments also suggest that both the EU institutions and the EU Member States responded to the Madrid and London terrorist attacks with a much needed critique of the measures they have taken to combat terrorism thus far. The EU Council adopted a Revised Plan of Action; the Commission launched a five year Action Plan for Freedom, Justice and Security, and provided significant financial resources towards its implementation. Moreover, the recently ratified Lisbon Treaty should help to remedy some of the most blatant shortcomings, especially in the area of coordination.

Taking into account the tentative evidence of incrementally growing EU officials’ reputation and national security actors’ operational usage of EU counterterrorism agencies and instruments, it can be argued that the current EU counterterrorism capacity may already be greater than commonly understood. This general lack of awareness of enhanced EU counterterrorism role is due to several reasons, including its incremental development, its often technical nature, and the well-known fact that many EU Member States’ politicians prefer to present to the general public the failures of EU policies rather than their successes. Moreover, even within the academic literature, the EU has not been traditionally analysed as an actor pursuing an active security policy, especially when it comes to internal security problems. As Magnus Erkengen aptly noted, the EU’s success was that “it created security by not discussing security.” As a consequence, however, until 9/11 the EU lacked its own internal security identity and until today, it is still not absolutely clear what EU values or functions ought to be protected from terrorism. To some extent, this is also due to the persisting lack of the shared perception of the security threats stemming from terrorism. Nevertheless, due to factors such as the experiences of 9/11, 3/11 and 7/7; the involvement of a number of EU Member States in the conflicts in Iraq and Afghanistan; and the gradual development of a nascent joint analytical capacity at the EU level, there is nowadays a much closer degree of analysis of where the threat is.

In the long run, therefore, it appears that turning the EU’s counterterrorism policy into a real tiger requires a careful assessment of both the comparative advantages and disadvantages of the available legal instruments and institutional structures at all levels. While it is important to keep in mind that protecting the state and its citizens from terrorist attacks is a duty and competence of the Member States and the EU’s role is not to supplant them, there may be areas where EU-level counterterrorism measures are preferable on efficiency and/or transparency grounds to their national counterparts. It is in these areas where EU legal measures (provided their due implementation by EU Member States) and EU agencies (provided their actual utilization by EU Member States and the relevant national agencies) can offer genuine value-added in the fight against terrorism. At the same time, however, the EU level may not be the best platform for counterterrorism work in a number of other areas. Wherever it is uncertain that an extra layer of operational bodies and/or legal measures at the European level would produce a more efficient response, Member States’ continued preference for coordination and enhanced intergovernmentalism over the delegation of powers to the EU is perfectly understandable. Ultimately, what really matters is whether counterterrorism works, not whether it is coming from the EU.

Oldrich Bures is the Head of the Department of International Relations and European Studies and the head of the Center for Security Studies at Metropolitan University Prague. This text offers a brief summary of some of the findings of his most recent book *EU Counterterrorism Policy: A Paper Tiger?* (Ashgate 2011, ISBN

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