



General Aspects of the EU Counter-Terrorism Measures

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1. Preliminary remarks

- The fight against terrorism as a **EU focal point**
- **Cooperation of all "European actors"**: the institutions of the Union, the institutions of the Member States, the judiciary and police and law enforcement authorities
- **internal and international dimension of terrorism**
- Correlation with the claims concerning the exercise of **the principle of self-determination**

- **Constant evolution of terrorist phenomenon**
- The turning point of **the twin towers' attack** of 11 September 2001
- Specific and different features compared to the past
- **a network of decentralized structures, use of information technologies capable of mobilizing individuals "lone wolves"**
- Need to adopt and adapt **prevention strategies**

- **Initial intergovernmental nature of the EU intervention** in the fight against terrorism with the instrument of framework decisions
- **The Lisbon Treaty introduces a minimum harmonization** with the adoption of "*minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with a cross-border dimension resulting from the nature or impact of such offences or from a special need to combat them on a common basis*" (Article 82 TFEU)
- **Discretion in the implementation and the so-called *ius puniendi* to the EU Member States**
- **the use of the prevention tools in compliance with the general principles of criminal law and fundamental rights**
- **introduction of cases of danger and incrimination of preparatory acts of terrorism**

2. The adoption of the Directive (EU) 2017/541 on the fight against terrorism

This Directive is the result of a "multi-level regulatory production":

- United Nations Security Council Resolution 2178 (2014)
- Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism, CETS no. 217
- fifth recommendation of the 2012 International Financial Action Group (FATF / FATF)

- It updated the European legal framework in the fight against terrorism initially based on Framework Decisions 2002/475 / JHA and 2008/919 / JHA

- It introduced:
 1. prevention measures in the form of offences related to the terroristic activities;
 2. exchange of information;
 3. countering terrorist financing;
 4. protection of victims in accordance with the 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, 14.11.2012, p. 57) and Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims.

2.1 Introduction of “terrorist offences and offences related to a terrorist group”

More specifically, this Directive :

- referred to “terrorist group”;
- included attacks on IT systems (the so-called cyberterrorism);
- aimed at intercepting the so-called "Lone wolves":
 - Article 6 Recruitment for terrorism
 - Article 7 Providing training for terrorism
 - Article 8 Receiving training for terrorism (“Self-study, including through the internet or consulting other teaching material, should also be considered to be receiving training for terrorism when resulting from active conduct and done with the intent to commit or contribute to the commission of a terrorist offence”, 11).

- aimed at combating the phenomenon of "foreign fighters":
 - Article 4 Travelling abroad for the purpose of terrorism;
 - Article 5 Funding travelling abroad for the purpose of terrorism;
 - Article 6 Organising or otherwise facilitating travelling abroad for the purpose of terrorism.
- Italian legislation anticipated EU legislation

2.2. The criminalization of terrorist financing: some critical issues

The Directive aimed at the criminalization of terrorist financing

Article 11 Terrorist financing

“Member States shall take the necessary measures to ensure that providing or collecting funds, by any means, **directly or indirectly, with the intention that they be used, or in the knowledge that they are to be used, in full or in part, to commit, or to contribute to the commission of, any of the offences** referred to in Articles 3 to 10 is punishable as a criminal offence when committed intentionally.

2. Where the terrorist financing referred to in paragraph 1 of this Article concerns any of the offences laid down in Articles 3, 4 and 9, it shall not be necessary that the funds be in fact used, **in full or in part, to commit, or to contribute to the commission of, any of those offences, nor shall it be required that the offender knows for which specific offence or offences the funds are to be used”**.

- **Connection with the sale, acquisition or exchange of a cultural object of archaeological, artistic, historical or scientific interest (15)**

- **Individual sanctions of the Security Council and implementation by the Union** (or even EU autonomous sanctions)
- **a prior political decision taken through intergovernmental mechanisms within the Common Foreign and Security Policy (CFSP) framework, determining the conditions for the Council's subsequent adoption of restrictive measures by a qualified majority upon a joint proposal of the High Representative and the Commission** (article 215 TFEU).
- **Need to protect the defense rights of individuals** (ex multis judgment 2 September 2008, *Kadi and Al Barakaat International Foundation v Council and Commission*, C-402/05 P and C-415/05 P, para. 241 ff. and judgment 23 April 2013, *Gbagbo and Others v Council*, C-478/11 P to C-482/11 P, para. 56. need to protect fundamental right)
- The Terrorism Directive reaffirms the need for effective application of the freezing orders and confiscation in accordance with the Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union
- Another important step in the fight against terrorist financing is **the Regulation (EU) 2018/1805 of the European Parliament and of the Council of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders**. It expressly requires that confiscation decisions have a judicial nature and excludes mutual recognition where, in exceptional situations, there are serious reasons for considering the risk of a violation of fundamental or defense rights.

3. A look at other primary rules

Article 42.7 TEU: "If a Member State is the victim of armed aggression on its territory, the other Member States shall have towards it an obligation of aid and assistance by all the means in their power, in accordance with Article 51 of the United Nations Charter. This shall not prejudice the specific character of the security and defence policy of certain Member States"

Article 222 TFEU Solidarity Clause

“1. The Union and its Member States shall act jointly in a spirit of solidarity if a Member State is the **object of a terrorist attack** or the victim of a natural or man-made disaster. The Union shall mobilise all the instruments at its disposal, including the military resources made available by the Member States, to:

- (a) - **prevent the terrorist threat in the territory of the Member States;**
- **protect democratic institutions and the civilian population from any terrorist attack;**
- **assist a Member State in its territory, at the request of its political authorities, in the event of a terrorist attack;**
- (b) assist a Member State in its territory, at the request of its political authorities, in the event of a natural or man-made disaster.

2. Should a Member State be the object of a terrorist attack or the victim of a natural or man-made disaster, the other Member States shall assist it at the request of its political authorities. To that end, the Member States shall coordinate between themselves in the Council.”

4. Pending regulatory proposals

- Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on **European Production and Preservation Orders for electronic evidence in criminal matters** - COM/2018/225 final - 2018/0108 (COD), the so-called 'European production order/EPO'
- Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL 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 - COM/2018/213 final - 2018/0105 (COD)
- Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on preventing the **dissemination of terrorist content online** - COM/2018/640 final
- Communication from the Commission to the European Parliament and the European Council - Protecting Europe: **A Europe that protects: an initiative to extend the competences of the European Public Prosecutor's Office to cross-border terrorist crimes** - COM (2018) 641 final (p. 8)

5. The EU Approach towards the Regional Security Cooperation in the Western Balkans

- The **Integrative Internal Security Governance (IISG)** is a policy coordination framework designed to foster cross-border cooperation in the region, enabling the Western Balkans Countries to cope with internal security challenges in a long term and self-sustainable perspective
- It aims to **promote capacity building in the security sector and to foster reform process** in the Western Balkans Countries
- It started with **the Brdo-Brijuni Process**: a Slovenian-led ministerial regional framework in the area of internal security that was launched by the Republic of Slovenia and the Republic of Croatia in 2010
- It was introduced at the EU level after the **Western Balkan Counter-Terrorism Initiative (WBCTI)** and was endorsed by the EU
- The successful implementation of the WBCTI led to discuss further development, expanding the IISG scope to other two area of internal security cooperation: 1. serious and organized crime through the **Western Balkans Counter Serious Crime Initiative (WBCSCI)** and border security thanks to **the Western Balkans Border Security Initiative (WBBSI)**
- **These are the three pillars of the IISG**

6. Conclusions

- There are other initiatives have been undertaken, such as special nucleus at Europol for the identification and reporting to the competent authorities: the EU Internet Referral Unit (EU IRU)
- **There is Multi-Layer approach of the EU in fight against terrorism that aims, in particular**
 - To foster the exchange of information at all levels
 - To strengthen cooperation between law enforcement authorities and judicial authorities
- There is also to consider **the current pluralization of subjects operating in transnational relations** that have to be involved in the fight against transnational crimes