



Focus: Terrorism and Financing of Terrorism

Dossier particulier: Terrorisme et financement du terrorisme

Schwerpunktthema: Terrorismus und Finanzierung von Terrorismus

Guest Editorial

Věra Jourová

The Contribution of the Council of Europe to the Fight against Foreign Terrorist Fighters

Nicola Piacente

Coping with Unpredictability: the EU and Terrorism

Sanderijn Duquet and Prof. Jan Wouters

Terrorismusfinanzierung in Griechenland

Dr. Emmanouil Billis

The French “War on Terror” in the post-Charlie Hebdo Era

Vasiliki Chalkiadaki

The Associations for European Criminal Law and the Protection of Financial Interests of the EU is a network of academics and practitioners. The aim of this cooperation is to develop a European criminal law which both respects civil liberties and at the same time protects European citizens and the European institutions effectively. Joint seminars, joint research projects and annual meetings of the associations' presidents are organised to achieve this aim.

Contents

News*

European Union

Foundations

- 2 Enlargement of the EU
- 2 Schengen

Institutions

- 3 European Parliament
- 3 Court of Justice of the EU (CJEU)
- 3 OLAF
- 4 Europol
- 4 Eurojust
- 5 European Judicial Network (EJN)
- 5 Agency for Fundamental Rights (FRA)
- 6 Frontex

Specific Areas of Crime / Substantive Criminal Law

- 6 Protection of Financial Interests
- 7 Money Laundering
- 7 Counterfeiting & Piracy
- 7 Organised Crime
- 8 Cybercrime

Procedural Criminal Law

- 8 Procedural Safeguards
- 9 Data Protection

Police Cooperation

Council of Europe

Foundations

- 10 Reform of the European Court of Human Rights

Specific Areas of Crime

- 11 Corruption
- 11 Money Laundering

Articles

Terrorism and Financing of Terrorism

- 12 The Contribution of the Council of Europe to the Fight against Foreign Terrorist Fighters: The Draft Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism 2005
Nicola Piacente
- 15 Coping with Unpredictability: The European Union and Terrorism
Sanderijn Duquet and Prof. Dr. Jan Wouters
- 19 Der rechtliche Rahmen zur Bekämpfung der Terrorismusfinanzierung in Griechenland
Dr. Emmanouil Billis, LL.M.
- 26 The French "War on Terror" in the post-Charlie Hebdo Era
Vasiliki Chalkiadaki

Imprint

* News contain internet links referring to more detailed information. These links can be easily accessed either by clicking on the respective ID-number of the desired link in the online-journal or – for print version readers – by accessing our webpage www.mpicc.de/eucrim/search.php and then entering the ID-number of the link in the search form.

Guest Editorial

Dear Readers,

Security is among Europeans' key concerns in 2015.¹ Even though ensuring internal security lies primarily with the Member States, the new and more complex threats that have emerged require further synergies at all levels. The European Agenda on Security presented by the Commission on 28 April 2015 highlights the EU's added value to Member States' actions. It underlines that the EU needs a solid criminal justice response to terrorism, covering investigation and prosecution of those who plan terrorist acts or are suspected of recruitment, training, and financing of terrorism as well as incitement to commit a terrorist offence.

As Justice Commissioner, my focus will therefore be on the following five priorities in the implementation of the European Agenda on Security:

■ *Combat extremism and radicalisation:* EU action against terrorism needs to address extremism through preventive measures and to draw on common European values of tolerance, diversity, and mutual respect. The Commission will ensure that laws tackling racism and xenophobia are correctly enforced. We will also support actions to combat online hate speech.

■ *Make effective use of cooperation between all law-enforcement actors:* Working together better means that all actors involved fully implement existing instruments, including the European Investigation Order. I plan to accelerate the work already under way to include the data of non-EU nationals in the European Criminal Records Information System (ECRIS). I will also encourage national judges to use Eurojust and Joint Investigation Teams more often and to take full advantage of the European Judicial Network. Finally, establishing the European Public Prosecutor's Office will help prevent fraud against the EU budget.

■ *Reinforce the prevention of radicalisation, especially in detention facilities:* While detention issues fall mainly under the competence of the Member States, the risk of radicalisation and recruitment of potential terrorists in prison is real. I aim to organise a high-level conference on how to deal with radicalised offenders in detention in autumn 2015. We also need alternatives to detention, especially for young people vulnerable to radicalisation.

■ *Combat terrorist financing more effectively:* The recently agreed Anti-Money Laundering Directive² will help trace suspicious transfers of money and facilitate the information exchange between Financial Intelligence Units and authorities. I will also look into the freezing and confiscation of criminal assets, including by extending mutual recognition instruments to all forms of confiscation.

■ *Adapt the legislative framework in full respect of fundamental rights:* The European Union is founded upon democratic values. All security measures must be in line with the EU Charter of Fundamental Rights and comply with the principles of necessity, proportionality, and legality. Moreover, common rules on data protection will enable law enforcement and judicial authorities to cooperate more effectively with one another as well as build confidence and ensure legal certainty. An agreement by the end of 2015 on the data protection reform as a whole is crucial, particularly on the proposal for a Data Protection Directive for police and criminal justice authorities.

Through this shared EU agenda, I urge all actors, EU institutions, national authorities, and EU agencies to work together in a spirit of mutual trust. We will stand firm on fundamental rights and work to address the root causes of radicalisation.

Věra Jourová
Commissioner for Justice, Consumers and Gender Equality



Věra Jourová

1 Eurobarometer on European attitudes toward security http://ec.europa.eu/public_opinion/archives/ebs/ebs_432_en.pdf

2 http://ec.europa.eu/justice/newsroom/civil/news/150210_en.htm



European Union*

Reported by Dr. Els De Busser (EDB) and Cornelia Riehle (CR)

Foundations

Enlargement of the European Union

2014 European Neighbourhood Package and Review

On 25 March 2015, a set of annual reports were adopted in which the Commission and the High Representative for Foreign Affairs and Security Policy assess the implementation of the European Neighbourhood Policy. In addition to new association agreements with Georgia, the Republic of Moldova, and Ukraine, the democratic transition in Tunisia and strengthened relations with Morocco are among the main topics of the reports.

Since the European Neighbourhood Policy has not been reviewed since 2011, a consultation paper was adopted on 4 March 2015 in order to launch a debate on revising the policy in view of new developments. The adopted document is a joint consultation paper by the

Commission and the High Representative that includes preliminary findings in terms of lessons learnt, as well as key questions for a discussion with partners and stakeholders. (EDB)

► eucrim ID=1501001

Progress for Montenegro Accession

On 30 March 2015, Montenegro opened two more chapters in its accession negotiations with the EU: chapter 16 on taxation and chapter 30 on external relations (see also eucrim 4/2014, p. 95).

This brings the accession progress to 18 of 35 chapters that have been opened for negotiation and two that have already been provisionally closed. An accession conference at the ministerial level is planned for June 2015 in order to take the process forward. (EDB)

► eucrim ID=1501002

Schengen

UK Accession to SIS II

The Council, on 10 February 2015, adopted the Decision on putting into effect the provisions of the Schengen acquis on data protection and on provi-

sionally putting into effect parts of the Schengen acquis on the SIS for the UK. This means that the UK accedes to SIS II and shall enter data into SIS II and use data stored by the system from 13 April 2015 onwards (see eucrim 4/2014, pp. 95-96 and 2/2013, p. 35).

SIS II has been operational since April 2013 and is run by eu-LISA, the EU agency for the operational management of large-scale IT systems in the area of freedom, security, and justice. The information system provides for the sharing of alerts in five categories:

- Persons wanted for arrest for surrender or extradition purposes (in connection with the EAW);
 - Missing persons;
 - Persons sought in order to assist with a judicial procedure;
 - Persons and objects subject to discrete or specific checks;
 - Objects for seizure or use as evidence in criminal trials. (EDB)
- eucrim ID=1501003

Institutions

New Rules on EU Transparency Register

The Commission and the EP launched a new version of the transparency register on 27 January 2015. The register that was first set up in 2011 aims at increasing the transparency of the decision-making process and the accountability of the institutions. It includes a code of conduct governing the relations of lobbyists with EU institutions as well as an alerts and complaints mechanism. The most visible feature is a website where

* If not stated otherwise, the news reported in the following sections cover the period January – March 2015.

organisations representing particular interests at the EU level can register and where up-to-date information about those interests is available.

The changes to the existing system mostly concern lobbying efforts, such as the way in which they are declared, additional requirements for information on involvement in EU committees or forums, and the legislative files that are followed. The new system implements the provisions of the revised inter-institutional agreement signed between the EP and the Commission in April 2014. (EDB)

►eucrim ID=1501004

New Tasks for the Commission and the ECJ from 1 December 2014 Onwards

A five-year transitional period that was provided for in Article 10 of Protocol No. 36 to the Lisbon Treaty expired on 30 November 2014. This means that from 1 December 2014 onwards, the Commission and the ECJ have new competences with regard to the former third pillar. Both institutions can now also use their powers in the field of police and judicial cooperation in criminal matters. The Commission can start infringement proceedings for the lack of full or correct implementation of, for example, Framework Decisions. For the ECJ, it means that it can issue preliminary rulings on legal acts on police and judicial cooperation in criminal matters for all Member States. This was already possible for the majority of Member States that had explicitly accepted the Court's jurisdiction in this area. A new feature for all Member States is that requests for preliminary rulings are no longer an exclusive undertaking of the highest national courts. (EDB)

►eucrim ID=1501005

European Parliament

New EP Information Network

On 9 February 2015, the EP introduced its new information network in the shape

of a blog on Tumblr. By means of constant updates, the blog gathers multimedia content that is free for everyone who wants to report on new developments. The content is often available in all official languages of the EU Member States. (EDB)

►eucrim ID=1501006

EP Study on Interagency Cooperation

The EP's LIBE Committee published a study on the interagency cooperation and future architecture of the EU criminal justice and law enforcement area on 26 November 2014. The two main chapters of the researched focused on the current as well as upcoming cooperation between Europol, Eurojust, OLAF, EJN, and the future EPPO regarding the fight against serious transnational crime, on the one hand, and the protection of the EU's financial interests, on the other.

In the final chapter, the recommendations and conclusions were divided into bilateral cooperation between the bodies for both areas of crime and cross-cutting recommendations. The latter include a call on the EU legislator to enhance regulation of bilateral relations in the relevant legal instruments, especially since several instruments are the subject of a decision-making process at the moment. (EDB)

►eucrim ID=1501007

Court of Justice of the EU (CJEU)

Statistics of CJEU Activity in 2014

Statistics presented on 3 March 2015 reveal that 2014 was the most productive year ever for the CJEU. 1,685 cases were brought to a close, which is an increase in productivity of 36.9% in five years. A record 719 cases were brought to a close by the Court of Justice in 2014. A slight decrease in newly initiated cases was registered in comparison to 2013. In 2014, a total of 622 new cases were brought before the Court of Justice, 428 of which were references for a preliminary ruling.

The average duration of references for a preliminary ruling amounted to 15 months. In four cases in 2014, an urgent preliminary ruling procedure was granted. They were concluded in 2.2 months on average. The average duration of direct actions and appeals in 2014 was 20 months and 14.5 months, respectively. (EDB)

►eucrim ID=1501008

OLAF

New Funds Available under Hercule III Programme

On 8 April 2015, OLAF announced that, in 2015, the Commission increased available funds under the Hercule III anti-fraud programme from €13.7 million in 2014 to €14.1 million in 2015. The Hercule III programme aims at supporting Member States in fighting fraud, corruption, and other illegal activities.

In June 2015, the Commission will publish "Calls for Proposals" to invite customs, tax authorities, universities, and legal experts in the Member States to present projects that help achieve the objective of protecting the EU budget. (EDB)

►eucrim ID=1501009

Cooperation Agreements with UNDP and OIOS

OLAF signed two cooperation agreements on 11 December 2014: one with the UN Office of Internal Oversight Services (OIOS) and one with the Office of Audit and Investigations of the UN Development Programme (UNDP). The partnership with OIOS aims at consolidating anti-fraud cooperation between the three institutions, while the agreement with the UNDP builds on existing investigative cooperation involving funds from both the EU and the UNDP.

The new alliances strengthen the institutions' fight against fraud, corruption, and other illegal activities affecting their financial interests, including setting up joint investigation teams. (EDB)

►eucrim ID=1501010

Europol

Connection with SIS II

On 10 December 2014, Europol was connected to the second generation Schengen Information System (SIS II), immediately performing its first query to the system.

Since September 2013, preparations and tests had been conducted by the European Agency for the Operational Management of large-scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA) to set up Europol's access to the SIS II. Eu-LISA started its activities on 1 December 2012 and currently provides 24/7 operational management for EURODAC, the Visa Information System (VIS), and the SIS II. (CR)

► eucrim ID=1501011

Operation Opson IV Seizes Thousands of Tonnes of Counterfeit Food and Drink

During December 2014 and January 2015, so-called Operation Opson IV resulted in the seizure of more than 2,500 tonnes of counterfeit and illicit food. Examples of faked food included, for instance, frozen seafood doused with chemical substances and sold as fresh. Of the nearly 275,000 litres of drinks recovered throughout the world, counterfeit alcohol was among the most seized product.

The operation was coordinated by Interpol and Europol and involved police, customs, national food regulatory bodies, and partners from the private sector in 47 countries around the globe. Countries that took part in Operation Opson IV included *inter alia* Austria, Colombia, Egypt, France, Italy, Kenya, The Netherlands, Peru, Philippines, Rwanda, South Korea, South Sudan, Spain, Sudan, Sweden, Tanzania, Thailand, Turkey, United Kingdom, USA, and Vietnam. (CR)

► eucrim ID=1501012

Memorandum of Understanding Signed with AnubisNetworks

To further the cooperation between law enforcement and private industry in the fight against cybercrime, in January 2015, Europol's EC3 signed a Memo-

randum of Understanding (MoU) with AnubisNetworks, an IT Security company offering threat intelligence and email security. The MoU establishes the possibility to work together through the exchange of expertise, statistics, and other strategic information. (CR)

► eucrim ID=1501013

Memorandum of Understanding Signed with S21sec

On 11 February 2015, Europol's EC3 signed a Memorandum of Understanding (MoU) with S21sec, a multinational firm based in Spain that provides cybersecurity services and technology. The MoU allows the two organisations to exchange knowledge and expertise on cybercrime and to cooperate to combat cyber fraud, particularly in the area of malware. (CR)

► eucrim ID=1501014

Eurojust

10th Annual JIT Meeting

The conclusions of the 10th annual meeting of National Experts on Joint Investigation Teams (JITs) have been published. The meeting, which took place

at Eurojust on 25-26 June 2014, was attended by national experts and practitioners from a vast majority of Member States, representatives of Eurojust, Europol, the European Commission, the General Secretariat of the Council, the European Parliament, OLAF, CEPOL, EJTN, the Secretariat of the Council of Europe as well as prosecutors and law enforcement personnel engaged in EU-funded projects in the European Union's neighbouring countries. The conference dealt with the following:

- The greater involvement of non-EU states in JITs;
- Other forms of cooperation with non-EU States;
- The different legal basis when cooperating with non-EU States;
- Particularities regarding the exchange of information and evidence in JITs involving non-EU States;
- The contribution of the JITs Network to the promotion of JITs with non-EU States. (CR)

► eucrim ID=1501015

Drug Trafficking: Eurojust Report Published

On 14 January 2015, Eurojust published its Implementation Report of the Action

Common abbreviations

CEPOL	European Police College
CDPC	European Committee on Crime Problems
CFT	Combating the Financing of Terrorism
CJEU	Court of Justice of the European Union
ECJ	European Court of Justice (one of the 3 courts of the CJEU)
ECtHR	European Court of Human Rights
EDPS	European Data Protection Supervisor
(M)EP	(Members of the) European Parliament
EPPO	European Public Prosecutor Office
FIU	Financial Intelligence Unit
GRECO	Group of States against Corruption
GRETA	Group of Experts on Action against Trafficking in Human Beings
JHA	Justice and Home Affairs
JSB	Joint Supervisory Body
LIBE Committee	Committee on Civil Liberties, Justice and Home Affairs
(A)ML	(Anti-)Money Laundering
MLA	Mutual Legal Assistance
MONEYVAL	Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism
SIS	Schengen Information System
THB	Trafficking in Human Beings

Plan on Drug Trafficking. The report assesses the follow-up to the recommendations listed in the Action Plan as a result of the strategic project ‘Enhancing the work of Eurojust in drug trafficking cases.’ The report also identifies areas in which greater efforts are needed and provides suggestions for possible future improvement.

According to the report, Eurojust has met six of the thirteen key performance indicators established in the Action Plan for 2012-2013:

- Better operation of coordination meetings;
- Participation of Europol and/or third States in coordination meetings;
- The enhanced use of JITs and other coordination tools;
- Providing advice on potential conflicts of jurisdiction;
- Increasing the number of coordination cases.
- Improvements with regard to the development of secure channels and considerations of cross-border asset recovery procedures in cases referred to Eurojust are still ongoing. (CR)

►eucrim ID=1501016

Eurojust Action Plan against THB: Mid-term Report Published

As a reaction to the relatively small number of THB cases referred to Eurojust, in January 2012, Eurojust’s Trafficking and Related Crimes Team initiated a strategic project called ‘Eurojust’s action against trafficking in human beings 2012-2016.’ The action plan is divided into the following six priority areas:

- Enhancing information exchange;
- Increasing the number of detections, investigations, and prosecutions in THB cases;
- Enhancing judicial cooperation, training, and expertise in THB cases;
- Increased cooperation with third States in THB cases;
- Multidisciplinary approaches towards combating THB;
- Disrupting criminal money flows and asset recovery in THB cases.

In November 2014, Eurojust published its mid-term report on the project. The findings of this report are based primarily on the analysis of 25 selected THB cases dealt with by Eurojust.

Looking at its first objective, the report finds that while the total number of notifications in THB cases remained extremely low, the percentage of coordination meetings dealing with THB cases increased to 11% compared to 9% in the previous four years (2008-2011).

For the second priority, the report recognises a slow upwards trend of THB cases registered at Eurojust. To enhance judicial cooperation in THB cases, Eurojust assisted the national authorities in overcoming legal obstacles; facilitated the setting up, functioning, and funding of 16 JITs set up for THB cases in 2012 and 2013.

Looking at training and expertise in THB, Eurojust was involved in various projects, meetings, and conferences. According to the report, no prosecution service made use of the possibility to request the setting up of a specialised THB unit.

With regard to the goal of increasing the involvement of third states in THB cases, the report notes that Eurojust only has very limited possibilities to influence the referral of such cases. In 2012 and 2013, no new Eurojust contact point in a third State has been set up. However, the number of cooperation agreements with third states could be increased. In the area of multidisciplinary approaches towards combating THB (such as conferences, seminars, expert groups, etc.), the report finds that additional efforts could be made. In the vast majority of cases, the possibility of encouraging Member States to use multidisciplinary approaches in THB cases and including this point on the agenda of coordination meetings was either not considered or not followed up on.

Finally, the report states that financial investigations and asset recovery procedures were used to a large extent during the reporting period in Eurojust THB cases. (CR)

►eucrim ID=1501017

Hearing on Foreign Fighters at the LIBE Committee

On 5 February 2015, the Committee on Civil Liberties, Justice and Home Affairs of the European Parliament (LIBE Committee) invited the President of Eurojust, Michèle Coninx, for an exchange of views on the criminal justice response to terrorism/foreign fighters. In the debate, Ms. Coninx underlined Eurojust’s operational role in assisting the network of counter-terrorism prosecutors as well as the National Correspondents for Terrorism. Furthermore, Eurojust provides a number of tools such as its Terrorism Convictions Monitor, support and funding of JITs, facilitation of EAWs, and gathering best practice. (CR)

►eucrim ID=1501018

European Judicial Network (EJN)

Ola Löfgren New Secretary to the European Judicial Network

At the beginning of December 2014, Mr. Ola Löfgren took up his position as new Secretary to the EJN.

Before taking up his new post at the EJN, Mr. Löfgren served at the Swedish Prosecution Authority for many years, for instance, as Head of the International Unit at the Office of the Prosecutor General. Furthermore, Mr. Löfgren has long experience as contact point to the EJN. Between 2002 and 2005, he was also Deputy National Member for Sweden at Eurojust. (CR)

►eucrim ID=1501019

Agency for Fundamental Rights (FRA)

Joint Statement of EU Agencies to Strengthen Fundamental Rights Protection

On 20 February 2015, the heads of EU agencies signed a joint statement to respect and proactively safeguard fundamental rights. The statement included the agencies’ pledge to:

- Promote and raise awareness regard-

ing fundamental rights within the organisation;

- Promote diversity in the workplace and mainstream fundamental rights in agency matters;

- Provide staff with an objective and trusted place to turn to in cases of harassment or other forms of inappropriate behaviour at work;

- Encourage fundamental rights compliance in conjunction with external activities when and where applicable for the organisation. (EDB)

► eucrim ID=1501020

Frontex

New Executive Director

On 16 January 2015, Fabrice Leggeri started his five-year term as the Executive Director of Frontex.

Mr. Leggeri has long-standing experience as a civil servant. Before joining Frontex, he worked at the French Ministry of the Interior, where he was in charge of EU- and Schengen-related issues such as management of external borders, visa policies, and migration management. He has also worked at the French Ministry of Defence, the French embassy in South Korea, and served as a representative of the central government at the local level. Furthermore, when being detached to the European Commission in 2002, Mr. Leggeri was already involved in the setting up of Frontex. Following the resignation of Ilkka Laitinen in 2014, Fabrice Leggeri is the second Executive Director of Frontex. (CR)

► eucrim ID=1501021

Illegal Border Crossings in 2014

Frontex has published the first figures regarding detections of illegal border crossing for the year 2014. According to the agency, 278,000 detections were made in 2014, compared to 107,000 in 2013 and 141,000 in 2011. The increase can mainly be explained by the conflict in Syria and its spread to Iraq, which led to a major increase in refugees and dis-

placed people worldwide. According to the figures, about 40% of all detections in 2014 were Kosovo nationals illegally crossing the external border of the EU/Schengen area. (CR)

► eucrim ID=1501022

Specific Areas of Crime / Substantive Criminal Law

Protection of Financial Interests

European Public Prosecutor's Office – State of Play

During the JHA Council of 12-13 March 2015, the Council discussed remaining key issues regarding the proposed regulation on the establishment of the EPPO (see eucrim 4/2014, p. 100). The focus of the debate was the question as to the conditions under which the EPPO would be able to conclude transactions with suspects. In view of finalising the first five chapters of the proposed regulation,

the Latvian presidency is concerned with the provisions on the functioning of the EPPO, including rules on the status, structure, and organisation of the Office; on the procedure for investigations, prosecutions, and trial proceedings; and on judicial review.

With respect to the debate on transactions with suspects, the presidency reported that a majority of delegations have, in principle, expressed support for the idea of a common European system for transactions. Some delegations suggested a plea bargaining system instead. Many delegations noted that a transaction should only be possible under certain conditions, e.g., when the criminal offence in question is of a minor nature or the offender is a first-time offender. Regarding the matter of judicial control, the question was whether a transaction concluded without any involvement of a judge would have the effect of *res judicata*. The presidency also reported that many delegations were of the opinion that there should be a possibility to appeal against a decision on transactions

Report

Interactions between the European Public Prosecutor's Office and National Authorities

On 16-17 April 2015, an international conference on "Interactions between the European Public Prosecutor's Office and national authorities" organized by the European Law Research Association in Poland took place in Warsaw, Poland. The conference was co-financed by Kozminski University and the European Commission (OLAF) within the framework of Hercule III.

The conference addressed the interesting and challenging issue of possible future relations between the EPPO and national authorities. The conference was attended by around 120 participants, including Mr. G. Kessler, Director-General of OLAF, and Mr. Cezary Grabarczyk, Polish Ministry of Justice. The discussions centered around a few crucial points:

- Perspectives on the establishment of the EPPO and its possible contribution to the protection of the EU's financial interests;
- The scope of competence of the EPPO;
- Exclusive or concurrent competence of the EPPO;
- Possible different models of relations between the national public prosecutor's offices and the EPPO.

The participants emphasized the complexity of the issues to be resolved by the European legislator, encouraging him not to hasten the pace on adopting the regulation on the EPPO, especially in the context of the rights of EU citizens.

For further information please contact

Dr. Celina Nowak: cnowak@kozminski.edu.pl

by the EPPO, yet some suggested that a possibility to appeal against decisions of European Delegated Prosecutors or Permanent Chambers to the College may be sufficient in this sense. In this context of the debate, the Latvian presidency sought the guidance of the Council. (EDB)

► eucrim ID=1501023

Proposed Directive on Protection of Financial Interests

After several technical meetings and political trilogues in October and November 2014, significant progress is being made on the proposal for a directive on the fight against fraud to the EU's financial interests by means of criminal law.

The Council and EP positions diverge on a number of substantive issues (see also eucrim 2/2014, p. 53). One of these is the inclusion of VAT within the scope of the proposed directive. On 27 November 2014, the Presidency drew attention to this particular point in the discussions. The EP and the Commission oppose the Council on this point and insist on the inclusion of related offences in the proposed directive. As the adoption of the proposal risks being delayed because of this debate, the Presidency has invited Ministers to encourage reflection in their Member States on possible solutions to this issue. Another issue is the level of sanctions and the prescription periods. The definition of fraud and the inclusion of a new offence of public procurement fraud have also been the subject of discussion, while agreement could be reached on the scope of application of the offence of corruption. (EDB)

► eucrim ID=1501024

Money Laundering

Agreement on Anti-Money Laundering Package

The EU Commissioner for Justice, Consumers and Gender Equality, Věra Jourová, welcomed the Council's endorsement of the political agreement that was reached on the so-called anti-

money laundering package. It consists of two proposed legal instruments: a directive on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (known as the fourth anti-money laundering directive, see eucrim 3/2014, p. 79) and a regulation on information accompanying transfers of funds to secure "due traceability" of these transfers.

The EP already gave its agreement on 16 December 2014 so that, after a second reading, the texts could soon be formally adopted by the EP. Publication in the Official Journal is expected in June 2015 after which the Member States will have two years to transpose the acts into national law. (EDB)

► eucrim ID=1501025

Counterfeiting & Piracy

OLAF and UK Customs Cooperation Lead to Two Large Seizures

On 12 and 13 March 2015, the cooperation between OLAF and UK Customs (Her Majesty's Revenue and Customs (HMRC)) resulted in over 43 million cigarettes being seized, amounting to more than €8 million in unpaid duties and taxes. The two seizures – one in Croatia and one in Greece – were successfully carried out by local customs authorities, based on information received from OLAF and HMRC. (EDB)

► eucrim ID=1501026

Organised Crime

Priorities in the Fight against Terrorism

The 7 January 2015 attacks in Paris led to a discussion on policy priorities in the fight against terrorism during an informal JHA Council on 29-30 January 2015 in Riga, Latvia. Several priorities and their urgent implementation had already been followed up during the JHA Council of 12-13 March 2015.

First, a joint statement was adopted on 11 January 2015 by EU Interior Minis-

ters who met in Paris together with *inter alia* the EU Counter-terrorism Coordinator Gilles de Kerchove and Commissioner for Migration and Home Affairs Dimitris Avramopoulos. Expressing their sympathies and condolences to the victims' families, the Ministers reaffirmed their unfailing attachment to the freedom of expression, to human rights, to pluralism, to democracy, to tolerance, and to the rule of law. As part of a comprehensive approach, the fight against radicalization, especially on the Internet, took centre stage. One of the measures already in progress is the establishment of a RAN (Radicalisation Awareness Network) Centre of Excellence in support of the RAN launched in 2011. Spreading of hatred and terror through the Internet requires cooperation with providers. Additionally, in order to combat terrorist propaganda, the Member States are urged to make maximum use of the Syria Strategic Communication Advisory Team (SSCAT) to be established by Belgium with European funding. Sharing intelligence and reducing the supply of illegal firearms are among further measures to be taken. Progress on the exchange of PNR data within the EU should be made, and cooperation with third states is stressed.

Second, during an informal JHA Council on 29-30 January 2015, the Member States' Justice Ministers outlined five justice policy priorities:

- Preventing and combating anti-Semitic hatred and anti-muslim sentiments by enforcing existing EU legislation in this area;
- Effectively using law enforcement cooperation between the Member States, involving Eurojust and Europol as well;
- Efforts should be reinforced to prevent radicalisation, especially in detention centres;
- Adoption and implementation of the upcoming fourth anti-money laundering directive;
- Accelerating the debate on the Data Protection Directive in response to terrorism.

Third, on 12-13 March 2015, the JHA Council discussed the implementation of measures prioritised in the aforementioned statements and focused on areas in which results can be achieved in the coming months:

- It was agreed to implement systematic checks on documents and persons based on a risk assessment at the external borders without delay, but no later than June 2015;
- With regard to Internet content promoting terrorism or violent extremism, the Ministers agreed that Europol should take on this additional responsibility and establish an EU Internet Referral Unit that should be operational as soon as July 2015;
- The Commission was invited to propose ways to combat illicit trafficking of firearms and enhance information exchange and operational cooperation on this topic together with Europol;
- The Council agreed to work with the EP on making progress on a strong and effective EU PNR Directive with solid data protection safeguards in the coming months.

The Council took note of information from the EU Counter-Terrorism Coordinator and the Commission on the progress achieved in implementing the measures in the aforementioned statements. They agreed to return to all these issues at their next meeting, with a view to reporting to the European Council in June 2015. (EDB)

► eucrim ID=1501027

Organised Crime Project Report Published

On 31 March 2015, the final report of a project called the Organised Crime Portfolio was published online. The project was funded by the European Commission's Prevention of and Fight against Crime Programme of DG Home Affairs. It was carried out by an international consortium coordinated by Transcrime (Università Cattolica Sacro Cuore, Milan, Italy) and involving seven other partners.

The project consisted of an exploratory study of the economics of organised crime with the focus on seven Member States (Finland, France, Ireland, Italy, the Netherlands, Spain, and the UK) but also included an examination of the European situation. It included questions on where illicit proceeds are generated, where they are invested in the legitimate market, and how much of these proceeds are confiscated by European authorities. (EDB)

► eucrim ID=1501028

Cybercrime

New Eurobarometer Study on Cybersecurity

A new Eurobarometer survey aiming at providing insight into the evolution of knowledge, behaviour, and attitudes towards cybersecurity was released on 10 February 2015. The study was carried out in October 2014 and is an update of a survey conducted in 2013, using mostly the same questions.

Conclusions show that levels of Internet use still vary significantly but that the use of the Internet through smartphones and tablets has increased dramatically since 2013. Misuse of personal data and the security of online payments while doing online banking and shopping are what concerns EU citizens the most. This concern has also increased since 2013. In spite of these concerns, 74% of the respondents agreed that they are sufficiently able to protect themselves against cybercrime. In comparison with the last survey, slightly more people reported feeling well-informed about the risks of cybercrime. The percentage increased from 43% in 2013 to 47% in 2014. 89% of Internet users agreed that they avoid disclosing personal information online based on concerns that their personal information is not kept secure by websites or by public authorities. More than half of respondents report being worried about experiencing various types of cybercrime, especially identity theft, malicious soft-ware and

online banking fraud. The full report, an elaborate summary, and factsheets in all official languages are available on the Commission's Eurobarometer webpage. (EDB)

► eucrim ID=1501029

Procedural Criminal Law

Procedural Safeguards

MEPs Strengthen Draft Rules on Presumption of Innocence

On 31 March 2015, the LIBE Committee approved the proposed directive on the presumption of innocence. Amendments made to the text include provisions obliging the Member States to prevent their public authorities from making statements that might suggest a suspect is guilty before a final conviction. This includes interviews or communication with the media or leaking of information to the press. Further amendments aim to ensure that the burden of proof stays with the prosecution. A provision was therefore deleted that would have, in limited cases, enabled compelling a suspect or accused to provide information relating to charges against him. Lastly, the right to remain silent and the right to be present at trial were enhanced.

The LIBE Committee's approval gives the rapporteur a mandate to start negotiations with the Council, with a view to reaching an agreement on the proposed directive. (EDB)

► eucrim ID=1501030

General Approach on Legal Aid

During the JHA Council of 12-13 March 2015, a general approach was reached on the proposed directive on the right to provisional legal aid for citizens suspected or accused of a crime and for those subject to an EAW.

Amendments to the original Commission proposal were made in order to define more precisely the scope of the directive. It should not apply to minor

offences or temporary restrictions of liberty. A new provision was inserted, granting provisional legal aid for less serious offences when this is required in the interest of justice, as interpreted in the case law of the ECtHR.

The general approach will form the basis of the negotiations with the EP. (EDB)

► [eucrim ID=1501031](#)

Fair Trials for Children

On 5 February 2015, the EP's LIBE Committee approved draft rules to ensure that children suspected or accused of a crime are assisted by a lawyer at all stages of criminal proceedings in any EU Member State (see also [eucrim 3/2014](#), p. 80). Other safeguards include the right to be informed in simple language about the charges against them, the conduct of the proceedings and their rights, the right to meet the holder of parental responsibility once arrested, full participation in the trial, and detention separate from adults.

The proposed directive is part of the so-called roadmap on procedural rights that was presented in 2009 together with the Stockholm Programme. (EDB)

► [eucrim ID=1501032](#)

Data Protection

Data Protection Reform – State of Play

During the JHA Council of 12-13 March 2015, further progress was made concerning the reform of the EU's data protection legal framework (see [eucrim 4/2014](#), pp. 103-104), in particular regarding the general data protection regulation. A general approach was agreed upon regarding the one-stop-shop mechanism of the regulation, ensuring that only one supervisory authority is competent. It was agreed that this mechanism should play a role in important cross-border cases and will provide for cooperation and joint decision-making between the various data protection authorities concerned.

Also, agreement was reached on a set of principles for lawful, fair, and transparent data processing, with extra attention being paid to special categories of personal data that require higher protection, e.g., data related to health.

With regard to the draft directive on data protection in criminal matters, discussions were held during the informal JHA Council on 29-30 January 2015. Topics debated included when the general data protection regulation would apply and when the directive would, considering the specific needs of law enforcement. (EDB)

► [eucrim ID=1501033](#)

EDPS Strategy 2015-2019

On 2 March 2015, the EDPS presented his strategy for the upcoming years to senior representatives of the EU institutions. He focused on three strategic objectives:

- Data protection goes digital: the EDPS aims to be open to innovative ideas, ensuring that the traditional data protection principles can be implemented in a digital environment. In this respect, accountability when handling personal data is a global challenge. Therefore, designing technologies that enhance privacy, transparency, user control, and accountability in large-scale data processing should be encouraged;

- Global partnerships with privacy and data protection authorities, fellow experts, non-EU countries, and international organisations should lead to a “social consensus” on principles that can inspire further actions;

- The EU data protection reform is urgent, as technological advancement continues. In the future, data protection should be easier, clearer, and less bureaucratic. (EDB)

► [eucrim ID=1501034](#)

Discussions on the EU PNR Directive Proposal

On 26 February 2015, discussions were held in the LIBE Committee on a new draft text for setting up an EU system

for the use of Passenger Name Record (PNR) data. The new report by rapporteur Timothy Kirkhope introduces changes to the original proposal by the Commission (see [eucrim 2/2011](#), p. 62). The decentralised nature of the system remains, but the new text includes a narrower scope, namely the EU PNR system would be limited to terror offences and serious “transnational” crime, e.g., trafficking in human beings, child pornography, trafficking in weapons, munitions and explosives. Intra-EU flights were not part of the original text but have now been incorporated. Due to the technological and structural demands of setting up such an EU PNR system for each Member State, the deadline for transposing the directive would be extended from two to three years.

Access to PNR data is proposed to be five years for terrorism but four years for other serious crimes. The new draft also includes references to the ECJ judgment on data retention and to the current EU data protection rules. (EDB)

► [eucrim ID=1501035](#)

Adoption of Directive on Tracing Traffic Offenders across Borders

On 13 March 2015, Directive 2015/413 facilitating the cross-border exchange of information on road safety-related traffic offences was published in the Official Journal. The new rules on data sharing help ensure that drivers who commit offences while abroad in the EU cannot escape their fines. For a number of offences (including speeding, not using a seatbelt, drunk driving, driving under the influence of drugs, or illegally using a mobile phone while driving), the directive regulates how EU Member States share their national vehicle registration data.

After the ECJ ruled on 6 May 2014 that the previous legal basis for this act – police cooperation – was incorrect, the legal basis was changed to transport safety (see [eucrim 2/2014](#), p. 56). The old version of the directive did not ap-

ply in the UK, Ireland, and Denmark, but this change in legal basis means that they must put the new directive into effect in their national laws within two years of its entry into force. All other Member States had only until 6 May 2015 to transpose the new rules into national laws, regulations, and administrative provisions. (EDB)

► [eucrim ID=1501036](#)

Police Cooperation

CEPOL Course on Tackling Ebola

From 4 to 6 February 2015, CEPOL hosted a residential course on the Ebola Virus Disease (EVD).

Key topics of the course were as follows:

- A summary of the situation in West Africa regarding EVD;
- EVD symptoms and their recognisability;
- Good practice in dealing with (potentially) infected citizens from a professional angle;
- The importance and establishment of national safety protocols regarding EVD;
- Prevention possibilities;
- Safety measures for others as well as self-protection measures;
- Connections with colleagues in other countries for benchmarking and mutual support on this matter. (CR)

► [eucrim ID=1501037](#)

to Rule 47, which determines what applicants are required to do (see [eucrim 1/2014](#), p. 15 and [4/2013](#), p. 123) but also because of a lower number of new applications (an overall decrease of 15% compared with 2013). 43,450 of the 56,250 applications were identified as single-judge cases likely to be declared inadmissible. This has all helped the Court to reduce the number of pending cases.

The total number of decisions on interim measures under Rule 39 increased by 20%, and the cases in which the Court granted requests for interim measures increased 100% compared with 2013. This increase can be mostly linked to the conflict in Ukraine.

Finally, the number of priority applications (falling within the top three categories) dealt with at different stages of the procedure in 2014 increased by 32% compared to 2013.

► [eucrim ID=1501038](#)

Court Published Updated Edition of Admissibility Guide

On 3 December 2014, the Court launched an updated third edition of its Practical Guide on Admissibility Criteria, which describes the formal conditions that an application to the Court must meet. The third edition covers case law up to 1 January 2014. The previous editions were translated into more than twenty languages. So far, the latest edition is available in English and French on the Court's Internet site, with more language versions to be added over time. President Spielmann stressed that, despite the reduction in the number of pending cases, the Court still receives far too many inadmissible applications. The vast majority of cases (92% of those decided in 2013) will be rejected by the Court on one of the grounds of inadmissibility. Therefore, practitioners should study the



Council of Europe*

Reported by Dr. András Csúri

Foundations

Reform of the European Court of Human Rights

Annual Activity Report and Statistics for 2014

On 29 January 2015, President Spielmann presented the annual results of the ECtHR. The Court had continued to build on the progress made in 2013. Working methods, like the single-judge system, adopted since the entry into force of Protocol No. 14 ([3/2011](#), p. 116; [1-2/2009](#), pp. 27-28 and [4/2009](#), p. 147), proved effective, and the number of pending cases decreased by 30% com-

pared with the end of 2013. Still, more than half of the pending cases are repetitive cases, and the President stressed that endemic problems need to be solved at the domestic level rather than before the ECtHR.

The Court also issued its annual activity report and its statistics for 2014. The annual table of violations by country shows that the states with the highest number of judgments finding at least one violation of the ECHR were Russia, Turkey, Romania, Greece, and Hungary. Half the priority cases concerned Russia or Romania. The statistics indicate a lower number of incoming cases allocated to a judicial formation. This is partly the result of a new approach

* If not stated otherwise, the news reported in the following sections cover the period January – March 2015.

Practical Guide carefully before deciding to bring a case before the Court. In order to make potential applicants aware of the requirements, the Court has expanded its range of information material in all official languages of the state parties to the Convention. These materials include videos explaining the admissibility criteria, how to fill in the application form correctly, and an interactive checklist.

► [eucrim ID=1501039](#)

Specific Areas of Crime

Corruption

GRECO Fourth Round Evaluation Report on Germany

On 28 January 2015, GRECO published its Fourth Round Evaluation Report on Germany. The fourth and latest evaluation round was launched in 2012 in order to assess how states address issues such as conflicts of interest or declarations of assets with regard to parliamentarians (MPs), judges, and prosecutors (for further reports, see [eucrim 3/2014](#), p. 83.; [4/2014](#), pp. 104-106.).

Though the overall assessment of the German system was positive, the report raised some issues. As regards MPs' conflicts of interest, the report calls for further development of the Code of Conduct for MPs and their disclosure obligations (which are currently limited to income from secondary activities and donations). MPs should publicly declare potential or actual conflicts of interest as they arise, and monitoring needs to prevent violations of the rules on parliamentary comportment. Access to information throughout the legislative process shall be improved as well,

in particular with regard to third-party involvement in decision-making.

While GRECO acknowledges the individual independence of judges and public prosecutors, there are concerns with regard to their structural independence from governing bodies, which decide on fundamental matters such as the appointment of judges.

The report was particularly concerned with the right of the Ministers of Justice to give instruction in individual cases and recommends that steps be taken to ensure that the justice system is free from political influence. In addition, GRECO acknowledges the high quality of the judiciary and the prosecution service in Germany, but was concerned about growing dissatisfaction among professionals with the human and financial resources available for the justice system.

► [eucrim ID=1501040](#)

GRECO President Requires Stronger Political Will to Fight Corruption

On 8 December 2014, Marin Mrcela, President of GRECO, stressed in a statement that rarely a day goes by without a corruption scandal hitting the headlines. However, institutions set up to fight corruption frequently lack resources and face legal obstacles or even political interference while doing their work.

The results of GRECO evaluations give good reason to ring the alarm bells in order to boost the integrity of MPs, judges, and prosecutors. While citizens continue to protest on the streets to denounce the corruption of those who are meant to responsibly manage public and civil affairs, there is a stronger need for political will to bring about lasting progress.

► [eucrim ID=1501041](#)

Money Laundering

MONEYVAL Public Statement on Bosnia Herzegovina

At its 35th plenary meeting on 11-14 April 2011, MONEYVAL invited Bosnia and Herzegovina to develop a clear action plan in response to MONEYVAL's third round evaluation report. At its 37th plenary meeting on 13-16 December 2011, MONEYVAL noted that an action plan had been adopted, but the 44th plenary meeting on 31 March to 4 April 2014 stated that the majority of the objectives in the action plan had not been fully addressed or even rejected. As a consequence, MONEYVAL issued a public statement on 1 June 2014. A fourth assessment visit to Bosnia and Herzegovina was conducted from 18 to 29 November 2014. Though the report on the fourth assessment will not be adopted before September 2015, the emerging findings of the assessment team were shared with the 46th Plenary on 8-12 December 2014. The plenary decided to maintain Bosnia and Herzegovina at step three of its compliance enhancing procedures and adopted a revised public statement. It calls upon the states and territories evaluated by MONEYVAL to advise their financial institutions to pay special attention by applying enhanced due diligence measures to transactions with persons and financial institutions from or in Bosnia and Herzegovina, in order to address the money laundering and financing of terrorism risks.

The revised statement urges Bosnia and Herzegovina to immediately and meaningfully address its remaining deficiencies in AML and CFT regimes, in particular by amending its criminal code.

► [eucrim ID=1501042](#)

The Contribution of the Council of Europe to the Fight against Foreign Terrorist Fighters

The Draft Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism 2005

Nicola Piacente

On 24 September 2014, the Security Council of the United Nations, acting under Chapter VII of the Charter of the United Nations, expressing grave concern over the acute and growing threat posed by foreign terrorist fighters,¹ unanimously adopted Resolution 2178 (2014) on “Threats to international peace and security caused by terrorist acts” (hereinafter UNSCR 2178). The main measures enumerated in UNSCR 2178 (Art. 6) include establishing as criminal offences the travelling or attempting to travel to another state “for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts, or the providing or receiving of terrorist training;” the “willful provision or collection” of funds to be used for travelling to another state to carry out terrorist acts, as well as the “willful organisation or other facilitation” of such travels. In the view to implement the Security Council of the United Nations UNSCR 2178, at its 27th plenary meeting (November 2014), the Committee of Experts on Terrorism (CODEXTER), in its position as steering committee of the Council of Europe responsible for the formulation of counter-terrorism policies examined the issue of radicalization and foreign terrorist fighters. Under the direction of the Council of Europe Secretary General, they decided to adopt the draft terms of reference, to be submitted to the Committee of Ministers, for an *ad hoc* committee to be established in order to elaborate and negotiate, under the authority of the CODEXTER, a Draft Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism.

On 22 January 2015, the Committee of Ministers, at the suggestion of CODEXTER, set up this *ad hoc* committee for the purpose of drafting an additional protocol (hereinafter the Draft Additional Protocol) to the Council of Europe Convention on the Prevention of Terrorism (CETS No. 196) from 2005 (hereinafter the Mother Convention). It also adopted the Terms of Reference for the Committee on Foreign Terrorist Fighters and Related Issues (COD-CTE). The COD-CTE, under the auspices of CODEXTER, was tasked with preparing the Additional Protocol to the Mother Convention and with examining the following: The criminalization of the following acts when committed intentionally:

- Being recruited, or attempting to be recruited, for terrorism;

- Receiving training, or attempting to receive training, for terrorism;
- Travelling, or attempting to travel, to a state other than the state of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts, or the providing or receiving of terrorist training;
- Providing or collecting funds for such travels;
- Organizing and facilitating (other than “recruitment for terrorism”) such travels;

Whether any other act relevant for the purpose of effectively combating the phenomenon of foreign terrorist fighters, in the light of UNSCR 2178, should be included in the Draft Additional Protocol.

The main objective of the Additional Protocol is to supplement the aforesaid Mother Convention with a series of provisions aimed at implementing the criminal law aspects of UNSCR 2178. After three meetings held by COD-CTE, CODEXTER adopted at the plenary meeting on 8-10 April 2015 a Draft Additional Protocol to Convention (2005)¹⁹⁶ and its explanatory report (to be submitted to the Committee of Ministers for final approval and, later, to the State Parties for signature, which has been scheduled for June 2015). The Draft Additional Protocol calls upon State Parties to criminalize the following misconduct:

- Participating in an association or group for the purpose of terrorism (Art. 2);
- Receiving training for terrorism (Art. 3);
- Travelling abroad for the purpose of terrorism (Art. 4);
- Funding travelling abroad for the purpose of terrorism (Art. 5);
- Organizing or otherwise facilitating travelling abroad for the purpose of terrorism (Art. 6).

I. Participating in an Association or Group for the Purpose of Terrorism (Art. 2)

Pursuant to the terms of reference set up by the Committee of Ministers, CODEXTER considered the criminalization of participation in an association or group for the purpose of terrorism and receiving training for terrorism to be two additional tools aimed at implementing the criminal law aspects

of UNSCR 2178 and completing the provisions of the Mother Convention. The Mother Convention has not, in fact, called on states to outlaw the terrorist association or group *per se* but only “recruitment for terrorism,” which is the “active” solicitation of another person to commit or participate in the commission of a terrorist offence or to join an association or group, for the purpose of contributing to the commission of one or more terrorist offences by the association or the group. Neither the Mother Convention nor the draft protocol define the terrorist association or group and/or state the difference between “association” and “group.” In fact, pursuant to the Mother Convention’s explanatory report, the terms “association or group” can be interpreted as “proscribed” organizations or groups in accordance with national legislation.

Looking at the EU’s binding instruments, the 2002/475 JHA Council Framework Decision on combating terrorism (that refers only to the terrorist group) criminalizes not only the participation in the activities of a terrorist group (including the supplying of information or material resources, or the funding its activities in any way, with knowledge of the fact that such participation will contribute to the criminal activities), but also the directing a terrorist group (Art. 2 of the Framework Decision). The 2002/475 JHA Council Framework Decision also contains a clear definition of terrorist group (a structured group of more than two persons established over a period of time and acting in concert to commit terrorist offences²). It should be highlighted that Art. 2 of the draft protocol does not perfectly mirror Art. 6 of the Mother Convention and the initial relevant term of reference (being recruited, or attempting to be recruited, for terrorism). Since the initial work of the COD-CTE, it became clear that the criminalization of “passive recruitment” would create problems in some legal systems. The drafters therefore decided that State Parties should criminalize behavior they deemed closely related to that of “being recruited for terrorism,” namely “participating in an association or group for the purpose of terrorism” (which is misconduct, usually following a recruitment process). The agreed upon draft of Art. 2 is limited to the participation in the activities of an association or group for the purpose of committing or contributing to the commission of one or more terrorist offences by the association or group (irrespective of the effective perpetration of a terrorist offence). Being recruited for the purpose of committing a terrorist offence of an individual neither being a member of, nor acting on behalf of an association or group has therefore not been criminalized, neither in the draft protocol nor in the above-mentioned EU Framework Decision.

II. Receiving Training for Terrorism (Art. 3)

The draft protocol criminalizes receiving training for terrorism purposes (irrespective of the effective perpetration of a terror-

ist offence after training), that is receiving instruction, including obtaining knowledge or practical skills from another person in the making or use of explosives, firearms, or other weapons, or noxious or hazardous substances, or in other specific methods or techniques, for the purpose of carrying out or contributing to the commission of a terrorist offence. Art. 3 of the Protocol was intended to mirror Art. 7 of the Mother Convention (criminalizing active training for terrorism) by binding State Parties to criminalize the receiving of training enabling the recipient to carry out or contribute to the commission of terrorist offences. Receiving training for terrorism purposes is not regulated either by the Framework Decision 2002/475/JHA on combating terrorism or by the Council Framework Decision 2008/919/JHA of 28 November 2008 amending Framework Decision 2002/475/JHA. Pursuant to the draft explanatory report of the draft protocol, the receiving of training for terrorism may take place in person (e.g., by attending training camps) or through various electronic media, including the Internet.

It must be highlighted, however, that the mere visiting of websites containing information or receiving communications that are potentially useful for training for terrorism is not deemed sufficient to consider the crime of receiving training for terrorism as having been perpetrated. Following the case law of several national systems that already criminalized the receiving of training for terrorism purposes, the drafters of the Protocol meant that the perpetrator must normally take an active part in the training, e.g., by participating in interactive training sessions via the Internet. Pursuant to the protocol, the criminalization of this offence is not confined to the (either active or passive) training within a terrorist association or group. Law enforcement agencies are thus enabled to investigate and prosecute perpetrators, including those ultimately acting alone, and all training activities having the potential to lead to the commission of terrorist offences. Contrary to the 2002/475 JHA Council Framework Decision, which criminalizes incitement and the aiding and abetting of offences related to a terrorist group (such as participation in or direction of a terrorist group), and to the Council Framework Decision 2008/919/JHA, which criminalizes incitement and the aiding and abetting of training for terrorism, the drafters of the new Council of Europe draft instrument did not consider it necessary to criminalize the attempt or the aiding or abetting of participating in an association or group for the purpose of terrorism (Art. 2) and receiving training for terrorism (Art. 3).

III. Travelling Abroad for the Purpose of Terrorism

The core of the draft protocol is the specific implementation at the regional level of the Council of Europe of the UNSCR 2178 through the criminalization of the following:

- Travelling abroad for the purpose of terrorism;
- Funding travelling abroad for the purpose of terrorism;
- Organizing or otherwise facilitating travelling abroad for the purpose of terrorism.

Taking into account the specific provision of the above-mentioned resolution,³ the draft protocol criminalises travelling abroad for the purpose of terrorism, that is travelling or attempting to travel to a state (travel to the state of destination for terrorism purposes may be direct or via transit through other states en route), which is not that of the traveller's nationality or residence, for the purpose of the commission of, contribution to, or participation in a terrorist offence or for the providing or receiving of training for terrorism.

State Parties are thus bound to criminalize anyone "travelling abroad for the purpose of terrorism" from their own territories or their own nationals (irrespective of the geographical location of the starting point of the travel), when committed unlawfully and intentionally. When criminalizing travelling for terrorism purposes, each State Party may establish conditions required by and in line with its constitutional principles. According to the clarifications provided for by the draft explanatory report to the draft protocol, the following prerequisites must be fulfilled for the travels specified by the draft protocol to be prosecuted:

- 1) The real purpose of the travel must be for the perpetrator to commit or participate in terrorist offences, or to receive or provide training for terrorism, in a state other than that of his nationality or residence (irrespective of the effective perpetration of a terrorist offence);
- 2) The perpetrator must commit the crime intentionally and unlawfully;
- 3) The act of travelling must be criminalized under very specific conditions and only when the terrorism purpose is proven:
 - a) in accordance with the domestic law of a State Party, with the specific, applicable criminal procedures of said Party and pursuant to the general principle of the rule of law;
 - b) through evidence submitted to an independent court for scrutiny.

Members of CODEXTER considered the seriousness of the threat posed by foreign terrorist fighters to require a robust response, which, for Council of Europe Member States, should be fully compatible with human rights and the rule of law and proportionate with the principles of the ECHR (and, in particular, with the right to freedom of movement as enshrined in Art. 2 of Protocol No. 4 to the ECHR, taking into account that the aforementioned Convention allows for the right to freedom of movement to be restricted under certain conditions, including the protection of national security),⁴ its applicable case-law, and national legislation and case-law.

The draft protocol does not contain an obligation for State Parties to ban or criminalize all travel to certain destinations. Parties are also not bound to introduce administrative measures, such as the withdrawal of passports. The drafters of the Protocol considered that the wording of Paragraph 6 (a) of UNSCR 2178 does not contain an obligation for states to criminalize the act of travelling "for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts, or the providing or receiving of terrorist training" as a separate criminal offence. In fact, in some legal systems, the act of travelling for the purpose of terrorism may normally be criminalized as a preparatory act to the main terrorist offence or as an attempt to commit a terrorist offence.

It can be easily observed that great relevance has been given to active and passive training for terrorism purposes. This misconduct has been criminalized *per se* by the Mother Convention (active training) and by the Draft Additional Protocol (passive training). Active and passive training for terrorism also comprises the purpose of the act of travelling. Neither the activities of armed forces during an armed conflict, which are governed by international humanitarian law, are governed by the provisions of the draft protocol, nor are the activities undertaken by military forces of a State Party in exercise of their official duties, as far as they are governed by other rules of international law. Members of COD-CTE decided not to criminalize the travels for terrorism purposes undertaken by the so-called returnees; that is, by foreign terrorist fighters returning to the State Parties in which they are citizens or residents.

IV. Funding Travelling Abroad for the Purpose of Terrorism (Art. 5) and Organizing or Otherwise Facilitating Travelling Abroad for the Purpose of Terrorism (Art. 6)

These two offences can be criminalized as preparatory acts or as aiding and abetting the main offence, that is travel for terrorism purposes. The wording of Art. 5 recalls the wording of Operative paragraph 6 (b) of UNSCR 2178 and of Art. 2, paragraph 1 of the International Convention for the Suppression of the Financing of Terrorism of the United Nations of 1999.

The funding of travelling abroad for terrorism purposes is committed by "providing or collecting" funds fully or partially enabling any person to commit the crime of travelling abroad for the purpose of terrorism. Looking at the draft explanatory report to the draft protocol, the funds may come from a single source, e.g., as a loan or a gift provided to the traveller by a person or legal entity or from various sources through some kind of collection organized by one or more persons or legal entities. The funds may be provided or collected "by any means, directly or

indirectly.” Organizing and facilitating travelling abroad for terrorism purposes refers to a variety of conduct related to practical arrangements connected with travelling and to any other conduct than that falling under “organization,” which assists the traveler in reaching his or her destination. In order to deem these two offences as having been committed, it is required that:

- 1) The perpetrator acts intentionally and unlawfully;
- 2) The perpetrator is aware that the funds are fully or partially intended to finance travelling abroad for the purpose of terrorism;
- 3) The perpetrator is aware that organization and facilitation refer to travelling abroad for the purpose of terrorism.

As regards the definition of “funds,” the drafters refer to the definition contained in Art. 1, paragraph 1 of the UN International

Convention for the Suppression of the Financing of Terrorism. The drafters did not consider it necessary to criminalize attempt or the aiding or abetting of these two offences. State Parties are, however, free to do so if they consider it appropriate in their domestic legal systems.

The draft protocol, due also to the participation of the EU in the negotiations in Strasbourg, might help the EU (in view of implementing the European Agenda on Security for the period 2015–2020 set out by the European Commission)⁵ to update the above-mentioned 2008 Framework Decision on terrorism through the criminalization of travel for terrorism purposes, to strengthen its response to terrorism and foreign terrorist fighters, and to provide Member States with better tools to tackle this phenomenon.

1 Pursuant to UNSCR 2178, foreign terrorist fighters are individuals who travel to a state other than their state of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training, including in connection with armed conflict.

2 Pursuant to the 2002/475 JHA Council Framework Decision, “structured group” shall mean a group that is not randomly formed for the immediate commission of an offence and that does not need to have formally defined roles for its members, continuity of its membership, or a developed structure.

3 ... all states shall ensure that their domestic laws and regulations establish serious criminal offenses sufficient to provide the ability to prosecute and to penalize in a manner duly reflecting the seriousness of the offense:

- (a) their nationals who travel or attempt to travel to a state other than their state of residence or nationality and other individuals who travel or attempt to travel from their territories to a state other than their state of residence or nationality, for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts, or the providing or receiving of terrorist training;
- (b) the willful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to finance the travel of individuals to a state other than their state of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training;

- (c) the willful organization or other facilitation, including acts of recruitment, by their nationals or in their territories of the travel of individuals who travel to a state other than their state of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training.

4 See also Art. 12 of the International Covenant on Civil and Political Rights of the United Nations.

5 See Communication from the Commission to the European parliament, the Council, the European Economic and Social Committee, and the Committee of Regions COM (2015) 185 final.

Nicola Piacente

Deputy Chief Prosecutor; Prosecution Office of Genova
Chair of CODEXTER

Coping with Unpredictability

The European Union and Terrorism

Sanderijn Duquet and Prof. Dr. Jan Wouters

Terrorism remains a major concern for the international community. Terrorist attacks are unpredictable events with far-reaching consequences for economic, social, and political life. Having never been far out of the picture, the threat of terrorism

seems to have taken centre stage once again. Media and civil society increasingly report the atrocities committed by terrorist organizations, including Islamic State (IS), Al-Shabab, and Boko Haram. Closer to home, deadly attacks on a British sol-

dier in London in broad daylight in May 2013, on tourists at a Jewish Museum in Brussels in May 2014, and, recently, on journalists at the Paris Headquarters of the satirical magazine Charlie Hebdo in 2015, have left the European citizen alarmed.

Public authorities have been struggling to anticipate and to respond to sudden, politically-inspired attacks that target citizens and society. The European Union (“EU” or “Union”) is sensitive to the issue and, for many years now, has participated in the fight against terrorism. Following a surge of EU counterterrorism action in the first few years of the 21st century, however, a sense of “fatigue” in fighting terrorism was detectable in the years that followed.¹ This is remarkable, since Europol’s strategic analyses have consistently indicated a high threat of terrorism in Europe.² The EU’s involvement has never been an obvious choice. Traditionally, the EU’s Member States have occupied a central role in this arena, ranging from the work undertaken by their national intelligence services to the criminal prosecution of perpetrators. Yet, the 2015 Paris attacks seem to have created new momentum for the EU and its Member States to manage the unmanageable problem of terrorism. In light of a global context that is different to that of post-9/11, and considering the changing nature of the threat of (home-grown) terrorism, the revitalization of regulatory answers is required. This contribution examines whether and how the EU advances risk-oriented approaches in its counterterrorism management. It will be argued that it is necessary for the Union to focus not only on threats posed by terrorism, but, importantly, to further develop its legal framework on the cooperation among Member States in the criminal sphere. Following a brief overview of the EU’s counterterrorism strategy, we reflect on the use of the concept of risk as a parameter in counterterrorism regulation. A final section concludes.

I. Some Key Principles of the EU’s Counterterrorism Framework

An “event-driven” counterterrorism strategy has dominated the past fifteen years of EU counterterrorism management.³ Three major terrorist attacks (in New York/Washington DC, Madrid, and London) that occurred between 2001 and 2005 serve as landmark moments that have shaped law- and policy-making. All three events caused disorder in Europe, altered threat perceptions, and (at least temporarily) led to a greater political will to address terrorism.⁴

Following the 9/11 attacks, a comprehensive EU Action Plan to Fight Terrorism was adopted within two weeks. The Action Plan implemented parts of the 1999 Tampere Programme, which had until then received little support, and served as the policy basis for legal instruments adopted in the course of

the following months.⁵ The most significant of these instruments were the two Council Framework Decisions of 13 June 2002 on Combating Terrorism⁶ and the European Arrest Warrant.⁷ External action in the field of law enforcement was also strengthened. Such cooperation took the form of a Europol-US Agreement on the exchange of personal data⁸ and EU-US Agreements on extradition⁹ and mutual legal assistance.¹⁰ Institutionally, new departments and functions were created and anti-terrorist teams within Europol and Eurojust were established. The Madrid 2004 attack re-invigorated this political will. Only days later, on 25 March 2004, the European Council adopted a Declaration on Combating Terrorism,¹¹ and, in May 2004, the Commission negotiated a transatlantic agreement on the use and transfer of passenger name (“PNR”) records to the US Department of Homeland Security.¹² In order to facilitate interstate police and judicial cooperation and recognition, frameworks were developed, and extradition and arrest warrant procedures were simplified. In the same month, Gijs de Vries was appointed the first EU Counterterrorism Coordinator within the Council Secretariat to overcome coordination problems related to the proliferation of counterterrorism action in the Union.¹³ Since 2007, the position has been held by Gilles de Kerchove.

In July 2005, the city of London was attacked. This built a fresh wave of political momentum that served to speed up ongoing regulatory work. Importantly, the momentum resulted in the adoption of the EU Counterterrorism Strategy (“CTS” or “Strategy”).¹⁴ The Strategy’s structure reflects the idea that threats should be tackled at different stages and introduces four pillars to this effect (“Prevent,” “Protect,” “Pursue,” and “Respond”). Along with the development of a more comprehensive approach to counterterrorism, for the first time, the CTS added risk parameters to the Union’s counterterrorism policy. It did so by cautiously introducing the concepts of risk prevention and risk response. In the first decade of the new millennium, the EU’s management of counterterrorism was driven by public shock, often leading to hasty decision-making. Transatlantic talks have been, to a lesser extent, subject to these political mood swings and have continued even in periods of counterterrorism fatigue within the EU. Cooperation focused mainly on the promotion of information sharing (see: the 2010 Terrorist Finance Tracking Program; the 2012 entry into force of the PNR Agreement) and on strengthening border controls and transport security. Such data sharing has been an object of great concern for the European Parliament as well as for European civil liberty groups. The protection of European citizens’ privacy rights has featured in intense debates in Parliament and procedures before the Court of Justice of the EU. This was no different when the Commission tabled a proposal on the development of a European PNR system in 2011, which is still being negotiated with the Council and the Parliament.

II. The Concept of Risk in the EU's Counterterrorism Framework

Post-2005, strategic thinking grounded in risk analysis has slowly been making an appearance in the Union's counterterrorism policy. Laws and policies were designed to manage threats posed by terrorism, on the one hand, and to manage the vulnerability of the Union, its Member States, and its citizens, on the other. The first set of laws and policies acknowledges the potential danger of terrorism both within and outside the Union's borders and focuses on the reduction of threats that can be quantified and analysed. The starting point of the second set of laws and policies is different: it emphasizes the enhancement of the legal framework to make the Union less vulnerable in case a terrorist attack occurs. Rather than centralising external threats (focus on the "other"), it stresses the protection of European citizens via the refinement of EU laws on terrorism (focus on the "self").

1. Reducing the threat of terrorism

To reduce the threat posed by terrorism, the Union relies on criminal investigation methods and measures preventing radicalisation. Due to its limited powers in criminal law-making, however, the EU is prevented from assuming a leading role in the field: it lacks the necessary competences and operational capacity in criminal matters and intelligence gathering.¹⁵ These constitutional hiccups have not stopped the EU from contributing to threat reduction by playing a supportive and coordinating role. Gradually building common tools to analyse terrorism threats, legal and policy instruments have been developed under the "prevent" and "pursue" pillars of the CTS.

First, the Union combats radicalisation as well as the recruitment of terrorists,¹⁶ mainly by focusing on the disruption of factors that draw people to terrorism. Countering radicalisation requires the alignment of internal and external policies. As such, radicalisation reduction measures have been integrated into the EU's external action instruments, e.g., into its neighbourhood policy (ENP) and political dialogues with third countries as well as into the 2010 Internal Security Strategy, which commits to eradicating terrorism at its source.¹⁷ To this end, a Radicalisation Awareness Network ("RAN") was established by the Commission in partnership with the Committee of the Regions.¹⁸ The network reaches out to actors in the Member States by pooling the expertise of policy makers, law enforcement and security officials, prosecutors, local authorities, academics, field experts, and civil society organisations. It has been referred to as a "network of networks,"¹⁹ in which the EU's role focuses on the facilitation of contacts.

Second, the EU embraces the efforts of domestic intelligence agencies making threat assessments and builds on them in its own counterterrorism activities. Union initiatives have focused on the streamlining of Member States' and EU agencies' ability to access each other's databases and to store data.²⁰ To a certain extent, however, EU actors also analyse scientific data to determine risks while remaining dependent on the expertise and raw intelligence of the Member States. The European Police Office (Europol) and the EU Intelligence Analysis Centre (IntCen) are the main actors involved in dealing with statistics. Europol's task is to "collect, store, process, analyse, and exchange information and intelligence"²¹ while IntCen is the external intelligence actor. Referred to as the European External Action Service's "intelligence hub," IntCen has been particularly active in providing early warning and situational awareness information. Annually, 200 strategic situation assessments and 50 special reports and briefings are produced by its staff of around 70 people.²²

2. Reducing vulnerability

Taking a risk-based approach to counterterrorism goes beyond analysing and diminishing potential threats. Prospective targets also have to be made less vulnerable to terrorism. To reduce its vulnerability, it is necessary that the Union be equipped with sufficient and adequate legal tools. Investigation, prosecution, and assistance procedures have to be up and running and must have the capacity to be activated instantly in order to serve as a defence mechanism if a terrorist attack materializes. In EU policy terms, vulnerability reduction comes mainly under the "protect" and "respond" pillars of the CTS. In contrast to the threat reduction measures discussed above, vulnerability reduction is less context-specific and less dependent on data (collected through Member States).

First, given that terrorism often assumes a transnational character, the protection of citizens demands the improvement of cooperative and coordinative efforts in the criminal sphere. Setting up a framework for Member States to act jointly against terrorists and terrorist groups is not, in itself, a new initiative²³ nor is it reserved for the Union alone.²⁴ In the past 15 years, progress has been made in the EU on the traditionally sensitive subject of the approximation of criminal laws and on the development of mutual assistance and recognition frameworks, a topic that is also featured in the Stockholm Programme.²⁵ It is sometimes conceded that Member States need to move beyond cooperation and coordination, towards forms of integration. Yet, at the present time, Member States remain divided on the topic.²⁶

Second, the Lisbon Treaty provided the EU with a new set of reactive, mutual counterterrorism tools, some of which need to be implemented. One tool is the potential establish-

ment of a European Public Prosecutor's Office (Art. 86 TFEU), which includes the possibility for the European Council to adopt a decision to extend the jurisdiction of the Prosecutor's Office to include serious crimes having a cross-border dimension. This possibility, however, will only be considered in the longer term according to the Commission's 2013 proposal.²⁷ A further tool can be found in Art. 222 TFEU, which introduces a solidarity clause. As a constitutional principle, solidarity refers to a legal obligation for the Union and its Member States to assist each other in the event of terrorist attacks if requested to do so. Following efforts of the 2010 Belgian Presidency and repeated concerns raised by the EU Counterterrorism Coordinator, in 2014, the Council adopted a decision on the rules and procedures for its implementation.²⁸ The decision provided for the immediate activation of the Integrated Political Crisis Response arrangements (IPCR) and an Emergency Response Centre (ERC), linked to the Commission's Union Civil Protection Mechanism and ensuring a 24/7 operational capacity.²⁹ These initiatives add to the preparedness of the Union should one of its Member States be the object of an actual or imminent terrorist attack.

III. Concluding Remarks on the Way Forward

Neither the EU nor its Member States can eliminate all threats posed by terrorism. Still, mechanisms can be created that better deal with the challenges relating to the prosecution of terrorists and the protection of citizens, society, and critical infrastructure. Presently, counterterrorism remains a highly fragmented policy field. For that reason, this contribution has used two different, yet interrelated, concepts in risk regulation to evaluate common action: the reduction of threats within and outside the Union and the reduction of the vulnerability of the Union. An accurate and cohesive counterterrorism framework in the EU requires both.

Following the January 2015 twin attacks in Paris, the EU and its Member States have, once again, pledged closer cooperation in the fight against terrorism. Judging by the policy initiatives in the first months following the attack,³⁰ priority is being given to reduction of threat rather than reduction of vulnerability. A further priority seems to be the intensification of the EU's relationship with the US with regard to information sharing. In the following months, it is expected that legal initiatives will materialise on radicalisation over the Internet (by setting up Internet referral capabilities), on fighting the illicit trafficking of firearms, and on stepping up information sharing and operational cooperation. Member States are also looking for broad agreement to reinforce the application of the Schengen Framework. Transatlantic relations seem stronger than ever: it is telling that, on the day Paris marched for the freedom of speech, an EU delegation composed of ministers of those European countries most affected by terrorism, Commissioner for Home Affairs Avramopoulos and the EU Counterterrorism Coordinator, met with US Attorney-General Holder and Secretary of Homeland Security Johnson to discuss a common approach. Some of the most interesting things to follow up on will be the effect of the Paris attacks on the US-EU SWIFT agreement (up for renewal in 2015) and, in the longer term, on the PNR accord (up for renewal in 2019) as well the effect on the development of the European PNR System under preparation by the Commission for a number of years now.



Sanderijn Duquet

PhD Fellow at the Research Foundation – Flanders (FWO), the Leuven Centre for Global Governance Studies – Institute for International Law, KU Leuven.



Prof. Dr. Jan Wouters – Full Professor of International Law and Jean Monnet Chair *ad personam*, Director, Leuven Centre for Global Governance Studies – Institute for International Law, KU Leuven and Visiting Professor, College of Europe (Bruges), Sciences Po (Paris) and Luiss University (Rome).

1 EU Counter-Terrorism Coordinator, "EU Counter-Terrorism Strategy", 26 November 2009, <<http://register.consilium.europa.eu/pdf/en/09/st15/st15359-re01.en09.pdf>>, p. 2. The criticism is echoed in the literature, see O. Bures, EU counterterrorism policy: A paper tiger?, Surrey, 2013, p. 244.

2 See, e.g., Europol, "TE-SAT 2013: EU Terrorism Situation and Trend Report", 25 April 2013, <https://www.europol.europa.eu/sites/default/files/publications/europol_te-sat2013_lr_0.pdf>.

3 R. Coolsaet, "EU counterterrorism strategy: value added or chimera?", in *International Affairs*, Vol. 86 No. 4/2010, 857-873.

4 J. Wouters and F. Naert, "The European Union and 'September 11'", in *Ind. Int'l & Comp. L. Rev.*, Vol. 13 No. 3/2003, 719-775.

5 Tampere European Council Conclusions, 15-16 October 1999, <http://www.europarl.europa.eu/summits/tam_en.htm>.

6 Council Framework Decision on combating terrorism, O.J. 2002, L 164, 22.06.2002, 3.

7 Council Framework Decision on the European Arrest Warrant and the Surrender Procedures between Member States, O.J. 2002, L 190, 18.7.2002, 1.

8 US-Europol Agreement on the exchange of personal data, 6 December 2001, European Council 14581/01; Supplemental Agreement on the Exchange of Personal Data and Related Information, Council Doc. 15231/02 Europol 104, 5 December 2002.

9 EU-US Agreement on extradition, O.J. 2003, L 181, 19.7.2003, 27.

10 EU-US Agreement on mutual legal assistance, O.J. 2003, L 181, 19.7.2003, 34.

11 European Council, "Declaration on Combating Terrorism", 25 March 2004, <www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/79637.pdf>.

12 The 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, which was eventually only signed on the 14th of December 2011, O.J. 2012, L 215, 11.08.2012, 5.

13 A. Mackenzie, O. Bures, Ch. Kaurert, S. Léonard, "The European Union Counter-terrorism Coordinator and the External Dimension of the European Union

Counter-terrorism Policy", in *Perspectives on European Politics and Society*, Vol. 14, No 3/2013, 325-338.

14 Council of the European Union, "The European Union Counter-Terrorism Strategy", Brussels, 30 November 2005, <register.consilium.eu.int/pdf/en/05/st14/st14469-re04.en05.pdf>.

15 E. Herlin-Karnell, "EU Competence in Criminal Law after Lisbon", in A. Biondi, P. Eeckhout, and S. Ripley, *EU Law after Lisbon*, Oxford, 2012, 331-346.

16 Council of the European Union, "The European Union Strategy for Combating Radicalisation and Recruitment to Terrorism", 24 November 2005 (revised 2008), <register.consilium.eu.int/pdf/en/05/st14/st14781-re01.en05.pdf>.

17 Council of the European Union, "Internal security strategy for the European Union: Towards a European security model", 25 March 2010 <www.consilium.europa.eu/uedocs/cms_data/librairie/PDF/QC3010313ENC.pdf>.

18 Communication, "The EU Internal Security Strategy in Action: Five steps towards a more secure Europe Council of the European Union", 22 November 2010, COM(2010) 673 final, at 7.

19 Commission, "Charter of Principles Governing the EU Radicalisation Awareness Network", 20 December 2012, at 2.

20 European Council, "The Stockholm Programme: an Open and Secure Europe Serving and Protecting Citizens", 4 May 2010.

21 Art. 5(1)(a) Council Decision establishing the European Police Office (Europol),

2009/371/JHA, O.J. 2009, L 121, 15.5.2009, 37.

22 Answer given by High Representative/Vice-President Ashton on 13 December 2012 in reply to written parliamentary question E-006017/2012.

23 See, e.g., the activities of Member States in the Trevi group and the integration thereof in the Treaties of Maastricht and Amsterdam.

24 Early initiatives to cooperate in the fight against terrorism were also carried out within the intergovernmental settings of NATO, the Western European Union, and the Council of Europe.

25 Stockholm Programme, *supra* note 19, at 3.1.1; A. Weyembergh, "Approximation of criminal laws, the Constitutional Treaty and the Hague Programme", in *Common Market Law Review*, Vol. 42 No. 6/2005, 1567-1597.

26 E. Herlin-Karnell, "Treaty of Lisbon and the Criminal Law: Anything New under the Sun", in *Eur. J.L. Reform*, Vol. 10 No. 3/2008, 321-337.

27 Commission, Proposal for a Council Regulation on the establishment of the European Public Prosecutor's Office, 17 July 2013, COM(2013) 534 final.

28 Council Decision on the arrangements for the implementation by the Union of the solidarity clause, O.J. 2014, L 192, 1.7.2014, 53.

29 Proposal for a Decision of the European Parliament and of the Council on a Union Civil Protection Mechanism, 20 December 2011, COM(2011)934 final.

30 Outcome of the 3376th Council meeting, Justice and Home Affairs, Brussels, 12 and 13 March 2015.

Der rechtliche Rahmen zur Bekämpfung der Terrorismusfinanzierung in Griechenland*

Dr. Emmanouil Billis, LL.M.

This paper was commissioned in order to contribute to the crucial research conducted by the Max Planck Institute for Foreign and International Criminal Law in the field of the financing of terrorism. It presents in a systematic way the main legal framework and counter-terrorism policies in Greece, as well as the activities of criminal justice authorities, police agencies, and other (private) actors involved in the fight against the financing of terrorist activity. It shows that Greece has implemented most of the major international counter-terrorism provisions in a coherent yet not uncritical way as far as their content is concerned, despite the ongoing controversy regarding the role of the traditional protective principles of criminal law in these fairly new fields of criminal investigation and prosecution. It has not, however, been possible to avoid the sometimes unfeasible parallel existence of multiple legal norms, such as the substantive penal rules defining terrorism and the procedural and administrative provisions on the various duties of information disclosure with respect to suspect (money) transactions, as well as the problem of several simultaneously competent investigating authorities. The transparent implementation of this complicated legal and institutional framework raises practical issues with regard to the proper administration of justice in an already multilayered and rather "tricky" area of (pre-)crime and criminal prosecution. It is therefore of importance to contemplate the changes the constant reforms of the European and international counter-terrorism laws will further bring to the "war on (the financing of) terror" declared by the criminal justice system in the years to come.

I. Einführender Überblick

In der griechischen Rechtsordnung wurden die internationalen sozial- und rechtspolitischen Entwicklungen im vielschichtigen und hochaktuellen Bereich der Bekämpfung des Terrorismus und seiner Finanzierung stets aus kurzem Abstand beobachtet und zum großen Teil entsprechende Adaptionen vorgenommen. Die wichtigsten materiell-rechtlichen Vor-

schriften für die Bekämpfung von Terrorismusphänomenen befinden sich heute in Art. 187A im Besonderen Teil¹ des griechischen StGB, des „Poinikos Kodikas“ (PK),² der im Folgenden unter II. näher analysiert werden soll. Vorwegnehmend sei darauf hingewiesen, dass nach Art. 187A(2) PK die in Art. 187A(1) PK enthaltenen materiell-rechtlichen Anti-Terror-Bestimmungen keine Anwendung finden, soweit die Tatbestände der in Art. 134–137 PK vorgesehenen Delikte gegen

gegen die verfassungsmäßige Ordnung (Verfassungshochverrat und seiner Vorbereitung) erfüllt sind. Hinsichtlich der Vorbereitung eines solchen Verfassungshochverrats wird (in Art. 135 PK) nicht ausdrücklich etwa auf die Bereitstellung oder Sammlung finanzieller Mittel, sondern eher allgemein auf Verschwörungstaten verwiesen.

Des Weiteren sind in Art. 187B PK spezielle Strafausschließungs- und Strafmilderungsmöglichkeiten aus Billigkeitsgründen für Fälle der Hilfeleistung zur Zerschlagung krimineller und terroristischer Vereinigungen vorgesehen. Die grundsätzlichen Fragen zur Bildung und Beteiligung an einer kriminellen Vereinigung sind selbstständig in Art. 187 PK geregelt; vorliegend sind diese aber nicht von unmittelbarem Interesse. Im Allgemeinen Teil³ des PK sind Vorschriften enthalten, die in Bezug auf terroristische Aktivitäten u.a. die griechische Strafzuständigkeit, verschiedene Aspekte der Strafbemessung und des Strafvollzugs sowie die Aussetzung des Strafrestes zur Bewährung unter vergleichsweise strengen Voraussetzungen bzw. unter für den Täter ungünstigen Bedingungen regeln.⁴ Im „Kodikas Poinikis Dikonomias“ (KPD)⁵ gibt es schließlich strafprozessuale Vorschriften, die für den Bereich der Terrorismuskriminalität u.a. spezielle Ermittlungsmaßnahmen und eher nachteilige Konditionen bei der Anwendung von Zwangsmaßnahmen vorsehen.⁶

Neben den in den beiden zentralen strafrechtlichen Kodifikationen (PK und KPD), im Gerichtsorganisationsgesetz⁷ sowie im Strafvollzugsgesetz⁸ vorgesehenen Delikten und Strafmaßnahmen existiert eine beträchtliche Anzahl an strafrechtsrelevanten Spezialgesetzen: Diese wurden in den letzten Jahrzehnten insb. zur Bekämpfung moderner Kriminalitätsformen, beispielsweise im Bereich der Betäubungsmittelkriminalität⁹ der Waffenkriminalität,¹⁰ der organisierten Kriminalität und des Terrorismus,¹¹ verabschiedet.¹² Relevant für die Unterbindung der Terrorismusfinanzierung ist vor allem das Gesetz (G.) 3691/2008 über die Prävention und Unterdrückung der Geldwäsche und der Terrorismusfinanzierung, das vorliegend unter III. vorgestellt wird.

Diese Spezialgesetzgebung sowie die kontinuierlichen Reformen des PK und des KPD durch Einzelgesetze sind zum Teil ein Ergebnis der Erfüllung von international- und europarechtlichen Verpflichtungen. Griechenland ist Mitgliedsstaat u.a. der EG/EU (seit 1981/1992), des Europarates (seit 1949), der Vereinten Nationen (seit 1945) und der FATF (seit 1991). Die wichtigsten internationalen Verträge und supranationalen Rechtsinstrumente im Bereich Terrorismus und organisierte Kriminalität – wie das Internationale Übereinkommen der Vereinten Nationen zur Bekämpfung der Finanzierung des Terrorismus (1999),¹³ der Rahmenbeschluss des Rates der Europäischen Union vom 13. Juni 2002 zur Terrorismusbekämpfung (2002/475/JI)¹⁴ und die Richtlinie 2005/60/EG zur

Verhinderung der Nutzung des Finanzsystems zum Zwecke der Geldwäsche und der Terrorismusfinanzierung (sowie die Richtlinie 2006/70/EG)¹⁵ – sind von Griechenland bereits ratifiziert und/oder in nationales Recht umgesetzt¹⁶ worden. Noch nicht ratifiziert wurden die Konvention des Europarats über Geldwäsche, Terrorismusfinanzierung sowie Ermittlung, Beschlagnahme und Einziehung von Erträgen aus Straftaten (2005) und das Übereinkommen des Europarats zur Verhütung des Terrorismus (2005). Auch der EU-Rahmenbeschluss 2008/919/JI, der die Probleme der öffentlichen Aufforderung zur Begehung terroristischer Straftaten sowie der Anwerbung und Ausbildung für terroristische Zwecke betrifft, ist noch nicht in griechisches Recht umgesetzt worden.¹⁷ Darüber hinaus sind gewisse Resolutionen des Sicherheitsrats der Vereinten Nationen zur Terrorismusbekämpfung¹⁸ noch nicht implementiert worden.

II. Terrorismustatbestand und Regelung des Strafgesetzbuchs zur Terrorismusfinanzierung (Art. 187A PK)

Die zentralen materiell-rechtlichen Strafvorschriften gegen Terrorismus sind in Art. 187A PK enthalten. Diese Vorschriften wurden zum ersten Mal durch Art. 40 des G. 3251/2004, das hauptsächlich den Rahmenbeschluss des Rates vom 13. Juni 2002 zur Terrorismusbekämpfung (2002/475/JI)¹⁹ in nationales Recht umgesetzt hat, in das griechische Strafgesetzbuch eingeführt. Sie wurden in der Folge durch Art. 53(1) G. 3691/2008²⁰ und noch einmal weitgehend durch Artikel 2 G. 3875/2010, welches das Übereinkommen der Vereinten Nationen gegen die grenzüberschreitende organisierte Kriminalität (2000) ratifiziert hat, geändert. Die Verantwortlichkeit juristischer Personen für terroristische Aktivitäten ist selbstständig und außerstrafrechtlich in Art. 41 G. 3251/2004 geregelt.

Die Definition des Terrorismus als Straftat sowie die Einstufung der entsprechenden Strafen sind in Art. 187A(1) PK enthalten. Als Terrorismusdelikt gilt hiernach unter bestimmten Bedingungen die Begehung (Vollendung oder Versuch²¹) einer oder mehrerer der Straftaten, die in einer abschließenden, ziemlich ausgedehnten Liste mit Basisstraftaten (Verbrechen und Vergehen, wie z.B. vorsätzliche Tötung, Entführung oder auch Störung der Verkehrssicherheit)²² erfasst werden. Diese Basisstraftaten sollen ihrer Begehungsweise nach geeignet sein, einen Staat oder eine internationale Organisation ernsthaft zu schädigen, und sie sollen mit dem spezifischen Ziel begangen werden, eine Bevölkerung auf schwerwiegende Weise einzuschüchtern oder öffentliche Stellen oder eine internationale Organisation rechtswidrig zu einem Tun oder Unterlassen zu zwingen oder die verfassungsrechtlichen, politischen, wirtschaftlichen Grundstrukturen eines Landes oder einer internationalen Organisation ernsthaft zu schädigen oder

zu zerstören. Diese (in mehrfacher Hinsicht, etwa mit Blick auf das *nullum crimen nulla poena sine lege*-Prinzip, nicht unproblematische)²³ Definition des Terrorismusdelikts steht im Einklang mit den relevanten Vorschriften des Rahmenbeschlusses 2002/475/JI, kopiert sie jedoch nicht blind und geht teilweise ein Stück darüber hinaus.

Die ernsthafte Drohung mit der Begehung einer terroristischen Straftat nach Art. 187A(1) PK wird des Weiteren als selbstständige Straftat in Art. 187A(3) PK definiert. Die terroristische Vereinigung wird in Art. 187A(4) PK als ein organisierter und kontinuierlich aktiver Zusammenschluss von drei oder mehr Personen bestimmt, die zusammenwirken und die Begehung der in 187A(1) PK definierten Straftat anstreben; die Bildung, die Beteiligung an und die Anführung (Art. 187A(5) PK) einer solchen Vereinigung werden als selbstständige Straftaten bestimmt.

Schließlich bezieht sich Art. 187A(6) PK auf das Problem der Terrorismusfinanzierung. Bestimmte strafrechtliche Teilnahmeformen²⁴ werden als selbstständige Straftaten bestimmt und die daran Beteiligten als deren Täter (nicht als Gehilfen eines Terroristen oder einer terroristischen Vereinigung) behandelt.²⁵ Als Kerndelikt wird die Bereitstellung von materiellen oder immateriellen, beweglichen oder unbeweglichen Vermögenswerten²⁶ oder von geldwirtschaftlichen Mitteln jeglicher Art (unabhängig von der Art ihres Erwerbs) für eine terroristische Vereinigung oder einen einzelnen Terroristen, oder die zu deren Gunsten erfolgende Einnahme, Sammlung oder Verwaltung jener wirtschaftlichen Mittel festgelegt. Darüber hinaus legt Art. 187A(7) PK die selbstständige erhöhte Bestrafung von Straftaten wie Diebstahl, Raub oder Erpressung fest, wenn diese zur Vorbereitung von terroristischen Aktivitäten begangen werden. Im Ganzen lautet Art. 187A PK (nicht-amtliche Übersetzung) wie folgt:²⁷

Art. 187A PK – Terroristische Taten

1. Wer eine oder mehrere der folgenden Straftaten:
 - α) vorsätzliche Tötung eines Menschen (Art. 299),
 - β) schwere Körperverletzung (Art. 310),
 - γ) Körperverletzung mit Todesfolge (Art. 311),
 - δ) Entführung (Art. 322),
 - ε) Entführung Minderjähriger (Art. 324),
 - στ) schwere Fälle der Sachbeschädigung (Art. 382(2)),
 - ζ) Brandstiftung (Art. 264),
 - η) Brandstiftung im Wald (Art. 265),
 - θ) Überschwemmung (Art. 268),
 - ι) Explosion (Art. 270),
 - ια) Verletzung der Vorschriften über Explosivstoffe (Art. 272),
 - ιβ) gemeingefährliche Beschädigung (Art. 273),
 - ιγ) Beseitigung von Sicherheitsvorrichtungen (Art. 275),
 - ιδ) Strandung (Art. 277),
 - ιε) Brunnen- und Lebensmittelvergiftung (Art. 279),
 - ιστ) Lebensmittelverfälschung (Art. 281(1)),
 - ιζ) Störung der Verkehrssicherheit (Art. 290),
 - ιη) Störung der Sicherheit des Eisenbahn-, Schiffs- und Luftverkehrs (Art. 291),
 - ιθ) die in Art. 8(1) Legislativdekret 181/1974 zum Schutz vor ionisierender Strahlung definierten Taten,

- κ) die in Art. 161, 162, 163, 164, 165, 168, 169, 170, 173, 178, 179, 180, 181, 182, 183, 184, 186 G. 1815/1988 (Luftrecht) definierten Taten,
- κα) die in Art. 15(1, 2) und 17(1, 3) G. 2168/1993 (Waffengesetz) definierten Taten,
- κβ) die in Art. 4(2, 3) G. 2991/2002 (Implementierung der Chemiewaffenkonvention) definierten Taten,

in einer solchen Art, in einem solchen Umfang oder unter solchen Bedingungen begeht, dass diese [Straftaten] ein Land oder eine internationale Organisation ernsthaft schädigen können, wobei diese [Straftaten] mit dem Ziel begangen werden, eine Bevölkerung auf schwerwiegende Weise einzuschüchtern oder öffentliche Stellen oder eine internationale Organisation rechtswidrig zu einem Tun oder Unterlassen zu zwingen oder die verfassungsrechtlichen, politischen, wirtschaftlichen Grundstrukturen eines Landes oder einer internationalen Organisation ernsthaft zu beschädigen oder zu zerstören, wird wie folgt bestraft:

- i) mit lebenslanger Gefängnisstrafe, wenn die vorgesehene Strafe für eine der im Katalog (Buchstaben α–κβ) enthaltenen Straftaten lebenslange Gefängnisstrafe ist. In diesem Fall verjährt die Tat nach 30 Jahren.²⁸ Bei einer verhängten lebenslangen Gefängnisstrafe werden die Vorschriften²⁹ der Art. 105 bis 110 dann angewandt, wenn 25 Jahre verbüßt sind;
- ii) mit Gefängnisstrafe von mindestens 10 Jahren, wenn die vorgesehene Strafe für eine der im Katalog (Buchstaben α–κβ) enthaltenen Straftaten zeitige Gefängnisstrafe ist;
- iii) mit Inhaftierung von mindestens 3 Jahren, wenn die vorgesehene Strafe für eine der im Katalog (Buchstaben α–κβ) enthaltenen Straftaten Inhaftierung ist. Die Vorschrift des Art. 94(1)³⁰ wird angewandt, wenn die terroristische Tat den Tod mehrerer Menschen zur Folge hatte.

2. Die Vorschriften des vorangehenden Absatzes werden nicht angewandt, wenn die Voraussetzungen der Art. 134 bis 137 erfüllt sind.³¹

3. Wer ernsthaft mit der Begehung der in Absatz 1 definierten Straftat droht und somit Schrecken verursacht, wird mit Inhaftierung von mindestens 2 Jahren bestraft. Der Versuch dieser Straftat ist nicht strafbar.

4. Mit Gefängnisstrafe bis zu 10 Jahren wird bestraft, wer einen organisierten und kontinuierlich aktiven Zusammenschluss von drei oder mehr Personen, die zusammenwirken und die Begehung der in Absatz 1 definierten Straftat anstreben, bildet oder wer in einen solchen Zusammenschluss als Mitglied eintritt (terroristische Vereinigung). Mit gemilderter Strafe (Art. 83) wird die Tat des vorangehenden Abschnitts bestraft, wenn die terroristische Vereinigung zur Begehung der in Absatz 1 erwähnten Vergehen gebildet wurde. Die Herstellung, der Erwerb oder der Besitz von Waffen, Sprengstoffen und chemischen oder biologischen Stoffen oder Stoffen mit für Menschen schädlicher Strahlung, um den Zielen der terroristischen Vereinigung zu dienen, stellt einen belastenden Umstand dar. Die Nicht-Begehung irgendwelcher der im Katalog des Absatzes 1 (Buchstaben α–κβ) enthaltenen Straftaten durch die terroristische Vereinigung stellt einen mildernden³² Umstand dar.

5. Wer die terroristische Vereinigung des ersten Abschnitts des vorangehenden Absatzes anführt, wird mit Gefängnisstrafe von mindestens 10 Jahren bestraft. Mit der gemilderten (Art. 83) Strafe des vorangehenden Abschnitts wird bestraft, wer die terroristische Vereinigung des zweiten Abschnitts des vorangehenden Absatzes anführt.

6. Wer materielle oder immaterielle, bewegliche oder unbewegliche Vermögenswerte irgendeiner Art oder geldwirtschaftliche Mittel irgendeiner Art, unabhängig von der Art ihres Erwerbs, einer terroristischen Vereinigung oder einem einzelnen Terroristen oder zur Bildung einer terroristischen Vereinigung oder so, dass jemand zum Terroristen wird, bereitstellt, oder wer zugunsten der oben Genannten diese [Vermögenswerte bzw. Mittel] einnimmt, sammelt oder verwaltet, wird, unabhängig von der Begehung irgendeiner der in Absatz 1 erwähnten Straftaten, mit Gefängnisstrafe von bis zu 10 Jahren bestraft. Mit derselben Strafe wird auch bestraft, wer substan-

tielle Informationen mit dem Wissen ihrer zukünftigen Verwertung bereitstellt, um die Begehung irgendeines der in Absatz 1 erwähnten Verbrechen durch eine terroristische Vereinigung oder durch einen einzelnen Terroristen zu erleichtern oder zu unterstützen.

7. Wer schweren Diebstahl (Art. 374), Raub (Art. 380(1, 3)), Fälschung (Art. 216) öffentlicher Dokumente oder Erpressung (Art. 385) mit dem Ziel begeht, die in Absatz 1 definierte Straftat zu verwirklichen, wird mit Gefängnisstrafe bestraft, es sei denn, die Erpressung wird mit einer höheren Strafe bestraft. Wenn die begangene Tat ein Vergehen ist, wird Inhaftierung von mindestens 3 Jahren verhängt.

8. Der Absatz 4 des Art. 187³³ gilt auch in Bezug auf die in den vorherigen Absätzen definierten Straftaten.

Bezüglich der Verantwortlichkeit von juristischen Personen für terroristische Aktivitäten ist zunächst allgemein zu bemerken, dass das griechische Rechtssystem im Einklang mit dem Schuldprinzip die Strafbarkeit natürlicher, jedoch nicht juristischer Personen kennt.³⁴ Absatz 1 des Art. 41 G. 3251/2004³⁵ sieht übereinstimmend mit dem Rahmenbeschluss 2002/475/JI gleichwohl vor, dass juristische Personen für Straftaten der Art. 187 und 187A PK verantwortlich gemacht werden können, wenn diese durch die juristische Person oder zu ihren Gunsten von einer natürlichen Person begangen wurden, die entweder allein oder als Teil eines Organs der betreffenden juristischen Person gehandelt hat und aufgrund der Befugnis zur Vertretung der juristischen Person oder der Befugnis, Entscheidungen im Namen der juristischen Person zu treffen, oder einer Kontrollbefugnis eine Führungsposition innerhalb der juristischen Person innehat.³⁶ Vorgesehen ist die Auferlegung von angemessenen, aber in jedem Fall schweren *verwaltungsmäßigen* Sanktionen durch gemeinsame Entscheidung des Justizministers und des Ministers für den Schutz des Bürgers (öffentliche Sicherheit) – insbesondere von hohen Geldbußen (zwischen 50.000 und 5.000.000 Euro), von Maßnahmen des Ausschlusses von öffentlichen Zuwendungen oder Hilfen und von Maßnahmen des vorübergehenden oder ständigen Verbots der Ausübung einer Handelstätigkeit. Die Anwendung dieser Vorschriften über die Verantwortlichkeit der juristischen Personen erfolgt unabhängig von der strafrechtlichen, administrativen oder zivilrechtlichen Verantwortlichkeit der betreffenden natürlichen Personen.

III. Gesetz zur Prävention und Unterdrückung der Geldwäsche und der Terrorismusfinanzierung (G. 3691/2008)

Eine Verstärkung des durch Art. 187A(6) PK gewährleisteten materiell-rechtlichen Schutzes gegen die Terrorismusfinanzierung stellt das Gesetz 3691/2008 zur Prävention und Unterdrückung der Geldwäsche und der Terrorismusfinanzierung dar. Damit wurden insbesondere die Vorschriften der Richtlinie 2005/60/EG zur Verhinderung der Nutzung des Finanzsystems zum Zwecke der Geldwäsche und der Terrorismusfinanzierung sowie die Vorschriften der Richtlinie 2006/70/EG

implementiert. Das vorherige Geldwäschegesetz 2331/1995, geändert vor allem durch G. 3424/2005 (das die Geldwäscherichtlinie 2001/97/EG implementierte), wurde durch das G. 3691/2008 größtenteils ersetzt. Das G. 3691/2008 ist inzwischen mehrmals geändert worden, z.B. durch das G. 3932/2011, das die Gründung der unabhängigen Behörde zur Bekämpfung der Geldwäsche und der Terrorismusfinanzierung und zur Kontrolle der Angaben über die Vermögensverhältnisse bestimmte.³⁷

Die Vorschriften des G. 3691/2008 beziehen sich zum großen Teil auf das Delikt der Geldwäsche, dessen spezielle Probleme vorliegend nicht näher angesprochen werden.³⁸ Bezüglich der Definition der Straftat der Terrorismusfinanzierung wird in Art. 2(4) G. 3691/2008 auf Art. 187A(6) PK verwiesen.³⁹ Darüber hinaus gelten die Vorschriften des G. 3691/2008, die u.a. gewisse Melde- und Sorgfaltspflichten begründen, vor allem für Kredit- und Finanzinstitute.⁴⁰ Die Regeln des G. 3691/2008 sind nach Art. 5 (im Einklang mit Art. 2 Richtlinie 2005/60/EG) u.a. auch für folgende juristische oder natürliche Personen bei der Ausübung ihrer beruflichen Tätigkeit verbindlich: Casinos, externe Buchprüfer und Steuerberater, Dienstleister für Trusts und Gesellschaften, Immobilienmakler und andere Personen, die mit Gütern handeln, soweit Zahlungen in bar in Höhe von 15.000 Euro oder mehr erfolgen, unabhängig davon, ob die Transaktion in einem einzigen Vorgang oder in mehreren Vorgängen, zwischen denen eine Verbindung zu bestehen scheint, getätigt wird.

Mit Blick auf die (strafbare)⁴¹ Verletzung von Berufsgeheimnissen besonders problematisch scheint die Geltung des G. 3691/2008 für Notare und Rechtsanwälte zu sein. Genauer gesagt, gelten seine Vorschriften nach Art. 5(1 γ) für Notare und Rechtsanwälte, wenn sie im Namen und auf Rechnung ihres Klienten Finanz- oder Immobilientransaktionen erledigen oder für ihren Klienten an der Planung oder Durchführung von Transaktionen mitwirken, die Folgendes betreffen: i) Kauf und Verkauf von Immobilien oder Gewerbebetrieben, ii) Verwaltung von Geld, Wertpapieren oder sonstigen Vermögenswerten ihres Klienten, iii) Eröffnung oder Verwaltung von Bank-, Spar- oder Wertpapierkonten, iv) Beschaffung der zur Gründung, zum Betrieb oder zur Verwaltung von Gesellschaften erforderlichen Mittel, v) Gründung, Betrieb oder Verwaltung von Treuhandgesellschaften, Gesellschaften oder ähnlichen Strukturen. Ausdrücklich wird aber in Art. 5(1 γ) bestimmt, dass die Rechtsberatung immer noch vom Berufsgeheimnis umfasst wird, es sei denn, der Rechtsanwalt oder der Notar beteiligen sich selbst an Aktivitäten der Geldwäsche oder der Terrorismusfinanzierung oder die Rechtsberatung erfolgt zum Zweck der Begehung dieser Straftaten oder in Kenntnis der Tatsache, dass der Klient die Rechtsberatung zum Zweck der Begehung dieser Straftaten verlangt.⁴²

Darüber hinaus werden in Art. 6 G. 3691/2008 die Aufsichtsbehörden bestimmt, die u.a. für die Kontrolle der richtigen Anwendung des Gesetzes durch die oben genannten verpflichteten Personen bzw. für die Auferlegung von notwendigen verwaltungsrechtlichen Sanktionen, für die allgemeine Förderung der Gesetzeszwecke, für die effektive Kooperation mit europäischen und internationalen Behörden und Organisationen sowie für die zentrale Sammlung und Vermittlung wichtiger (Know-how-)Informationen verantwortlich sind. Solche staatlichen Behörden sind beispielsweise die Bank of Greece⁴³ in Bezug auf die Kredit- und Finanzinstitute sowie das Justizministerium in Bezug auf die Rechtsanwälte.

Die Vorschriften der Art. 7–7Γ G. 3691/2008 regeln die Zusammensetzung und die Zuständigkeit der unabhängigen Behörde zur Bekämpfung der Geldwäsche und der Terrorismusfinanzierung und zur Kontrolle der Angaben über die Vermögensverhältnisse. Diese Behörde hat weitgehende Ermittlungsbefugnisse, sie sammelt und bewertet die für die Straftaten der Geldwäsche und der Terrorismusfinanzierung relevanten Informationen, fördert die internationale Zusammenarbeit in jenen Bereichen, teilt die Ergebnisse ihrer Ermittlungen und Informationssammlungen dem zuständigen Staatsanwalt zum Zweck der Strafverfolgung mit und sie kann u.a. die Vermögenswerte der ermittelten Personen in dringenden Fällen⁴⁴ oder in Übereinstimmung mit den Entscheidungen des Sicherheitsrates der VN⁴⁵ sperren. Darüber hinaus wird in Art. 8–11 G. 3691/2008 die Zuständigkeit anderer staatlicher Organe, wie die des Wirtschaftsministeriums als zentralem Koordinationsträger sowie des Ausschusses für die rechtspolitische Planung von Strategien gegen die Geldwäsche und die Terrorismusfinanzierung geregelt.

In Art. 12–25 G. 3691/2008 werden die Sorgfaltspflichten der diesem Gesetz unterliegenden natürlichen und juristischen Personen (vor allem der Kreditinstitute) gegenüber Kunden, z.B. bezüglich des Führens anonymer Konten bestimmt; dies erfolgt zum großen Teil in Übereinstimmung mit den Vorschriften der Art. 6–19 Richtlinie 2005/60/EG. In Art. 26–34 G. 3691/2008 werden dann, entsprechend Art. 20–29 Richtlinie 2005/60/EG, die weitgehenden Melde- und Informationspflichten der in Art. 5 G. 3691/2008 aufgelisteten Personen insbesondere mit Blick auf verdächtige (z.B. komplexe oder unüblich große)⁴⁶ Transaktionen dargelegt. Art. 35–39 G. 3691/2008 regeln nach Art. 30–33 Richtlinie 2005/60/EG die praktischen Angelegenheiten hinsichtlich der Aufbewahrung von Aufzeichnungen seitens der verpflichteten Personen und der behördlichen Sammlung von statistischen Daten.⁴⁷

Die Maßnahmen zur Durchsetzung der in Gesetz 3691/2008 bestimmten Pflichten und Strategien sind in Art. 40–44, 52 (entsprechend Art. 34–39 Richtlinie 2005/60/EG) vorgesehen.

Sie betreffen u.a. den vertraulichen Austausch von Informationen zwischen den staatlichen Behörden sowie die genaue Art ihrer Zusammenarbeit, die Durchführung von angemessenen internen (Kontroll-)Verfahren und Schulungen und die Aufsicht in Bezug auf die Gründung von juristischen Personen. Außerdem wird die Auferlegung von schweren verwaltungsrechtlichen Sanktionen gegen die dem G. 3691/2008 unterliegenden natürlichen und juristischen Personen (Art. 5) geregelt, wenn diese ihre Verpflichtungen nach diesem Gesetz, den entsprechenden europäischen Vorgaben, den Ministerentscheidungen und den Entscheidungen der Behörde zur Bekämpfung der Geldwäsche und der Terrorismusfinanzierung (Art. 7 G. 3691/2008) oder anderer zuständiger Behörden nicht erfüllen.

Hinsichtlich der strafrechtlichen Verantwortlichkeit bestimmt das G. 3691/2008 (in Art. 45) lediglich die Strafen in Bezug auf das Geldwäschedelikt; Art. 51 ergänzt die Sanktionen gegen juristische Personen wegen Geldwäsche. Die Terrorismusfinanzierungstaten werden nach den Vorgaben des Art. 187A(6) PK bestraft; Art. 41 G. 3251/2004 regelt die entsprechende Verantwortlichkeit von juristischen Personen für terroristische Aktivitäten.⁴⁸

Art. 46 G. 3691/2008 enthält spezielle Vorschriften⁴⁹ für die Beschlagnahme und die verbindliche Einziehung von Vermögenswerten und Mitteln aufgrund einer verurteilenden Gerichtsentscheidung, wobei u.a. ausdrücklich auf die in Art. 2 G. 3691/2008 (und dadurch auf die in Art. 187A(6) PK) genannten Delikte verwiesen wird: Die Einziehung betrifft konkret Vermögenswerte, die einen Erlös aus der Geldwäsche oder der Terrorismusfinanzierung darstellen oder die unmittelbar oder mittelbar durch einen Erlös aus jenen Straftaten erlangt wurden, sowie Mittel, die zur deren Begehung gebraucht wurden oder bestimmt gewesen sind.⁵⁰ Die Einziehung wird auch dann angeordnet, wenn die Vermögenswerte oder Mittel einer dritten Person gehören, soweit diese Person zur Zeit des Erwerbs in Kenntnis der Geldwäsche bzw. der Terrorismusfinanzierung handelte. Diese Vorschriften sind auch im Rahmen der Versuchsstrafbarkeit anwendbar. In den Fällen, in denen die betreffenden Vermögenswerte nicht mehr existieren, nicht gefunden worden sind oder nicht beschlagnahmt werden können, werden andere wertgleiche Vermögenswerte beschlagnahmt und eingezogen; alternativ ist die Verhängung einer entsprechenden Geldstrafe möglich.⁵¹

Weiterhin regelt Art. 48 G. 3691/2008 die praktischen Einzelheiten über die richterliche Sperrung von Konten und das Einfrieren von wirtschaftlichen Kredititeln sowie das Veräußerungsverbot im Vorverfahren und während der Ermittlungen, die zur Aufklärung der Geldwäsche oder der Terrorismusfinanzierung stattfinden.⁵² In Art. 49 G. 3691/2008 wird genau-

er das Verfahren zur Sperrung von Vermögenswerten aufgrund von Entscheidungen des Sicherheitsrates oder Rechtsakten der Europäischen Union, die sich zum Ziel der Bekämpfung der Terrorismusfinanzierung auf konkrete Personen beziehen, beschrieben. Für die nationale Umsetzung solcher internationalrechtlichen Entscheidungen und Rechtsakte ist die unabhängige Behörde des Art. 7 G. 3691/2008 zur Bekämpfung der Geldwäsche und der Terrorismusfinanzierung primär zuständig.

Dieselbe Behörde ist schließlich nach Art. 49A G. 3691/2008 für die Sammlung und Bearbeitung von Informationen und für die darauf basierende Zusammenstellung von Katalogen mit Terrorismusverdächtigen sowie, wenn nötig, für die Auferlegung von wirtschaftlichen Sanktionen, genauer für die Sperrung von Vermögenswerten der in den Katalogen gelisteten Personen zuständig. In der gerichtlichen Praxis wurden des Öfteren die Anwendungsgrenzen dieser Vorschriften und die den verdächtigen Personen verfügbaren Rechtsbehelfe angesprochen. Die in Art. 49A G. 3691/2008 vorgesehenen präventiven Maßnahmen stellen jedenfalls nach der Rechtsprechung der Hochgerichte keine Strafen im strafrechtlichen Sinne dar; deren Hauptziel sei vielmehr die Bekämpfung der Terrorismusfinanzierung, wobei für deren Auferlegung der begründete Verdacht genüge.⁵³

IV. Schlusswort

Die gesetzgeberischen Debatten und technisch komplexen Verfolgungspraktiken im Bereich der (transnationalen) Bekämpfung der Terrorismusfinanzierung stehen nach wie vor im Vordergrund der rechtspolitischen Programme der europäischen Institutionen und internationalen Organisationen.⁵⁴ Die griechische Rechtsordnung hat bisher bemerkenswerte Anpassungsfähigkeit bewiesen. Das ganze Land steht heute vor enormen sozial-politischen Schwierigkeiten und destruktiven ökonomischen Umwandlungen; diese haben einen unmittelbaren Einfluss auch auf das Strafrechtssystem, insbesondere auf die Schaffung der Regeln und die Funktionalität der justiziellen Strukturen zur Bekämpfung von Finanzdelikten und organisierter Kriminalität. Glücklicherweise blieb die griechische Gesellschaft bis dato von großen terroristischen Gewalttaten

verschont. Es ist jedoch insbesondere vor dem Hintergrund der zentralen geopolitischen Position Griechenlands und der gegenwärtigen sozial-ökonomischen Umstände nicht von der Hand zu weisen, dass sich Zellen zur Unterstützung des transnationalen Terrorismus und Organisationsstrukturen zur Terrorismusfinanzierung jederzeit bilden bzw. festigen können.

Auf der Ebene der nationalen Gesetzgebung und der weiteren institutionellen Anti-Terror-Mechanismen konnten bisher vor allem folgende Probleme nicht vermieden werden: die Polynomie *per se* sowie die komplexe Mischung von straf- und verwaltungsrechtlichen Regelungen, die praktischen Hindernisse bei der (hochaufwendigen) Kontrolle der Tätigkeit juristischer Personen (trotz der Bedrohung mit hohen Sanktionen für den Fall illegaler Aktivitäten) sowie die exzessive Vielfalt von zuständigen staatlichen (in einigen Fällen „konkurrierenden“) Ermittlungs- und Verfolgungsbehörden. Ebenso wenig zu bezweifeln sind die Effizienzdefizite in Bezug auf die transparente und rechtsstaatliche Kontrolle der staatlichen (meistens „heimlichen“) Ermittlungsaktivitäten durch die Justizbehörden im ohnehin schon „grauen“ konspirativen Milieu der Terrorismuskriminalität und ihrer (im traditionellen Sinne außerstrafrechtlichen) Vorstadien. Zudem bringt der zunehmende verpflichtende Einbezug von Privatpersonen (wie z.B. Rechtsanwälten und Steuerberatern) in die Meldung, Ermittlung und Verfolgung von verdächtigen Sachverhalten im Bereich der Geldwäsche- und Terrorismusdelikte neue Parameter ins Spiel.

Die „Ungeschicklichkeit“ im Umgang mit rechtspolitisch eingeführten „Straftaten“, die dem traditionellen Kernstrafrecht bisher fremd waren, ist auch hier evident. Immerhin ist Griechenland auf der Ebene des materiellen Strafrechts den internationalrechtlichen Forderungen in möglichst umfassender und dogmatisch (mit Blick auf die Besonderheiten des eigenen Rechtssystems) kohärenter Weise nachgekommen. Es wird sich nun zeigen, zu welchen weiteren innerstaatlichen Anpassungen sowohl die zunehmende Komplexität der sich ständig neu erfindenden organisierten Kriminalität als auch die kontinuierliche Stärkung der Anti-Terror-Vorgaben und (strafrechtlichen) Maßnahmen seitens der internationalen Rechtsgesellschaft führen werden.

* Der vorliegende Bericht (Stand: Januar 2015) wurde ursprünglich zur Vorbereitung eines rechtspolitischen Gutachtens über die strafrechtliche Erfassung der Terrorismusfinanzierung angefertigt, das Professor Dr. Dr. h.c. mult. Ulrich Sieber, Direktor des Max-Planck-Instituts für ausländisches und internationales Strafrecht, für den Rechtsausschuss des Deutschen Bundestages erstellte. Zur entsprechenden Untersuchung der deutschen und internationalen Vorgaben siehe bereits Ulrich Sieber/Benjamin Vogel, *Terrorismusfinanzierung, Prävention im Spannungsfeld von internationalen Vorgaben und nationalem Tatstrafrecht*, Berlin 2015.

1 Definition der einzelnen Deliktstatbestände, Art. 134–459 PK.

2 „Poinikos Kodikas“ (PK, *Ποινικός Κώδικας*), Gesetz (G.) 1492/1950. Für die Übersetzung älterer Fassungen des PK ins Deutsche und Englische siehe Dimitrios Karanikas, *Das Griechische Strafgesetzbuch vom 17. August 1950*, Berlin 1953; Nicholas Lolis, (Übers.)/Giorgios Mangakis (Einf.), *The Greek Penal Code*, South Hackensack/London 1973. Seit ihrer Schaffung wurde diese Kodifikation ebenso wie die Kodifikation des griechischen Strafprozessrechts (KPD, siehe unten En. 6) durch Einzelgesetzesvorschriften mehrfach und manchmal sogar gravierend modi-

fiziert. Zu den Wurzeln, Quellen und zur historischen Entwicklung des griechischen Strafrechts siehe ausführlich m.w.N. Emmanouil Billis, National characteristics, fundamental principles, and history of criminal law in Greece, in: Ulrich Sieber/Konstanze Jarvers/Emily Silverman (Hrsg.), *National Criminal Law in a Comparative Legal Context* Vol. 1.2, Introduction to National Systems: Australia, Côte d'Ivoire, Greece, South Korea, Berlin 2013, S. 213–215, 254–262, 265–284.

3 Grundlagen der Strafbarkeit, Art. 1–133 PK.

4 Siehe insb. Art. 8 PK; Art. 56 PK; Art. 94(1) und 187A(1iii) PK; Art. 105, 110A, 110B PK i.V.m. Art. 3 G. 4274/2014 und Art. 19 G. 4242/2014.

5 Griechisches Strafprozessgesetzbuch „Kodikas Poinikis Dikonomias“ (KPD, *Κώδικας Ποινικής Δικονομίας*), G. 1493/1950.

6 Siehe insb. Art. 253A, 282 KPD.

7 G. 1756/1988.

8 G. 2776/1999.

9 Siehe insb. G. 4139/2013 i.V.m. G. 3459/2006.

10 Siehe insb. G. 2168/1993.

11 Siehe z.B. G. 2928/2001, G. 3251/2004, G. 3663/2008, G. 3691/2008 (i.V.m. G. 2331/1995 und G. 3424/2005), G. 3875/2010, G. 4049/2012.

12 Für mehr Details zu den jüngeren Entwicklungen in Gesetzgebung und Praxis siehe Billis, a.a.O. [En. 3], S. 256–259, 267–284.

13 G. 3034/2002.

14 Siehe insb. G. 3251/2004 und Art. 187–187B PK; vgl. auch das frühere G. 2928/2001 zur organisierten Kriminalität.

15 Siehe G. 3691/2008, das heute das zentrale Gesetz zur Geldwäsche und Terrorismusfinanzierung darstellt. Siehe auch Entscheidung ΕΤΠΘ 281/5/17.3.2009 der Bank of Greece. Die frühere Geldwäscherichtlinie 2001/97/EG wurde mit G. 3424/2005 in nationales Recht umgesetzt, das entsprechend das vorherige Geldwäschesgesetz 2331/1995 änderte.

16 Neuerdings u.a.: das Übereinkommen der Vereinten Nationen gegen die grenzüberschreitende organisierte Kriminalität (2000, siehe G. 3875/2010; auch Art. 187–187A PK und G. 3691/2008); die Resolutionen S/RES/1267 (1999, siehe Präsidialdekret 352/2001), S/RES/1373 (2001, siehe Ministerentscheidung vom 26.10.2001, ΦΕΚ Α' 257/2.11.2001), S/RES/1636 (2005, siehe Präsidialdekret 173/2006 und Ministerentscheidung Φ.3150/11/ΑΣ 1453/21.11.2005) und S/RES/1822 (2008, siehe Ministerentscheidung YA Φ.4710/7/ΑΣ 1245) des Sicherheitsrats der Vereinten Nationen, die zentrale Fragen der Terrorismusbekämpfung ansprechen; und die Verordnung (EG) Nr. 1889/2005 über die Überwachung von Barmitteln, die in die oder aus der Gemeinschaft verbracht werden (siehe insb. Ministerentscheidung E2320/976/A0034/10.6.2008 AYO i.V.m. G. 2960/2001 und G. 3790/2009). Ausführlich zu den internationalrechtlichen Verpflichtungen und zu den von Griechenland ratifizierten und innerstaatlich umgesetzten Rechtsinstrumenten Billis, a.a.O. [En. 3], S. 215–219, 272–273, 277–278.

17 Siehe zu diesem Rahmenbeschluss Maria Kaiafa-Gbandi, Terrorismusbekämpfung in der Europäischen Union und das vor-präventive Strafrecht: Neue Vorgaben für strafbare Taten nach dem Rahmenbeschluss 2008/919/JI, in: Felix Herzog/Ulfrid Neumann (Hrsg.), *Festschrift für Winfried Hassemer*. Heidelberg 2010, S. 1161–1181, wo u.a. bemerkt wird (S. 1162), dass es dabei um „einen Fall der institutionellen Vorverlagerung der Strafverfolgung in das Vorfeld von Rechtsgutsverletzungen mit besonderem Gewicht“ geht.

18 Wie z.B. die jüngere S/RES/2178 (2014, „Threats to international peace and security caused by terrorist acts“).

19 Siehe dazu mit Kritikpunkten Dionysios Spinellis, Der Rahmenbeschluss zur Terrorismusbekämpfung. Bemerkungen aus Sicht des griechischen Rechts, in: Gunnar Duttge u.a. (Hrsg.), *Gedächtnisschrift für Ellen Schlüchter*, Köln u.a. 2002, S. 823–838; Elisabeth Symeonidou-Kastanidou, *Organomeno Egklima kai Tro-mokratia* [Οργανωμένο έγκλημα και τρομοκρατία] (auf Griechisch), 2. Aufl. Athen/Thessaloniki 2007, S. 128–145.

20 Zu diesem Gesetz zur Prävention und Unterdrückung der Geldwäsche und der Terrorismusfinanzierung siehe unter III.

21 Zu den allgemeinen Vorschriften zur Versuchsstrafbarkeit siehe Art. 42–44 PK.

22 Im Griechischen Strafrechtssystem wird allgemein zwischen Verbrechen (*κακούργημα*), Vergehen (*πλημμελήματα*) und Bagatelldelikten (*παιίσματα*) unterschieden. Die beiden wichtigsten Formen von Freiheitsstrafen, sind die Gefängnisstrafe (*κάθειρξη*), bei Verbrechen), die lebenslang (wenn ausdrücklich bestimmt) oder zeitlich (von 5 bis 20 Jahren) sein kann, und die sog. Inhaftierung (*φυλάκιση*, bei Vergehen; von 10 Tagen bis 5 Jahren). Siehe dazu Art. 18, 52ff. PK.

23 Siehe ausführlich *Elisabeth Symeonidou-Kastanidou*, Defining Terrorism, in: *European Journal of Crime, Criminal Law and Criminal Justice* 12 (2004), 14–35.

24 Zur Täterschaft und Teilnahme siehe allgemein Art. 45–49 PK.

Dr. Emmanouil Billis, LL.M.

Senior Researcher at the Max Planck Institute in Freiburg, Attorney at law, Former Alexander S. Onassis Foundation Scholarship Holder; e.billis@mpicc.de



25 Siehe Michail Margaritis, *Poinikos Kodikas: Ermineia – Efarmogi* [Ποινικός Κώδικας: Ερμηνεία – Εφαρμογή] (Kommentar auf Griechisch), 3. Aufl. Athen 2014, S. 521.

26 Vgl. zum Begriff „finanzielle Mittel“ (*funds*) auch das Internationale Übereinkommen der Vereinten Nationen zur Bekämpfung der Finanzierung des Terrorismus (1999), das mit G. 3034/2002 ratifiziert und dessen Art. 1(1) wörtlich ins Griechische übernommen wurde.

27 Bis dato existiert keine aktuelle amtliche deutsche Übersetzung des PK. Die vorliegende Übersetzung stammt vom Autor.

28 Zu den allgemeinen Verjährungsvorschriften siehe Art. 111–116 PK.

29 Diese Vorschriften betreffen die Aussetzung des Strafrestes.

30 Diese Vorschrift betrifft die Strafbemessung nach den Regeln der Realkonkurrenz. Im Übrigen gilt die unechte Konkurrenz, wobei die Bestrafung für das Terrorismusdelikt nach Art. 187A(1) PK die Bestrafung für die Basisstraftaten verdrängt.

31 Die Art. 134–137 betreffen die Delikte gegen die verfassungsmäßige Ordnung (Verfassungshochverrat und seiner Vorbereitung). Siehe schon oben unter I.

32 Siehe Art. 83 und 84 PK.

33 Die Vorschrift des Art. 187(4) PK betrifft das Delikt der Verhinderung der Strafverfolgung krimineller Vereinigungen durch Bedrohung oder Bestechung von Justizorganen und Zeugen.

34 Siehe m.w.N. Billis, a.a.O. [En. 3], S. 234, 248–249.

35 Wie durch Art. 10 G. 3875/2010 geändert.

36 Juristische Personen können nach Absatz 3 Art. 41 G. 3251/2004 auch verantwortlich gemacht werden, wenn mangelnde Überwachung oder Kontrolle seitens einer der in Absatz 1 Art. 41 G. 3251/2004 genannten natürlichen Person die Begehung einer der Straftaten der Art. 187 und 187A PK zugunsten der juristischen Person durch eine ihr unterstellte natürliche Person ermöglicht hat.

37 Siehe auch die Gesetze 3875/2010, 4099/2012, 4170/2013 und 4254/2014.

38 Siehe dazu u.a. Maria Kaiafa-Gbandi, Poinikopoisi tis Nomimopoiisis Esodon apo Egklimatikos Drastiriotes [Ποινικοποίηση της νομιμοποίησης εσόδων από εγκληματικές δραστηριότητες: Βασικά χαρακτηριστικά του ν.3691/2008 και δικαιοκρατικά όρια] (auf Griechisch), in: *Strafrechtliche Abteilung der Rechtswissenschaftlichen Fakultät der Universität Athen* (Hrsg.), *Festschrift für Professor Calliope Spinellis*, Athen/Komotini 2010, S. 1115–1129; Stefanos Pavlou, O.N. 3691/2008 [O.N. 3691/2008 για την πρόληψη και καταστολή της νομιμοποίησης εσόδων από εγκληματικές δραστηριότητες και της χρηματοδότησης της τρομοκρατίας. Η οριστικοποίηση μιας διαχρονικής δογματικής εκτροπής και η εμπέδωση της κατασταλτικής αυθαιρεσίας] (auf Griechisch), in: *Poinika Chronika* (Zeitschrift) 2008, 923–933.

39 Siehe oben, II.

40 Die Begriffe „Kredit- und Finanzinstitute“ werden in Art. 4 G. 3691/2008 größtenteils nach den Vorgaben des Art. 3 Richtlinie 2005/60/EG definiert.

41 Siehe Art. 371 PK, der jedenfalls einen Rechtfertigungsgrund für die Fälle vorsieht, in denen die betreffende Person das Geheimnis zur Erfüllung einer Pflicht oder zum Schutz eines rechtlichen Interesses offenbart.

42 Siehe auch Art. 26(2) G. 3691/2008 bezüglich der Meldepflichten im Rahmen eines laufenden Gerichtsverfahrens. Ausführlich dazu Elisabeth Symeonidou-Kastanidou, *Dikigoroi* [Δικηγόροι: Υποχρεώσεις συνδρομής στην αντιμετώπιση της νομιμοποίησης παράνομων εσόδων και χρηματοδότησης της τρομοκρατίας και ποινική ευθύνη], in: *Poinika Chronika* (Zeitschrift) 2008, 933–940.

43 Siehe z.B. in <http://www.bankofgreece.gr/Pages/en/Supervision/money/acts.aspx> die Entscheidung „BCC Decision 281/5/17.3.2009: Prevention of the use of credit and financial institutions supervised by the Bank of Greece for money laundering and terrorist financing“ (auf Englisch).

44 Siehe Art. 48 (5) G. 3691/2008.

45 Siehe Art. 49 G. 3691/2008.

46 Siehe dazu die Definitionen in Art. 4 G. 3691/2008.

47 Siehe auch Art. 50 G. 3691/2008 für die Befugnis der richterlichen Behörden zur Akteneinsicht.

48 Siehe oben unter II.

49 Die allgemeinen materiell-rechtlichen Vorschriften zur Einziehung befinden sich in Art. 76 PK.

50 Siehe mehr bei Giorgos Dimitrainas, Nomimopoiisi Esodon apo Egklimatikes Drastiriotes [Νομιμοποίηση εσόδων από εγκληματικές δραστηριότητες: Οι ανακριτικές διατάξεις δέσμευσης και απαγόρευσης εκποίησης των περιουσιακών στοιχείων του κατηγορουμένου υπό το πρίσμα των διατάξεων για την κατάσχεση και ειδική δήμηση των κρίσιμων περιουσιακών στοιχείων (από το ν. 2331/1995 στο ν. 3691/2008)] (auf Griechisch), in: *Poinika Chronika* (Zeitschrift) 2008, 943–948.

51 Fragen zu möglichem zivilrechtlichem Ansprüchen des Staates werden in Art. 47 G. 3691/2008 angesprochen.

52 Siehe auch Art. 1 G. 4312/2014. Mehr bei Dimitrainas, a.a.O. [En. 51], 948–955.

53 So z.B. die Urteile 422/2013, 835/2012 und 406/2012 der strafrechtlichen Abteilung des Kassationsgerichts Areios Pagos (*Άρειος Πάγος*), abrufbar (auf Griechisch) unter <http://www.areiospagos.gr/>.

54 Siehe z.B. neuerdings die Einigung der zuständigen EU-Institutionen über die Stärkung der Methoden für die Verhinderung von Geldwäsche und Terrorismusfinanzierung durch die Annahme eines neuen Gesetzespakets (Verordnung und Richtlinie, siehe unter <http://www.consilium.europa.eu/de/policies/money-laundering-terrorist-financing/>).

The French “War on Terror” in the post-Charlie Hebdo Era

Vasiliki Chalkiadaki

I. Introduction

France’s history of terrorism is neither new nor exclusively Islamist-related. At the end of the 1970s, France experienced a wave of terrorist activity both from left-revolutionary groups, such as the *Action Directe*,¹ and from nationalist-separatist groups, especially those active in Brittany, Corsica, and the Basque Country.² By the early 1980s, however, France had become a target of Islamist terrorist groups and has remained so ever since, as the gunmen attack on the Paris headquarters of the satirical magazine *Charlie Hebdo* on 7 January 2015 demonstrated.³ The history of contemporary French counterterrorism legislation dates back to 1986, with the law on counterterrorism of 9 September 1986. Before the latter, France dealt with terrorist attacks by means of special laws on state security that had been enacted during the Algerian wars (1954–1962), which provided for an intensive limitation of individual rights and even for a special court to deal with the relevant offences (*Cour de Sûreté de l’État*, “Court of State Security”)⁴ that was abolished only in 1982. Therefore, until 1986, no specific counterterrorism legislation existed. Before 1986, terrorist acts were characterized as “serious violent acts threatening the integrity and the security of the state” and treated accordingly.⁵

This paper presents the impact that the latest terrorist attack (hereafter: the *Charlie* attack) has had so far on France’s counterterrorism legislation (part III). After a brief historical overview of current legislative measures (part II), the following aspects are examined as being the effects of the attack: the

enactment of a series of provisions, mainly in the Code of Internal Security (*Code de sécurité intérieure*, hereafter: *Cod. Séc. Int.*); the exponentially increasing number of prosecutions on the basis of already existing substantive criminal law provisions (especially the glorification of terrorism and the preparation of terrorist acts); the planning of new measures and the drafting of the relevant provisions regarding the financing of terrorism to reinforce the already existing framework on terrorist financing.

II. Historical Overview

Contemporary counterterrorism legislation in France has evolved over three distinct periods:

- The 1980s were dominated by the law on counterterrorism of 9 September 1986,⁶ created in the aftermath of a series of bombing attacks by terrorist groups in various French cities – usually in Paris. Characterized as the cornerstone of French counterterrorism legislation, this law did not introduce any special “terrorist offences,” but it provided for the application of new, stricter procedural rules for some of the ordinary offences typically associated with terrorist activity (e.g., murder, abduction).⁷ Concurrently, the government implemented⁸ the *plan vigipirate*, namely the constant presence of armed soldiers, gendarmes, and police officers in public places like railway stations or airports in order to prevent possible outbreaks of violence and particularly terrorist attacks.⁹

■ The 1990s represented a different era of counterterrorism strategy, in which two “waves” of terrorist attacks mainly by Algerian Islamist groups (1993–1994, 1995–1996) initiated broad changes in legislation and the practice of law enforcement agencies engaged in counterterrorism. The legislation of this period involved the extension of the duration of pretrial detention¹⁰ as well as the introduction of closed-circuit television (hereafter: CCTV) in public places¹¹ and night searches¹² as regards criminal procedure. In addition, in the field of substantive criminal law, new offences were introduced, such as membership in a terrorist organization.¹³ Regarding the practice of law enforcement agencies, police custody (*garde à vue*),¹⁴ provided in the Code of Criminal Procedure, was massively applied and implementation of the *plan vigipirate* continued, reinforced with even more human resources.¹⁵

■ The beginning of the current (third) phase of counterterrorism legislation came with the terrorist attacks on the World Trade Center in New York on 11 September 2001, which triggered a chain reaction of legislative reforms at national, supranational, and international levels. France’s immediate reaction to the attacks was the law on everyday security of 15 November 2001,¹⁶ which introduced a plethora of norms aimed at the reinforcement of state security. Characterized by the creation of special (terrorist) offences and by changes in criminal procedure, the new law targeted primarily the financing of terrorism and the seizure of assets of terrorist organizations.¹⁷ The counterterrorism legal framework was further enriched with the law on counterterrorism and other security-related provisions of 23 January 2006¹⁸ after the bomb attacks in London in 2005 and the outbreak of a huge wave of violence in the *banlieues* of Paris in 2006. The latter was not connected to terrorism, yet led to the implementation of a state of emergency throughout France. In line with its English counterpart, the French legislature insisted on the broadening of police duties to include, for instance, controlling the movements of individuals to “dangerous” states like Pakistan. After all, since 2002, counterterrorism had been officially declared a police priority for at least the five following years, which gave a whole new dimension to the cooperation of the police and secret services.¹⁹ Parallel to these reforms, the competences of the police, especially in conjunction with the use of new technologies (e.g., using CCTV, storing DNA data, photographing vehicles), were extended.²⁰ In the next few years, especially after the constitutional reform of 2008 that changed the structure of the secret services radically, the police and secret service agencies developed the pillars of a comprehensive counterterrorism strategy. This strategy focused not only on the introduction of (substantive and procedural) criminal law provisions but also on the use of intelligence to identify terrorists and terrorist suspects, as the most effective method to prevent future

terrorist attacks, e.g., with the creation of databases storing personal data of terrorist affiliates.²¹

Turning specifically to the question of today’s substantive criminal law, counterterrorism provisions constitute a distinct part of the French Penal Code (*Code Pénal*, hereafter: CP) in the broader section of “felonies and misdemeanours against the nation, the state and the public peace.” They are regulated as ordinary offences – as opposed to political offences and offences against the press – and are characterized by particularly strict penalties and – partly – by an extended criminal liability. The relevant procedural norms are particularly tough, which is evident in the offences regarding the financing of terrorism. These provisions were introduced with the law on counterterrorism of 9 September 1986 and are divided as follows, on the basis of their form: *terrorisme par référence* (terrorism by reference) and *infractions terroristes autonomes* (autonomous terrorist crimes). “Terrorisme par référence” is defined in Art. 421-1 CP, which provides that specific, restrictively enumerated crimes of the CP, such as murder, abduction, or damage to property, when committed in conjunction with an individual or collective enterprise aiming at a severe disruption of the public order through intimidation or terror, attain a special gravity in the context of terrorism. This special gravity that the purpose of intimidating the public attributed to the commission of specific crimes is the subject matter of the aforementioned “extended” criminal liability. The “autonomous terrorist offences” refer to concrete offences the CP itself defines *ab initio* as terrorist acts. These offences are ecological terrorism (Art. 421-2 CP), the financing of terrorist attacks (Art. 421-2-2 CP), “supposed” terrorism or the fact that resources available to an individual affiliated with terrorists and terrorist suspects do not correspond to his lifestyle (Art. 421-2-3 CP), encouragement to be recruited by a terrorist organization (Art. 421-2-4 CP), direct provocation of terrorist acts and the public glorification of terrorist acts (Art. 421-2-5 CP), as well as the preparation to commit a terrorist act as defined in the Penal Code (Art. 421-2-6 CP).

III. Impact of the *Charlie Hebdo* Attack on Counterterrorism Legislation

1. Introducing new legislation on the use of intelligence against terrorism

Before discussing the proposed legislation on the use of intelligence for counterterrorism purposes, it is necessary to present the relevant current legal framework. The use of intelligence²² has been a typical practice of the French police and the intelligence services²³ since 1978.²⁴ This includes, in particular, retaining personal data of offenders or suspects in

special databases (*fichiers*) for the different areas of crime by the police and the intelligence services in order to facilitate the surveillance of specific individuals. The only database used specifically for counterterrorism purposes by the listing of personal data for the purposes of surveillance was the *Fichier Informatisé du Terrorisme* (hereafter: FIT). However, the intelligence services had practiced use of the FIT since 1978, without being regulated by law. In 1990, the intelligence agencies underwent an extensive reform in their structure (and competencies), which, of course, could not leave the *fichier* practice intact. Two new databases were created on the same day by decrees for the *Renseignements Généraux* (hereafter: RG)²⁵ and covered the entire spectrum of data used by this agency. This led to a fierce public debate on the collection and management of sensitive data of individuals and, ultimately, to the withdrawal of the decrees and their replacement by two new ones in 1991. They had the same names as their predecessors but were clearer as to the management of the data by the RG. One of those new decrees regulated the (already used in practice) FIT, which also included, alongside the typical data (contact, profession, etc.) a description (*signalement*) of the appearance and the behaviour of the individual in question. Stored in the FIT was also the social circle of the individual, which meant that the database was extended to also contain concrete data of the contact persons of the terrorist or terrorist suspect. The FIT was abolished along with all databases of the RG during the reform of the secret services in 2008²⁶ and replaced by the new database called *Exploitation Documentaire et Valorisation de l'Information Générale* (hereafter: EDVIGE).²⁷ Among other data, EDVIGE included data of individuals, organizations, or legal entities whose (individual or collective) activities threatened the public order; hence, terrorists, terrorist suspects, and terrorist organizations were also dealt with under this category. Access to such data was limited to specialized agents of specific secret services and police agencies. With EDVIGE, the spectrum of sensitive data became so broad as to include data on sexual orientation, state of health, racial or ethnic origin, and political and religious views of the enlisted individuals.

The reactions triggered by this extension led to its replacement by the French Ministry of Home Affairs: Once again, two new databases were created,²⁸ one of which is still in force *Prévention des Atteintes à la Sécurité Publique* (hereafter: PASP). Described as the database for processing and analyzing information on persons whose individual or collective activities are indicators for their aim to harm the security of the state, and despite the fact that it mainly targeted disruptive incidents in football matches and in the urban context, PASP has until today also been the counterterrorism database, as terrorism is the principal activity harming state security. For

the PASP, it was prohibited to include data on state of health, sexual orientation, race or ethnic origin, and it only allowed for data on political and religious views if they were related to terrorist activities. Apart from PASP, however, an even more controversial database in conjunction with counterterrorism is the *Centralisation du renseignement intérieur pour la sécurité du territoire et des intérêts nationaux* (hereafter: CRISTINA), which was introduced by decree in 2008 along with the founding of the *Direction Centrale du Renseignement Intérieur* to which it belongs. CRISTINA was defined as “defense secret,” namely a highly confidential database requiring high-level clearance to be consulted, since it includes data on terrorism and espionage that are characterized as state secrets. It cannot be known which data exactly are retained in CRISTINA, or for how long; a special control by a judge is required after the application by a person who wishes to clarify whether he is on the CRISTINA list. The specific data is deleted as soon as the purpose of the listing has been served, in other words, when the person no longer constitutes a possible threat to the state and state security.

In the aftermath of the *Charlie* attacks, the French government decided to give even more prominence to the intelligence services and particularly to the generation of intelligence. Prime Minister *Valls*, in his speech before the Parliament to commemorate the victims of the attacks on 13 January 2015, announced a series of measures in this direction. These aim at reinforcing the war on terror in a variety of ways, e.g., increasing the human resources of the counterterrorism operations; strengthening the surveillance of air travel by preparing the ground for the implementation of the proposed Directive on the exchange of passengers data (PNR), which provides for the creation of a database with passenger data from all EU countries; or the creation of special departments in penitentiaries for radicalized individuals. Among the measures, the following two are of greatest importance for this paper: first, the creation of a new database for individuals that have been sentenced for terrorism; secondly, the new bill aiming at reinforcing the secret services.²⁹

The originality of the proposed database lies in the fact that refers exclusively to terrorism. It will include only individuals that have already been prosecuted and sentenced for terrorist acts, and not generally for acts jeopardizing state security, as it has been the case so far. Moreover, the database will include persons suspected of having joined armed terrorist groups. Persons whose personal data (most important: residence address) is to be stored on this list will have to report frequently to the nearest police stations or will be subjected to frequent controls by police officers. So far, a consultation between the Ministries of Justice and of Home Affairs has been launched in order to clarify the legal prerequisites for its creation.

The proposed legislation on reinforcing the intelligence services was adopted in its entirety by the Assemblée Nationale by 438 votes (against 86) on first reading on 5 May 2015. This “intelligence bill” (*Projet de loi relatif au renseignement*) constitutes an amendment of the Code of Internal Security (*Code de sécurité intérieure*, hereafter: Cod. Séc. Int.), as it adds to the latter a section dedicated to *renseignement*, namely to the intelligence services³⁰ and intelligence in general. The core of this comprehensive bill is the definition of the mission of specialized intelligence services and the conditions under which these services are allowed to use technology (such as security interceptions, GPS systems, etc.) to access massive (connection) data in order to collect information relevant to restrictively enlisted public interests. With respect to these intervention techniques, the bill provides that they can be used by the specialized intelligence services after relevant authorization by the Prime Minister, who has to consult the independent (administrative) authority *Commission nationale de contrôle des techniques du renseignement* (hereafter: CNCTR)³¹ first. This bill provides that the CNCTR will also receive the complaints of any person having a direct and personal (relevant) interest in the information. The bill also regulates how long the collected data will be preserved by the intelligence services, provides for a specific regime of authorization and control for international surveillance measures, and establishes a judicial remedy before the Conseil d’État that is open to the CNCTR as well as to anyone having a direct and personal interest. At the same time, procedural exemption rules are also provided by the bill in order to safeguard national security secrets.

It is not the purpose of this paper to analyze the intelligence bill in detail, since it refers to internal security in general. Nonetheless, it is useful to stress the following points in conjunction with terrorism:

- In the (proposed) Art. L.811-3 Cod. Séc. Int. regarding the public interests served by the collection of information by secret services, explicit reference is made to the prevention of terrorism as a distinct public interest (along with national security, the essential economic and scientific interests of France, fundamental interests of foreign policy, as well as prevention of the continuation of activities of dissolved combat groups and militia) for which the collection of information is permitted.
- Arts. L.851-3, 851-4 Cod. Séc. Int. refer to the collection of information and documents mentioned in the new Art. L.851-1 Cod. Séc. Int., namely information and documents of the networks of electronic services (bulk data, such as a list of incoming and outgoing calls of a subscriber, the date and duration of the communication, the location of a terminal piece of equipment, etc.). The provision declares that only for counterterrorism needs can the collection of the aforementioned informa-

tion relating to an individual previously recognized as a threat be operated in real-time on the networks and operators of electronic communication. Such data collection procedures can be operated by specialized agents of the intelligence services that have been individually commissioned for this purpose and after consultation with the CNCTR.³² These agents can request the Prime Minister to lift the anonymity of the data circulated by operators of electronic communication networks, on the sole basis of the automatic processing of anonymous elements that may constitute a potential terrorist threat (Art. L.851-4 Cod. Séc. Int.). The Prime Minister then has to address the request to the CNCTR for consultation, as described in the bill.

- Following the authorization described in the bill, Art. L.821-4 Cod. Séc. Int., once again explicitly for the purpose of preventing a terrorist attack, allows for the use of a device of proximity (e.g. radar, antenna or any kind of sensor) for a strictly defined period in order to intercept directly the communications sent or received by terminal equipment.

In other words, the intelligence services can request the right to put hidden microphones in a room, in computers or on objects, such as cars, or to use antennae to capture telephone conversations or mechanisms that capture text messages; in this way, the bill actually legalizes tools of mass surveillance.

2. Reinforcing the counterterrorism legislation: Glorification and preparation of terrorist acts

The provisions on directly provoking or publicly glorifying terrorist acts and on preparing a terrorist act were recently introduced with the law on reinforcing the counterterrorism provisions in November 2014.³³

The direct provocation to commit terrorist offences and the public glorification of terrorist acts were criminalized as a result of a long period of gradually intensifying terrorist threats due to the activities of the Jihadi-Salafist organization Islamist State (ISIS). In France, in particular, the activity of subgroups of ISIS consisted of French citizens travelling to Syria in order to take part in the armed conflict initiated by ISIS.³⁴ Furthermore, the use of the Internet for the commission or the facilitation of the activity that directly provokes or publicly glorifies a terrorist act is considered to be an aggravating circumstance. The law of November 2014 follows the general trend of establishing the use of Internet as an aggravating circumstance for the commission of an offence due to the possibility of a broad and extremely fast transmission of a (criminal) message, as is, for instance, the case when sexual offenders use the Internet to contact their victims.³⁵

The preparation of the commission of a terrorist act constitutes an individual enterprise taking the form of one of the actions

described exhaustively in Art. 421-2-6 CP. The article provides the following exhaustive list of actions that are defined as individual terrorist enterprises:

- Research, procurement, or production of dangerous objects or substances, whether the procurement or the maintenance of these objects or substances are illegal or not (Art. 421-2-6 para.1 n° 1 CP);
- Collection of information on places or persons that facilitates their surveillance with a view for to a terrorist attack (Art. 421-2-6 para. 1 n° 2a CP);
- Training for armed conflict and production of the relevant means (Art. 421-2-6 para. 1 n° 2b CP);
- Visiting websites for the procurement of documents to instigate terrorist acts (Art. 421-2-6 para. 1 n° 2c CP);
- Staying in a terror camp abroad (Art. 421-2-6 para. 1 n° 2d CP).

This provision also applies explicitly in the cases of *terrorisme par référence* and *terrorisme écologique* in accordance with Art. 421-2-6 para. 2 CP.³⁶ The norm depicts the will of the French legislator to refrain from deriving criminal liability in cases of terrorist offences from participation in a terrorist organization according to Art. 421-2-1 CP. This step was necessary for the prosecution of persons committing or preparing terrorist offences by themselves, namely operating individually and not in their role as members of a specific terrorist organization. This could be the case, for instance, when a person plans a terrorist attack without belonging to a terrorist organization, e.g., looking for instructions on the making of explosives on the Internet, preparing videos with communiqués to be broadcast after the terrorist attack, or travelling to a terror camp abroad to take part in the militants' training. Such individuals clearly show a terrorist potential; without this provision, however, under the old regime, these persons could at best be prosecuted for preparatory acts, e.g., the illegal procurement of illegal weapons and explosives, meaning that terrorist potential was more or less disregarded.³⁷

Of the 251 proceedings in conjunction with the *Charlie* attack, 117 persons have been prosecuted on the grounds of terrorism glorification and direct provocation, only 20 of them ending up with imprisonment sentences. Since the *Charlie* attack, a vast amount of prosecutions has been initiated on the basis of this provision. As demanded in a circular³⁸ of the Minister of Justice, the criminal justice system should be particularly intolerant as regards any expression of glorification of terrorist acts and anti-Semitic ideology or instigation to hatred. Consequently, the practice of criminal justice to massively prosecute individuals on the grounds of this provision has been heavily criticized, especially in the context of the criminal law doctrine that considers such prosecutions to be “exceptional justice.”³⁹

3. Reinforcing the legal framework with new provisions (on the financing of terrorism)

The financing of terrorism is defined as to supply (*fournissant*), to gather (*réunissant*), or to manage (*gérant*) money, valuable items, or other goods, which are either used in the actual commission of a terrorist attack or designed to be used for terrorist purposes in general. In both variations, it is necessary that the financing individual is aware of the assets and the purpose of their use. Criminal liability for the terrorist financing acts is not connected to the actual commission of the terrorist attack for which the assets have been offered. This has enabled the French criminal justice system to prosecute the financing ringleaders of terrorist organizations. Their prosecution had always been quite problematic, since the mere (neutral) act of offering one's assets could not in itself be considered criminally relevant.⁴⁰

Approximately two months after the *Charlie* attack, the French Finance Minister *Sapin* announced a new “national action plan” targeting particularly terrorist financing, as the most effective way to stop terrorist attacks at their source, by depriving terrorist organizations of their logistics. The plan consists of eight principal measures divided into the following three categories or “pillars” (on the basis of the purpose they serve):

- Reducing anonymity in the economy in order to facilitate the tracking of suspicious transactions (the identification pillar);
- Increasing the exercise of due diligence by financial stakeholders, so that they can fully benefit from this transparency (the surveillance pillar);
- Reinforcing the capacities to freeze assets aimed at the funding of terrorist attacks (the action pillar).

The first pillar already addressed during the (current) first semester of 2015 is the action pillar, by consulting financial stakeholders in order to find the best practices for the implementation of freezing measures on both movable and immovable assets as well as by calling for greater diligence by on the part of banking institutions and large-scale financial establishments. The implementation of the identification pillar measures will start with the entry into force of an amendment to the French Monetary and Financial Code on 1 September 2015, which reduces the limit on authorized cash payments both for residents and for non-residents of France. In addition, a decree issued after consultation with the Conseil d'État will be enacted on 1 January 2016 to increase the capacities of the French agency for the fight against money laundering and terrorism financing (*Traitement du renseignement et action contre les circuits financiers clandestins*, TRACFIN),⁴¹ so as to include the monitoring of every transaction over €10,000 within one account (deposits and withdrawals alike). On the same date, the obligation of declaration of capital transferred physically from other EU countries to France by natural per-

sons when it exceeds the (present) limit of €10,000 will be extended to apply further to freight and express freight in order to enable customs. Also on 1 January 2016, the proposed 4th European “Anti-money Laundering” Directive⁴² is to be incorporated into French law, putting a limit to the use of reloadable prepaid cards by requiring an ID of the card holder (or the purchaser of a card) when the transaction exceeds a specific (relatively small) amount of money.

As far as the surveillance pillar is concerned, by decree enactment starting on 1 January 2016, the requirement to provide an ID for currency exchange transactions will be established for all such transactions over €1,000. Furthermore, payment accounts used by natural persons to deposit or withdraw cash and receive or send transfers, such as the Nickel-accounts,⁴³ estimated to total approximately 80,000 accounts by April 2015, will be included in the National Centralized Bank Accounts Register (*Fichier national des comptes bancaires et assimilés*, hereafter: FICOBA⁴⁴), making it possible to monitor suspicious transactions. In the meantime, since the first half of 2015 already, consultation with financial institution stakeholders has started with the purpose of setting the threshold for the so-called “transactions of unusually high sums.” It will require enhanced due diligence on the part of financial institutions and firms, in the form of checks regarding the origins of funds, the identity of the recipients, and the grounds for such transactions.⁴⁵

IV. Conclusion

This paper has shown that, in a very short time, France has engaged in a legislative fever, aiming to boost – once more – the capacities of the criminal justice system and the law enforcement agencies in the prevention of terrorist attacks. The paper has highlighted that the will to increase surveillance lies at the core of these developments, with the introduction of the various counterterrorism databases, the forthcoming simplified

authorization of procedures for collection and management of data and intelligence, as well as the planned elimination of anonymity for financial transactions. Apart from these legislative developments, individuals have been fiercely prosecuted on the basis of the latest provisions of the CP with regard to the public glorification and preparation of terrorist acts.

France had a fairly comprehensive – and constantly updated – counterterrorism legal framework in place that increasingly provided broad competences to the law enforcement agencies, even without the aforementioned forthcoming developments; yet terrorist attacks of the extent of the *Charlie* attack still take place. Inevitably, considerable concerns emerge as to the efficiency of existing legislation and its application by the law enforcement agencies. As far as legislation on intelligence and surveillance mechanisms are concerned, the *Charlie* attack has exhibited the systemic failures or weaknesses: According to French officials, the surveillance of one of the perpetrators had offered nothing for over two years, and the monitoring of another had already been abandoned for the same reason; their case was no longer deemed a priority, and the competent counterterrorism team allowed the surveillance order on them to expire.⁴⁶ Several months after the expiration of the order, the *Kouachi* brothers burst through the doors at *Charlie Hebdo* and killed 12 persons. Limited (human) resources, mistakes in the analysis of products of intelligence, slow action due to the complicated competences of the French intelligence agencies? No matter which factors led to the failure of surveillance, the French legislature insisted on considering the incident not to be a failure, but an insufficiency in relation to a disproportionate imminent (terrorist) threat: this is the reason why an increase in the surveillance measures was opted for, even if this solution may not be quite compatible with the French tradition of respect for human rights and fundamental freedoms. It remains to be seen whether this scheme of practically turning post-*Charlie* France into post-9/11 US will be the right approach or not, in terms of ensuring effectivity, fairness, and respect for human dignity in the criminal justice administration.

1 The Action Directe was a radical left-wing underground organization, active in France between 1979 and 1987, which perpetrated a series of gun assaults and assassinations. See more in: M. Y. Dartnell, *Action Directe: Ultra-left terrorism in France 1979–1987*, London 1993, 73–165; W. Dietl, K. Hirschmann and R. Tophoven, *Das Terrorismus-Lexikon: Täter, Opfer, Hintergründe*, Frankfurt 2006, 87–88.

2 On the activities of these separatist groups in France, see: A. Pérez Agote, *Prophétie auto-réalisée et deuil non résolu. La violence politique basque au XXI^e siècle*, in: X. Crettiez and L. Muchielli (eds.), *Les violences politiques en Europe: un état des lieux*, Paris 2010, 105–137; W. Dietl, K. Hirschmann and R. Tophoven, *Das Terrorismus-Lexikon: Täter, Opfer, Hintergründe*, Frankfurt 2006, 57–61; H. Kushner, *Encyclopedia of Terrorism*, Thousand Oaks 2003, 256–257; R. Ramsay, *The Corsican Time-Bomb*, Manchester 1983, 118–119 ; 200–201 and 205.

3 As factors for the targeting of France by Islamist organizations have usually been considered the expansionist policy in France’s history (from the crusades era

till the second colonial empire), the military presence of France in Muslim territories (e.g., in Djibouti), support for regimes that dissociate themselves from Islamist values (e.g., in the Maghreb countries), the French principle of *laïcité* and the relevant laws that are seen as opposing to Islamic symbols, as well as the determination of the criminal justice system to eliminate terrorists and their accomplices. N. Cettina, *The French Approach: Vigour and Vigilance*, in: M. van Leeuwen (ed.), *Confronting Terrorism: European Experiences, Threat Perceptions and Policies*, The Hague 2003, 72–75.

4 On the French Court of State Security, see: A. Oehmichen, *Terrorism and Anti-Terror Legislation: The Terrorised Legislator?* Antwerp 2009, 295–296.

5 A. Oehmichen, *Terrorism and Anti-Terror Legislation: The Terrorised Legislator?* Antwerp 2009, 291.

6 Loi n° 86-1020 du 9 septembre 1986 relative à la lutte contre le terrorisme.

7 See among others: S. Dagron, *Country Report on France*, in: C. Walter et al. (eds.), *Terrorism as a Challenge in National and International Law: Security versus*



Vasiliki Chalkiadaki, LL.M.

Attorney at Law, PhD Candidate at the University of Freiburg, and Member of the International Max Planck Research School for Comparative Criminal Law
v.chalkiadaki@mpicc.de

Liberty?, Berlin 2004, 267–309; D. Bigos and C. Camus, *Overview of the French anti-terrorism strategy* (WD 2), in: R. Neeve et al. (eds.), *First inventory of policy on counterterrorism (research in progress)*, The Hague 2006, 1–76.

8 Ordonnance n° 59-147 du 7 janvier 1959 portant organisation générale de la défense.

9 More on the *plan vigipirate* is available on the official website of the French government: <http://www.risques.gouv.fr/menaces-terroristes/le-plan-vigipirate>. See also: N. Cettina, *L'antiterrorisme en question: De l'attentat de la rue Marbeuf aux affaires corses*, Paris 2001, 112–115; N. Cettina, *The French Approach: Vigour and Vigilance*, in: M. van Leeuwen (ed.), *Confronting Terrorism: European Experiences, Threat Perceptions and Policies*, The Hague 2003, 76; A. Oehmichen, *Terrorism and Anti-Terror Legislation: The Terrorised Legislator?* Antwerp 2009, 296.

10 Loi n° 96-1235 du 30 décembre 1996 relative à la détention provisoire et aux perquisitions de nuit en matière de terrorisme.

11 Loi n° 95-73 du 21 janvier 1995 d'orientation et de programmation relative à la sécurité.

12 Loi n° 95-73 du 21 janvier 1995 d'orientation et de programmation relative à la sécurité ; Loi n° 96-1235 du 30 décembre 1996 relative à la détention provisoire et aux perquisitions de nuit en matière de terrorisme.

13 Loi n° 96-647 du 22 juillet 1996 tendant à renforcer la répression du terrorisme et des atteintes aux personnes dépositaires de l'autorité publique ou chargées d'une mission de service public et comportant des dispositions relatives à la police judiciaire.

14 See the frequently reformed Art. 62-2 of the Code of Criminal Procedure.

15 A. Oehmichen, *Terrorism and Anti-Terror Legislation: The Terrorised Legislator?* Antwerp 2009, 108–113.

16 Loi n° 2001-1062 du 15 novembre 2001 relative à la sécurité quotidienne.

17 More in: A. Oehmichen, *Terrorism and Anti-Terror Legislation: The Terrorised Legislator?* Antwerp 2009, 314–317.

18 Loi no 2006-64 du 23 janvier 2006 relative à la lutte contre le terrorisme et portant dispositions diverses relatives à la sécurité et aux contrôles frontaliers.

19 D. Bigos/C. Camus, *Overview of the French anti-terrorism strategy* (WD 2), in: R. Neeve et al. (eds.), *First inventory of policy on counterterrorism (research in progress)*, The Hague 2006, 55.

20 A. Oehmichen, *Terrorism and Anti-Terror Legislation: The Terrorised Legislator?* Antwerp 2009, 291–292.

21 See among others: F. Foley, *Countering Terrorism in Britain and France: Institutions, Norms and the Shadow of the Past*, Cambridge 2013, 121–129.

22 The relative French term is “*renseignement*.” This term can be interpreted – according to the context – either as “information” or as “intelligence” and is used to refer to the French intelligence services. The term *renseignement* is (also) defined in the dictionary *Petit Robert 2008* as the information that relates to the enemy and which poses public order and security at risk.

23 The main French intelligence services were the (*Direction Centrale des Renseignements Généraux* [“(Headquarters of) General Intelligence Services,” hereafter: RG] and the *Direction de la Surveillance du Territoire* (“Direction for the Surveillance of the territory,” hereafter: DST) until 2008, when they were subjected to an extensive reform by President Sarkozy. Since then they co-exist as one *Direction Centrale du Renseignement Intérieur* (“Headquarters of Home Intelligence,” hereafter: DCR). The (former) DST and its department nowadays within the DCR are also responsible for the prosecution of (potential) terrorists.

24 Loi n° 78-17 du 6 janvier 1978 relative à l'informatique, aux fichiers et aux libertés.

25 The RG was established by decree (*Décret n° 85-1057 du 2 octobre 1985 relatif à l'organisation de l'administration centrale du ministère de l'intérieur et de la décentralisation*, reformed in 2010) and it belonged to the Ministry of the Interior. Its duty was the collection of information on potential terrorists and terrorist suspects on French territory. For more, see G. Segell, *The French Intelligence Services*, in:

T. Jäger/A. Daun (eds.), *Geheimdienste in Europa: Transformation, Kooperation und Kontrolle*, Wiesbaden 2009, 44–45.

26 On the re-organization of the databases in the context of the 2008 reform, see: D. Batho and J. A. Bénisti, *Rapport d'information n° 1548 sur les fichiers du police* (submitted to the Assemblée Nationale), Paris 2009, 63–65.

27 Décret n° 2008-632 du 27 juin 2008 portant création d'un traitement automatisé de données à caractère personnel dénommé « EDVIGE ».

28 The databases were created by decrees: Décret no 2009-1249 du 16 octobre 2009 portant création d'un traitement de données à caractère personnel relatif à la prévention des atteintes à la sécurité publique and Décret no 2009-1250 du 16 octobre 2009 portant création d'un traitement automatisé de données à caractère personnel relatif aux enquêtes administratives liées à la sécurité publique.

29 For a brief listing of the measures: <http://www.gouvernement.fr/action/la-lutte-contre-le-terrorisme> ; http://www.francetvinfo.fr/faits-divers/attaque-au-siege-de-charlie-hebdo/manuel-valls-annonce-une-serie-de-mesures-pour-lutter-contre-le-terrorisme_796077.html.

30 The terms “intelligence services” and “secret services” are used interchangeably.

31 For the authority's composition and mission, see Arts. L.831-1–L.833-6 Cod. Séc. Int. (as proposed in the intelligence bill).

32 According to Art. 6, nonies ordonnance n° 58-1100 du 17 novembre 1958 relative au fonctionnement des assemblées parlementaires.

33 Loi n° 2014-1353 du 13 novembre 2014 renforçant les dispositions relatives à la lutte contre le terrorisme.

34 S. Pietrasanta, *Rapport fait sur le projet de loi (n° 2110), renforçant les dispositions relatives à la lutte contre le terrorisme* (submitted to the Assemblée Nationale), Paris 2014, 10–13.

35 J.-J. Hyst et A. Richard, *Rapport sur le projet de loi, adopté par l'Assemblée Nationale après engagement de la procédure accélérée, renforçant les dispositions relatives à la lutte contre le terrorisme* (submitted to the Sénat), Paris 2014, 42–48; S. Pietrasanta, *Rapport fait sur le projet de loi (n° 2110), renforçant les dispositions relatives à la lutte contre le terrorisme* (submitted to the Assemblée Nationale), Paris 2014, 91–94.

36 *Ibid.*, 91–94.

37 For a detailed analysis of the counterterrorism provisions in the French Penal Code, see: V. Chalkiadaki (dissertation, forthcoming), *Gefährderkonzepte in der Kriminalpolitik – Rechtsvergleichende Analyse der deutschen, französischen und englischen Ansätze*.

38 http://www.justice.gouv.fr/publication/circ_20150113_infractions_commises_suite_attentats201510002055.pdf.

39 See more online: http://www.lexpress.fr/actualite/societe/apologie-du-terrorisme-peines-d-exception-ou-justice-exemplaire_1642597.html; <http://tempsreel.nouvelobs.com/societe/20150120.OBS0379/apologie-du-terrorisme-les-juges-vont-ils-trop-loin.html>; http://www.lexpress.fr/actualite/societe/la-repression-de-l-apologie-du-terrorisme-se-durcit_1640337.html.

40 C. André, *Droit Pénal Spécial*, Paris 2013, point n° 436; E. Dreyer, *Droit Pénal Spécial*, Paris 2012, point n° 761–762; V. Malabat, *Droit Pénal Spécial*, Paris 2013, point n° 899.

41 TRACFIN is an intelligence services unit belonging to the Ministry of Finance and is responsible for the tracking of suspicious financial activity, such as money-laundering or terrorist financing. It has national jurisdiction for the collection of the relevant information and the production of intelligence, as provided by the *décret n° 2011-28 du 7 janvier 2011 relatif à l'organisation et aux modalités de fonctionnement du service à compétence nationale TRACFIN*. For more information: http://www.economie.gouv.fr/files/traefin_avril2015.pdf.

42 CELEX n° 52013PC0045.

43 The Nickel-accounts are low-cost accounts launched in 2013 by the company “Financière des Paiements Électroniques” (Electronic Finance and Payment). They are very easily opened at specific certified tobacconists and aim to lure people on the fringes of the social system who may be unable to open a conventional bank account. See more online: <http://compte-nickel.fr/>.

44 FICOBA is the database for the identification of every bank account in France and for the provision of information on accounts of individuals or companies to specific individuals or organizations for the pursuit of their missions. For more information: <http://www.cnil.fr/documentation/fichiers-en-fiche/fichier/article/ficoba-fichier-national-des-comptes-bancaires-et-assimiles/>.

45 More on the official website of the French Ministry of Finance: <http://www.economie.gouv.fr/direct-presentation-plan-daction-pour-lutter-contre-financement-terrorisme>; http://www.economie.gouv.fr/files/dp_en_countering_terrorist_financing.pdf.

46 <http://www.nytimes.com/2015/02/18/world/gaps-in-surveillance-are-clear-solutions-arent.html>.

Imprint

Impressum

Published by:

**Max Planck Society for the Advancement of Science
c/o Max Planck Institute for Foreign and International
Criminal Law**

represented by Director Prof. Dr. Dr. h.c. mult. Ulrich Sieber
Guenterstalstrasse 73, 79100 Freiburg i.Br./Germany

Tel: +49 (0)761 7081-0
Fax: +49 (0)761 7081-294
E-mail: u.sieber@mpicc.de

Internet: <http://www.mpicc.de>



MAX-PLANCK-GESELLSCHAFT

Official Registration Number:
VR 13378 Nz (Amtsgericht
Berlin Charlottenburg)
VAT Number: DE 129517720
ISSN: 1862-6947

Editor in Chief: Prof. Dr. Dr. h.c. mult. Ulrich Sieber
Managing Editor: Dr. Els De Busser, Max Planck Institute for Foreign and International Criminal Law, Freiburg
Editors: Dr. András Csúri, University of Vienna (APART); Cornelia Riehle, ERA, Trier; Anna Mildenerger, Max Planck Institute for Foreign and International Criminal Law, Freiburg
Editorial Board: Alexandra Jour-Schröder, Chef d'unité, Commission Européenne Belgique; Francesco De Angelis, Directeur Général Honoraire, Commission Européenne Belgique; Prof. Dr. Katalin Ligeti, Université du Luxembourg; Lorenzo Salazar, Ministero della Giustizia, Italia; Prof. Rosaria Sicurella, Università degli Studi di Catania, Italia; Thomas Wahl, Albert-Ludwigs-Universität, Freiburg
Language Consultant: Indira Tie, Certified Translator, Max Planck Institute for Foreign and International Criminal Law, Freiburg
Typeset: Ines Hofmann, Max Planck Institute for Foreign and International Criminal Law, Freiburg
Produced in Cooperation with: Vereinigung für Europäisches Strafrecht e.V. (represented by Prof. Dr. Dr. h.c. mult. Ulrich Sieber)
Layout: JUSTMEDIA DESIGN, Cologne
Printed by: Stückerle Druck und Verlag, Ettenheim/Germany

The publication is co-financed by the
European Commission, European
Anti-Fraud Office (OLAF), Brussels



© Max Planck Institute for Foreign and International Criminal Law 2015. All rights reserved: no part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical photocopying, recording, or otherwise without the prior written permission of the publishers.

The views expressed in the material contained in eucrim are not necessarily those of the editors, the editorial board, the publisher, the Commission or other contributors. Sole responsibility lies with the author of the contribution. The publisher and the Commission are not responsible for any use that may be made of the information contained therein.

Subscription:

eucrim is published four times per year and distributed electronically for free.

In order to receive issues of the periodical on a regular basis, please write an e-mail to:

eucrim-subscribe@mpicc.de.

For cancellations of the subscription, please write an e-mail to:
eucrim-unsubscribe@mpicc.de.

For further information, please contact:

Dr. Els De Busser
Max Planck Institute for Foreign and International Criminal Law
Guenterstalstrasse 73,
79100 Freiburg i.Br./Germany

Tel: +49(0)761-7081-256 or +49(0)761-7081-0 (central unit)
Fax: +49(0)761-7081-294
E-mail: e.busser@mpicc.de

