

FIGHTING TERRORISM: THE EU NEEDS A STRATEGY NOT A SHOPPING LIST

By Hugo Brady and Daniel Keohane

The fight against international terrorism is a key priority of Britain's EU presidency. Following the July London bombings, the British government is understandably keen to speed up European counter-terrorism efforts. The centrepiece of EU policy in this area is the counter-terrorism 'action plan', which EU governments first put together after the September 2001 attacks in the US.

The action plan looks impressive on paper. EU countries have agreed on over 150 measures in areas such as police and judicial co-operation; anti-money laundering and asset-freeze legislation; transport and border security arrangements; and programmes to help protect energy, food and water supplies in the event of an attack. Moreover, EU anti-terror efforts go beyond enhancing internal security: the Union is also planning to reinforce its co-operation with the US, the United Nations and other important international partners.

The EU's broad approach is laudable because effective counter-terrorism policies need to go much further than law enforcement and external defence. Finance ministers need to clamp down on terrorist funding; health authorities need to stockpile vaccines; and transport ministries need to be ready to protect vital infrastructure. However, EU countries already struggle to co-ordinate all the ministries and agencies involved in their national counter-terrorism efforts. Trying to streamline the collective efforts of 25 countries at the EU level is exponentially more difficult.

Despite these difficulties, the EU can boast some concrete results from its counter-terrorism action plan. The European arrest warrant, for example, allows EU governments to speed up cross-border investigations. According to the European Commission, the new warrant has reduced the time it takes to extradite suspects from an average of nine months to 43 days. In September, a judge in Rome used the EU arrest warrant to extradite Hussain Osman, a suspect in the attempted London bombings on July 21st, to the UK. The EU has also agreed on new measures against terrorist financing. New money laundering laws allow EU governments to check any cross-border transfers that exceed €15,000 – a significantly lower threshold than in most other countries. On intelligence sharing the EU has also made some progress. Its Brussels-based 'situation centre' (SitCen) provides valuable EU-wide threat assessments to the national governments. These assessments are unique as they combine internal and external intelligence analyses from the member-states.

However, progress has been slow in most areas covered by the EU's action plan. The rules for taking the necessary decisions are complex and cumbersome. But more importantly, EU governments often lack the

political will to align laws or make their police forces work together. It sometimes takes a calamitous event to dislodge the political blockage. For example, EU governments had discussed the idea of a common arrest warrant for a number of years, but they only agreed to it after the shock of the terrorist attacks in September 2001.

Even after a political agreement, EU countries can be remarkably slow in implementing a measure. For instance, the governments agreed in 2002 to set up joint teams of investigators from different EU countries to work together on specific cases by 2003. These cross-border teams are supposed to help national authorities share their expertise when investigating and prosecuting terrorists. By June 2005, four countries – Greece, Italy, Luxembourg and Hungary – had still not implemented the decision. Several other member-states have yet to give Europol, the EU's police agency, powers to participate in the investigation teams or to co-operate with US agencies on terrorist financing. Slow progress within the EU is also affecting its counter-terrorism efforts internationally. For example, the EU wants all UN countries to sign the UN's 12 international counter-terrorism agreements. However, the EU is in a weak position to lobby others as long as several of its members have not ratified all of the agreements.

Even in cases where EU governments have implemented joint decisions, they have sometimes done so incorrectly, thus defeating the purpose of the original decision. In February 2005, the European Commission reported that eleven of the 25 member-states had made mistakes when writing the EU arrest warrant into national law. Germany was one of them. As a result, the German constitutional court in July turned down a Spanish request for the extradition of Mamoun Darkazanli, who stands accused of being an "interlocutor and assistant" of Osama bin Laden and his terrorist network, arguing that the legal basis for the extradition was flawed. In retaliation for Darkazanli's release, the Spanish authorities have threatened to release 50-odd suspects whom the German government wants to question.

The EU's counter-terrorism co-ordinator, currently Gijs de Vries, monitors the progress that EU countries are making towards fulfilling the action plan. But he has few powers and cannot force national governments to act. He has no right to propose EU-level legislation, nor can he call meetings of national justice or foreign ministers to set the anti-terrorism agenda. The European Commission, along with the member-states, has the right to propose legislation in the area of police and judicial co-operation; and has successfully persuaded the EU's law-making bodies – the Council of Ministers and the European Parliament – to adopt new laws to curb terrorist funding. However, unlike legislation relating to the single market (such as the money laundering directive) the Commission cannot refer member-states to the European Court of Justice for failure to implement EU criminal legislation aimed at preventing terrorism.

After the London bombings, EU governments resolved to speed up their implementation of the action plan, rather than adopt a new set of measures. The British government hopes to use its EU presidency to forge agreements on some key measures such as retaining telecommunications and internet data; a European evidence warrant to facilitate the cross-border transfer evidence in terrorist prosecutions; and a policy to tackle terrorist recruitment.

Of course it would be good for the EU to adopt these key measures. But what the Union needs most is an overall counter-terrorism strategy. A clear strategy would guide the counter-terrorism efforts of various EU institutions and the member-states, and it would help EU governments prioritise and review the measures in the action plan. With its 50 pages of measures, the plan is too unwieldy for policy guidance. Some senior EU officials working on counter-terrorism have admitted to us that they have not even read the plan. One recommended that EU leaders should scrap it altogether and agree on a basic set of principles instead. This is what the EU governments did with their policy on the proliferation of weapons of mass destruction. EU governments agreed on a strategy first, and worked out the details later. With the counter-terrorism action plan, they have done the reverse.

The British government has proposed that the EU should draw up a counter-terrorism strategy. Some EU governments have developed sophisticated counter-terrorism strategies, from which the EU can learn. For example, the UK's own counter-terrorism strategy is known as the four Ps' – prevention (addressing the root causes of terrorism); pursuit (using intelligence to apprehend terrorists); protection (security

precautions); and preparedness (emergency response). The EU needs to develop a similar conceptual approach outlining what it is exactly that the EU is trying to achieve with its counter-terrorism policies.

Despite EU-based efforts, the powers to fight terrorism remain overwhelmingly in the hands of national governments. Only national authorities can infiltrate cells and arrest and prosecute suspects. But the EU is the obvious place for the member countries to work together to prevent cross-border terrorist activities. The EU governments have rightly taken a broad approach to counter-terrorism. But their action plan as it currently stands is little more than a long shopping list of desirable measures. Now the EU countries need to agree on the overall aim of EU counter-terrorism policies.

*Hugo Brady is a research fellow and Daniel Keohane is a senior research fellow
at the Centre for European Reform.
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