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EU's Response to Foreign Fighters: New Threat, Old Challenges?

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ABSTRACT

The conflicts in Syria and Iraq have put foreign fighters—individuals travelling from other countries to engage in these conflicts—high on the security agenda at both the national and EU level. Drawing on theoretical arguments previously advanced to explain the haphazard evolution of the EU's counterterrorism efforts after September 11, 2011, this article discusses the emergence and persistence of key challenges that have hampered the EU response to security threats posed by 5,000 European foreign fighters between 2013 and early 2017. These include the absence of a common EU-level definition; the differences regarding the scope and perceptions of the threats posed to individual Member States; the lack of consensus on root causes of terrorism and radicalization; and the differences among Member States when it comes to addressing the difficulties of criminal prosecution of foreign fighters.

Introduction

From the beginning of the escalation of conflicts in Syria and Iraq in 2012, Member States of the European Union (EU) have been increasingly confronted with the problem of foreign fighters (FF)—individuals travelling from Europe to engage in these conflicts. Whereas this phenomenon is not new and the recent surge of FF is not restricted just to Syria and Iraq,¹ these two conflicts jointly represent the largest mobilization of FF in Muslim majority countries since 1945.² The available estimates also suggest that somewhere between 3,000–5,000 of FF active in Syria and Iraq originated from the EU (see Table 1) and an average of 30 percent of them have already returned to their countries of departure. While existing research indicates that not all returnees systematically present a danger to the societies to which they return³ and their profiles, as well as the specific reasons for both departure and return, differ substantially,⁴ several recent terrorist attacks in Europe have been linked to FF, including the mass casualty attacks in Paris in November 2015 and Brussels in March 2016. There is also evidence that the so-called “Islamic State” has instructed some of its FF to return to Europe to commit terrorist attacks, spread propaganda, and radicalize and recruit others.⁵ Moreover, the overall numbers of FF returning to Europe are likely to increase after its eventual military defeat in the Middle East. In the meantime, an additional threat is posed by would-be FF originating from lone wolves and sleeper networks in Europe, who, having been prevented from travelling to Syria/Iraq, may carry out attacks within the EU instead.⁶

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Table 1. Foreign fighters from EU member states.

	ICSR 2015 ¹		TSG 2015 ²		ICCT 2015 ³	
	Absolute numbers	Per capita per million	Absolute numbers	Per capita per million	Absolute numbers	Per capita per million
Austria	100–150	17	300	35	230–300	31
Belgium	440	40	470	42	420–516	41
Bulgaria	No data	No data	No data	No data	0–10	0
Croatia	No data	No data	No data	No data	1	0
Cyprus	No data	No data	No data	No data	No data	No data
Czech Republic	No data	No data	?	?	0	0
Denmark	100–150	27	125	22	125	22
Estonia	No data	No data	?	?	2	2
Finland	50–70	13	70	13	70	13
France	1 200	18	1700	26	>900	14
Germany	500–600	8	760	9	720–760	9
Greece	No data	No data	No data	No data	No data	No data
Hungary	No data	No data	?	?	No data	No data
Ireland	30	7	30	7	30	6
Italy	80	2	87	1	87	1
Latvia	No data	No data	No data	No data	2	1
Lithuania	No data	No data	No data	No data	0	0
Luxembourg	No data	No data	?	?	6	11
Malta	No data	No data	No data	No data	0	0
Netherlands	200–250	15	220	13	220	13
Poland	No data	No data	?	?	20–40	1
Portugal	No data	No data	?	?	12	1
Romania	No data	No data	1	NA	0	0
Slovakia	No data	No data	No data	No data	6	1
Slovenia	No data	No data	No data	No data	3	2
Spain	50–100	2	133	3	120–139	3
Sweden	150–180	19	300	31	250–300	28
United Kingdom	500–600	10	760	12	700–760	11
EU total	3400–3850		4956		3922–4924	

Notes and sources: ¹ International Center for the Study of Radicalization.⁶⁷ Lower figures include only fully confirmed cases where names are known and higher figures represent the maximum number of individuals based on credible sources. No data means 5 or less confirmed FF. ² Soufan Group.⁶⁸ ? indicates a further unspecified number of citizens or residents based on comments by officials and the evidence of social media. Member States with no data can be interpreted as having no FF. ³ International Center for Counter-Terrorism.⁶⁹ The averages of the most recent minimum and maximum estimates are presented for each Member State. For Cyprus, Hungary, and Greece, no data was collected.

The threats posed by FF have therefore been high on the security agenda at both the Member States and the EU level. This article offers an analysis of the EU-level response to these threats. In the first section, I trace how FF have become a top priority of EU counterterrorism efforts since mid-2013, when the Justice and Home Affairs Council stipulated 22 measures to address the problem. At a first glance, this succinct overview appears to suggest that all relevant EU decision-making bodies and agencies have paid due attention to the manifold threats posed by FF and they have jointly devised a relatively comprehensive, cross-pillar mix of responses. A closer analysis of the EU's response to FF between 2013 and early 2017, however, reveals that it is one thing for Europe's policymakers to make public promises to improve the fight against FF and quite another thing for them to persuade the Member States and their relevant security agencies to comply.

Specifically, based on official EU documents and semi-structured interviews with seven EU-level and two national-level counterterrorism officials, I have identified the following four key challenges: a) absence of a common definition of FF; b) differences regarding the scope and perceptions of the threats posed to individual Member States by FF; c) lack of

consensus on root causes of terrorism and radicalization; and d) major differences among EU Member States when it comes to addressing the difficulties of criminal prosecution of FF. A question therefore arises as to what accounts for the emergence and persistence of these challenges? In order to answer this question, I introduce the theoretical arguments previously advanced to explain the haphazard evolution of the EU's counterterrorism efforts since September 2001. Building on these explanations, the following four sections of this article analyze the aforementioned major challenges that have hampered the previous EU efforts to address the security threats posed by FF. In the concluding section, I argue that even though several aspects of FF-related security threats have a clear cross-national dimension, the response is still primarily in the hands of EU Member States.

Evolution of EU-level response to foreign fighters

At the EU level, the issue of FF was first discussed at Eurojust in a networking meeting of prosecutors specializing in counterterrorism in June 2012, when it was raised by one of the national representatives (Interview 1). However, it was only in early 2013 when the issue of FF was first highlighted publicly by the EU Counter-terrorism Coordinator.⁷ Albeit several Member States have initially resisted its inclusion to the remit of the EU-level counterterrorism policy (Interview 2), by mid-2013 the increasing numbers of FF paved the way for the adoption of a package of actions to be taken by EU Member States and EU institutions and agencies in six priority areas: a) better understanding of the phenomenon; b) prevention of radicalization; c) detection of suspicious travel; d) investigation and prosecution; e) returnees; and f) cooperation with third countries.⁸ In addition to calls for accelerated implementation of all already agreed upon measures, all subsequent Justice and Home Affairs Councils have called for numerous additional measures, including improved checks at the EU's external borders;⁹ update of the 2002 Council Framework Decision on combating terrorism in order to criminalize travel to conflict zones for terrorist purposes (see below); adoption of the EU Passenger Name Record directive, which requires airlines to transfer passenger data from all EU-third country flights to national authorities; enhanced criminal justice responses to violent radicalization;¹⁰ fighting firearms trafficking and targeting terrorist financing;¹¹ better information exchange with the enhanced role of Europol and Eurojust and interoperability of relevant EU databases.¹² In 2015, both the Agenda for European Security¹³ and the renewed EU Internal Security Strategy 2015–2020¹⁴ singled out the threat of FF as a priority issue. In 2016, FF were also mentioned in the Global Strategy for the European Union's Foreign and Security Policy,¹⁵ highlighting the numerous links between FF, terrorism in Europe, and global security, and the corresponding need to further interlink the internal (i.e., Justice and Home Affairs) and external (i.e., Common Foreign and Security Policy) dimensions of the EU's counterterrorism activities.

In this light, it is not surprising that in addition to the Justice and Home Affairs Councils, several other EU bodies have also addressed the threats posed by FF. In October 2014, following the recognition of the "Islamic State" as a major threat to European security, Foreign Affairs ministers adopted an EU counterterrorism strategy focusing on Syria and Iraq, with particular focus on FF.¹⁶ This strategy later served as a basis for the EU Regional strategy on Syria and Iraq, as well as the ISIL/Da'esh threat of March 2015.¹⁷ Both of these strategies stressed the need to engage with key local, regional, and global actors when it comes to addressing FF-related security threats. The European Parliament,

whose role in Justice and Home Affairs has been elevated from consultation to co-decision with the entrance into force of the Treaty of Lisbon in 2009, adopted three resolutions addressing FF. These underlined the need for more specialized measures to tackle the issue of FF and asked the Commission to propose a common EU definition of FF;¹⁸ criticized the External Action Service for lacking a genuine strategy regarding returning FF, who are willing to leave the terrorist organizations and to reintegrate into society, and called on the Commission to develop such a strategy together with the Member States;¹⁹ and called on the Commission to draw up an action plan to implement and evaluate the EU strategy for combatting radicalization and recruitment for terrorism.²⁰ FF have also been a priority issue for the EU Counterterrorism Coordinator, the Counterterrorism Unit of Eurojust, and the new European Counterterrorism Center within Europol. Unfortunately, many of their in-depth reports are not publicly available (Interviews 1, 4, and 5). Since September 2016, measures related to detection of FF are also part of the new mandate of the European Border and Coast Guard.²¹

Explaining the challenges of EU-level response to terrorism

From discussion in the previous section, it appears that the EU has paid due attention to the complex security challenges posed by FF and devised a relatively comprehensive mix of responses. To make a difference, however, these must be duly implemented by the Member States and executed by their relevant security agencies. In order to understand the main challenges regarding the implementation and practical utilization of the recent EU-level legal and institutional innovations in response to the threats posed by FF, this section briefly summarizes three major theoretical arguments that have been advanced to explain the haphazard evolution of EU counterterrorism over time and its key shortcomings.

First, building on the public policy-making literature, several authors put special emphasis on the importance of supranational policy entrepreneurs for the growing role of the EU in counterterrorism. Kaunert and Occhipinti, for example, stress the Commission and the Council secretariat's influence as interest shapers that have invested resources into specific counterterrorism proposals (e.g., the European Arrest Warrant or the rules against terrorist financing) and successfully lobbied for their acceptance, thus weakening Member States' attachment to national sovereignty in Justice and Home Affairs in general, and in counterterrorism in particular.²² Similarly, Bossong has argued that during the windows of opportunity in the aftermath of the 9/11 and 3/11 attacks, the Commission and the Council Secretariat played a significant entrepreneurial role due to exceptional time pressures and expectations of joint problem-solving, which Member States had difficulty meeting without such "external" agenda-setters.²³

Second, some authors have preferred a historical institutionalist perspective, emphasizing the importance of path dependency, the institutional setting of the EU, and critical junctures as the decisive, intertwined factors when it comes to reconstructing the stages by which counterterrorism became an area of European governance. Argomaniz has contended that the intergovernmental form of counterterrorism cooperation in the 1970s–1980s and prior political decisions made in the 1990s have constrained institutional actors' reaction to 9/11 because the sunk costs derived from switching from one alternative (complete new policies tailored to the terrorist threat) to the pre-existing one (rapid

adoption of previously tabled instruments for criminal matters cooperation) were simply too high and the political pressure to “do something” obliged Member States to an immediate policy reaction.²⁴ Similarly, Bossong argued that due to the importance of historically contextual factors, large parts of the EU’s counterterrorism agenda were only loosely attached to the threat of terrorism in a process that approximates the garbage-can model of policy-making. This meant that the contingent availability of pre-existing policy proposals was more important than their relevance to the fight against terrorism.²⁵

Third, several authors have attributed much of the drive for the EU’s growing involvement in counterterrorism to the impact of the shocks produced by the major terrorist attacks. Most importantly in this social constructivist account, these attacks led to a change in the perception of terrorism across Europe and, consequentially, also of the instruments that the EU Member States should put in place to fight this security threat.²⁶ Since the threat was publicly framed as transnational, national governments rapidly agreed on the need for coordinated European action. Thus, although there are still diverging views amongst scholars about whether this threat perception is truly European (due to the fact that only some European countries have suffered from sustained terrorist campaigns within their borders), there is a general agreement on the view that, at least in the EU discourse, terrorism has been internalized as a transnational “European threat.” This has allowed the EU to present a common discourse that has sustained political consensus and, to a degree, unity of action, despite this action being often conducted by only a small group of countries within the Union. It is also important to note, however, that some authors have emphasized the importance of major terrorist attacks as the key explanation for the incident-driven formulation of EU counterterrorism, which tended to produce a highly inconsistent (over-)reaction in the aftermath of major attacks and a counterterrorism fatigue in periods between major attacks.²⁷

Finally, in addition to the aforementioned accounts of EU counterterrorism linked to specific theories, there has also been a difference of opinions regarding the importance of internal versus external factors. On the one hand, some scholars have argued that the transformation of the initial external crisis (the 9/11 attacks in the US) into sustained European action has been facilitated by internal and EU-specific enabling factors, such as the Lisbon treaty reforms that have empowered the EU in terms of competences and instruments.²⁸ Alternatively, from a more functionalist perspective, others have highlighted that some internal enabling factors are a by-product of the single market.²⁹ While freedom of movement of capital, goods, services, and labor are welcomed features of the common European market, free movement of criminals and terrorists is clearly an unwanted corollary. Thus, already since the late 1980s, a key argument for an EU counterterrorism role has been the need to prevent borderless terrorist networks from taking advantage of differences in national counterterrorism laws and existing gaps in international police and judicial cooperation across Europe. As a consequence, most of EU counterterrorism has been conducted within the borders of Europe and most experts have been generally rather skeptical about the EU’s external efforts, albeit some of the more recent literature suggests that over time, the EU has become increasingly accepted as a potential counterterror partner in its own right by third countries due to the use of political dialogues, counterterrorism clauses, capacity building, economic assistance, and other external relations instruments.³⁰

On the other hand, some of the literature has indicated that encouragement for a more proactive EU role in counterterrorism has also come from external actors. This for example includes the EU standards for countering terrorist financing originally drafted and promoted by the UN Security Council and the Financial Action Task Force,³¹ or the importance of the International Civil Aviation Organization and International Maritime Organization guidelines for the EU transport security policies.³² Finally, several authors have pointed out the importance of external pressure by the United States on the EU and argued that EU-US collaboration in counterterrorism has been very substantial, sometimes even controversially so (e.g., data protection concerns regarding EU-US passenger name record).³³

Building on the aforementioned theoretical accounts of the haphazard evolution of the EU's counterterrorism policy since September 2001, the following four sections of this article analyze the key challenges that have hampered the more recent EU efforts to address the security threats posed by FF.

Absence of a common definition of foreign fighters

Albeit the EU Member States have managed to agree on a common minimum definition of terrorism already in 2002, until February 2017, there was no EU definition of FF due to the lack of a common understanding of the criminal offences of FF across Europe. For example, as of March 2016, receiving terrorist training was a criminal offence in only 14 Member States and only 9 Member States criminalized travelling for the purpose of carrying out an act of terrorism.³⁴ As a remedy, the Commission proposed an update to the 2002 Council Framework Decision on combating terrorism 2002/475/JHA (amended by Council Framework Decision 2008/919/JHA), which sets out the legal framework for the approximation of criminal legislation on terrorist offences and offences related to a terrorist group in EU Member States.³⁵ The proposal came shortly after the terrorist attacks in Paris in November 2015 and it was not accompanied by an impact assessment as required by the Better Regulation Guidelines. In line with the institutionalist account, the Commission explained that this was due to “the urgent need to improve the EU framework to increase security in the light of recent terrorist attacks.”³⁶ The lack of an impact assessment and stakeholder consultation was nonetheless repeatedly criticized³⁷ and it was arguably one of the reasons why the Directive was ultimately approved by the European Parliament only in February 2017.³⁸ It requires all Member States (except for UK, Ireland, and Denmark, due to their opt-in/out) to criminalize the following acts within 12 months: travelling for terrorist purposes; funding, organizing, and facilitating such travel; receiving training for terrorist purposes; and providing funds to commit terrorist offences; and offences related to terrorist groups or terrorist activities.

In addition to exploiting the “window of opportunity” generated by major terrorist attacks in Europe, two types of arguments have been made by supranational entrepreneurs in favor of the aforementioned updates to the existing EU common definition of terrorism in the context of FF. First, highlighting the importance of external standards, the Commission, with support of the EU Counterterrorism Coordinator and Eurojust, consistently argued the updates are needed to bring EU law into line with the requirements of UN Security Council Resolution 2178, which requires all UN Member States to criminalize travel abroad for terrorist purposes and financing and facilitation of such travel.³⁹ The

EU Counterterrorism Coordinator, for example, claimed that if not updated, the 2002 Framework Decision on terrorism “would no longer be the yardstick for minimum required criminalization of terrorism across the EU,” and would risk “staying behind the legal developments” both globally and at the national level.⁴⁰ Many Member States have nonetheless “expressed hesitation to update the Framework Decision, questioning the necessity and citing the urgency to implement UNSCR 2178, which could be achieved more quickly at national level.”⁴¹ This in turn suggests that EU-level legal instruments may not automatically always be the best option when it comes to implementation of external/global counterterrorism standards.

Second, Eurojust has repeatedly warned that the existing absence of common minimum EU standards creates a risk of prosecution gaps (Interview 1). Similarly, the EU Counterterrorism Coordinator claimed in December 2014 that the judicial response to the FF “does not reflect the scale of the problem (round 10 convictions for around 3000 EU citizens/residents involved in the phenomenon of foreign fighters).”⁴² However, according to the more recent April 2016 report by the International Center for Counter-Terrorism, national prosecutors in EU Member States “do not seem to have insurmountable problems in prosecuting conduct related to the FF phenomenon” and “prosecutors and courts are thus far succeeding in prosecuting and convicting individuals [and] tough sentences have been handed out in many M[ember] S[tates].”⁴³ This in turn again highlights the problematic absence of impact assessments of both existing and proposed new EU counterterrorism measures, which have all too often been pushed through in the aftermath of major terrorist attacks in Europe.

Differences among EU member states: scope and perceptions of the foreign fighters threat

A second challenge to the EU’s response to FF stems from the significant differences in both the scope of FF-related threats and their perceptions across the EU Member States. Regarding the former, not every EU Member State is experiencing the same magnitude of the FF-related problems. According to the available data (see [Table 1](#)), when it comes to absolute numbers, a sizeable majority of FF come from just four countries: Belgium, France, Germany, and the United Kingdom, with Northern (especially Scandinavian) and Western European countries accounting for over two-thirds of the total number of EU’s FF. In contrast, very few FF originate from Eastern Europe, with no country from that region reporting more than 50 FF. Four Member States (the Czech Republic, Lithuania, Malta, and Romania) have not had any individual depart for Syria/Iraq thus far. A somewhat different picture emerges when the numbers of FF are viewed in relation to population size, with Belgium, Austria, Sweden, and Denmark being the most affected Member States, but the regional differences are similar to the absolute numbers of FF—Member States in Southern and Eastern Europe have comparatively lower numbers of FF compared to Scandinavian and Western EU Member States.

Regarding the perceptions of the threat posed by FF, the April 2016 study by the International Center for Counter-Terrorism found that while a majority of Member States consider the FF phenomenon as a serious security risk to their national society and eleven Member States have changed their threat levels since 2011, when the Syrian conflict

commenced and the issue of FF started to increasingly gain attention, five Member States still regard the threat level in their country to be low or below average.⁴⁴ Alternatively, according to the President of Eurojust (Interview 1), only thirteen Member States have been “very concerned” about threats posed by FF and five Member States have been “heavily targeted.”

It is therefore possible to argue that there is no shared EU-wide perception of the threats posed by FF and, consequentially, these threats are yet to be internalized as “European” in the constructivist perspective. In fact, it has been rather difficult to even agree how many FF originated from, and returned to, EU Member States (see Table 1). As noted in a recent report which (unsuccessfully) tried to collect the number of FF from all EU Member States:

First, lacking a common and agreed definition of FF, and a central repository for data collected at the MS level, some countries conflate numbers on FF and foreign *terrorist* fighters, at times adding those involved in terrorism more generally. Second, authorities themselves often lack accurate data or may not disclose their information. Open-source data seldom matches the official government numbers, and many reports use estimates instead of exact numbers, frequently leading to inflated FF numbers. The third challenge is that of the double counting of travellers, returnees, those who died abroad, residents, and citizens.⁴⁵

Although Europol has been running an analytical tool aimed at collecting information on the recruitment and travel facilitation of suspected individuals, known as Focal Point Travellers, since 2013, its use across the EU Member States varies: more than 90 percent of the contributions by Member States regarding verified FF before January 2015 originated from just five Member States.⁴⁶ Thus, albeit there are well-founded estimates that between 3,000–5,000 EU citizens have travelled to Syria and Iraq to join IS and other extremist groups (see Table 1), in early 2016 Europol’s Focal Point Travellers database still contained only 2,786 verified FF entered by EU Member States. Moreover, many Member States also do not systematically enter information about all their FFs in other relevant EU-level databases, such the Schengen Information System II and European Information System, which could be utilized to disrupt FF’s travel and to monitor their criminal activities.⁴⁷ According to a Europol official (Interview 5), this is also a consequence of the existence of too many EU-level databases with limited interconnectivity—for the EU Member States, it is too time consuming to input the same entry several times and for Europol, “too much manpower is needed for a simple check of one name in all existing databases.” Another Europol official (Interview 6) pointed out that Europol still does not have full and direct access to all of the existing information systems (e.g., the Visa Information System and Eurodac) due to strict purpose restrictions.

Albeit both the Commission and the Council recently put forward several proposals (including a tool to query several EU information systems simultaneously) and the High-Level Expert Group on Information Systems and Interoperability was established in June 2016,⁴⁸ it remains to be seen what difference they will make in practice. Moreover, it is questionable whether even perfect information sharing would be a sufficient condition for the emergence of an EU-wide perception of FF-related security threats, given the aforementioned differences across EU Member States in both absolute and relative numbers of FF. Thus, at least according to the constructivist account, the EU is likely to struggle to sustain political consensus and unity of action against FF in the absence of FF-linked

terrorist attacks in the hitherto relatively unaffected Member States. In this light, it is not surprising that since October 2016, 13 Member States most concerned by the phenomenon of FF have held separate experts meetings, with the support of the European Commission and the EU Counterterrorism Coordinator.⁴⁹

Lack of consensus on root causes of terrorism and radicalization

The third challenge to EU response to FF stems from the thus far inconclusive debate among both academics and policy-makers regarding the root causes of terrorism and radicalization, both in Europe and abroad. There is a vast body of literature devoted to the search for the so-called root causes of terrorism.⁵⁰ Arguments range from the role of poverty, political leaning, perceptions of grievance and threat, rise of modernity, aggressive imposition of Western culture, lack of democracy, to a search for identity, personality factors, and religion, without any single factor providing a fully satisfactory answer to the question of why terrorism occurs. There is also little agreement about which explanations are more useful than others—many plausible causal variables have been identified but the evidence provided for their support is still inconclusive.

In the absence of an agreement on the root causes of terrorism at the macro level, much attention in Europe has recently been paid to the topic of radicalization at the micro level, e.g., answering the vexing question of what makes an individual susceptible to radical views to the extent that s/he eventually becomes a terrorist. Radicalization processes have in particular been debated in Europe in the aftermath of the terrorist attacks in Madrid and London, which were carried out by “homegrown perpetrators—young people who had grown up in the West and conducted terrorist operations in their own backyard.”⁵¹ Moreover, “within European policy circles the term root causes has become politically incorrect, since it gives the impression of condoning terrorism as a legitimate tool for redressing grievances,” so it can be argued that “since mid-2004, European counterterrorism thinking has rapidly converged around ‘radicalization’ as the single most important ‘root cause’ of terrorism within Europe.”⁵²

Within the academic debate, the shift of emphasis on understanding the bottom-up process of radicalization from an inconclusive search for universal top-down root causes of terrorism also reflects the acknowledgement that humans are complex: “They catch the fire of terrorism in myriad ways—some environmental, some individual (or more likely, in most cases, a mix of the two); and unlike metals, they are strategic—they interact with the environment (including government counter-measures) and adapt in unpredictable ways.”⁵³ There is, therefore, no universal pathway to terrorism and the reasons why some people are radicalized to the extent of catching the terrorist fire are bound to “vary greatly across historical eras, regions of the world, and ideologies.”⁵⁴ Moreover, radicalization leading to acts of terrorism is a non-linear and multi-stage process of varying duration and many radicals do not resort to violence in the pursuit of their goals.

In response to the lacking consensus on the state of art when it comes to understanding the complex radicalization processes, the Commission initially tried “to help by clarifying things by doing lots of research” (Interview 3). Specifically, it set up several groups of experts not just to increase the understanding of the phenomena, but also to provide policy advice to the Commission and the Member States on fighting violent radicalization. The first of these was the Expert Group, which was set up in April 2006 and which

formulated 13 recommendations for further research with respect to a variety of areas and themes, such as the influence of surrounding societies and prevailing discourses or the impact of foreign conflicts. Subsequently, the Commission has also supported the establishment of the European Network of Experts on Radicalisation (ENER), a multidisciplinary network of academics, policy makers, law enforcement and security officials, and civil society organizations aimed to deepen understanding of violent radicalization in order to enhance counter-terrorism and preventative approaches at EU and Member States' levels.⁵⁵ The most recent EU network—the Radicalisation Awareness Network (RAN)—was set up in 2011 in order to connect first-line practitioners (e.g., teachers, social workers, community police officers) around Europe working daily with those vulnerable to radicalization, as well as those who have already been radicalized. It currently brings together more than 2,000 experts and practitioners throughout the EU, who meet in several working groups “in order to build up new, long-lasting relationships, draw inspiration from one another and peer review best practices.” The Internal and External Dimensions Working group focusses specifically on the issue of FF.⁵⁶ Since October 2016, the European Commission also funds a Belgian-led European Strategic Communications Network, whose aim is to share best practice on the use of strategic communications in countering violent extremism.⁵⁷

The aforementioned EU expert groups have jointly generated a substantial amount of new knowledge and RAN has been instrumental in gathering good practices and raising awareness among practitioners from Member States. According to the constructivist account, this ought to contribute to the emergence of a shared perspective across EU Member States. Alternatively, according to the supranational policy entrepreneurs' account, this is likely to raise expectations of joint problem-solving which then could be exploited by the Commission or the Council Secretariat. However, my interviews with both EU (Interviews 4, 5, 6, and 7) and national-level counterterrorism practitioners (Interviews 8 and 9) suggest that the influence of EU-level expert groups at the policy level has been piecemeal thus far. As one interviewee (Interview 4) noted, “all this research and networking is nice, but it takes a lot of time and action is needed now—we cannot wait that long for research to come.” The only interviewee who offered a positive assessment of RAN's contributions toward practical counter-radicalization efforts was the Chair of the Counter-Terrorism Team of Eurojust (Interview 1), who argued that “it is important to know what everybody is doing,” so “as long as the networking is done in a structured way, it certainly offers value-added.”

Difficulties with evidence collection: prosecute and/or reintegrate?

The fourth challenge to the EU response to FF stems from numerous difficulties with assembling evidence for criminal prosecution of FF and from major differences among EU Member States when it comes to reintegration and rehabilitation of returning FF (i.e., complements and/or alternatives to criminal prosecution). As such, it also represents a major challenge to the criminal model of counterterrorism, which has been the dominant approach in Europe despite substantial differences regarding both the scope and the perceptions of terrorism across EU Member States.⁵⁸ Since most Europeans prefer to think of terrorism as a heinous crime and thus primarily a law-enforcement problem,⁵⁹ it is the job of the police (with the help of intelligence services) to find the terrorists, put

them in detention, assemble evidence for prosecution in courts; and the job of judges and juries to try them later. In the case of FF, however, criminal prosecution efforts, both prior to their travel to Syria/Iraq and after their return to Europe, have been hampered by practical and legal difficulties with evidence collection.

First, evidence from the battlefields in Syria and Iraq is difficult to obtain, albeit the increasingly widespread use of photos and video footage by terrorist groups and individual FF posting self-incriminating material on social media provides some additional paths for gathering evidence.⁶⁰ Second, according to the President of Eurojust (Interview 1), the collection and use of Internet-based evidence against FF is challenging due to the significant differences amongst Member States national laws, particularly in relation to the period of retention of data; lack of comprehensive national legislations to cover relevant Internet-related activities with terrorist purposes (e.g., setting up, hosting, and administration of a website with terrorism-related material) and lawful interceptions of VoIP in some Member States; and problems regarding the freezing of a personal account on a social network (e.g., Facebook) when the Internet Service Provider is located in a different jurisdiction. Eurojust therefore concluded that a “harmonized approach at EU level may be necessary to address technical difficulties and legal challenges in the gathering and admissibility of e-evidence” (Interview 1).

Second, since FF may transit through non-EU countries and use non-EU Internet providers, there is a clear need to step up international judicial cooperation. However, according to a discussion paper on FF by the EU Counterterrorism Coordinator,⁶¹ EU agencies have thus far not been used strategically in cooperation with third countries, in particular those in North Africa and the Middle East. While cooperation of Eurojust has been strengthened with the Western Balkans, Turkey, the US, and Schengen partners, there is no systematic cooperation with the countries in North Africa and the Middle East. In the MENA region, Europol has only been tasked to work with Morocco, Turkey, and the United Arab Emirates. Similarly, CEPOL is organizing training programs for the Balkans, but not yet for the MENA region. Since 2016, the Commission and the EU Counterterrorism Coordinator have been more proactive when it comes to developing numerous counterterrorism cooperation packages with countries from the neighboring regions.⁶² However, in spite of its importance, the external dimension of the EU’s response to FF still does not appear to be too high on the agenda of relevant EU agencies.

In light of the substantial difficulties with criminal prosecution of FF, and pointing out that not all aspiring/returning FF pose a major threat, some recent studies have suggested that “soft” approaches including reintegration and rehabilitation may be the “smarter path” in some cases and warned that “excessive repression might be counterproductive, as it might increase the sense of victimization felt by segments of the community.”⁶³ Others have called for the use of rehabilitation programs both as an alternative and addition to prosecution of FF during the different stages of the criminal justice process (pre-trial, trial/sentencing, prison, and after-prison), due to the increasing number of individuals likely to be subject to criminal investigations and given the increasing number of returning FF as well as the broadening scope of offences that are being criminalized.⁶⁴ A similar opinion was expressed by the President of Eurojust (Interview 1), who argued that the response to the “very complex and dynamic” phenomenon of FF requires a “comprehensive approach” which includes alternatives to prosecution and detention.

As of early 2017, however, the aforementioned evidence collection difficulties regarding FF-related crimes are handled differently in the national legal and judicial systems of EU Member States. While it appears that most Member States already have, or at least are currently developing, a broad set of security and legislative measures to prevent and counter the problem of FF, both the specific mix and the overall strategies vary substantially. Whereas some Member States (most notably France) seem to favor a repressive approach utilizing a mixture of criminal provisions and administrative tools of preventive (e.g., confiscation of travel documents) or punitive nature (e.g., revocation of residence permits to foreigners), others have opted for an “inclusive” model (most notably Denmark) relying on soft measures (e.g., mentoring schemes, vocational training, treatment for injuries, and psychological support to address post-traumatic stress are offered to FF who return).⁶⁵ Since these national variances reflect the broader differences of national counterterrorism experiences, models and cultures across Europe, and the findings of the first case studies of FF radicalization in EU Member States identified different mixes of push and pull factors,⁶⁶ a harmonized EU-level approach to FF envisaged by Eurojust is unlikely to emerge in the near future. The substantial national differences arguably also account for the relative lack of pre-existing EU level policy proposals that could be pushed by supranational policy entrepreneurs. As aptly summarized by one EU official (Interview 7), when it comes to responding to FF, “the Commission is still playing catch-up.”

Conclusions

Since several aspects of FF-related security threats have a clear cross-national dimension, it is not surprising that the FF phenomenon has been high on the agenda of all EU bodies and agencies. Albeit security in general and counterterrorism in particular are still primarily in Member States’ remit, the EU has attempted to strengthen its role by updating existing legal measures, convening expert groups to share best practices, improving information exchange among national security agencies, boosting the capacities of its own agencies (in particular Europol), and by coordinating Member States’ activities regarding prevention of radicalization, detection of suspicious travel, criminal justice response, and cooperation with third countries. In practice, however, the EU’s response to FF has been hampered by several challenges, including the absence of a common EU-level definition of FF; lack of consensus on root causes of terrorism and radicalization; and the differences among EU Member States regarding the scope and perceptions of, as well as most appropriate mix of responses to, the threats posed by FF.

In order to understand the emergence and persistence of these challenges, I utilized several key insights from theoretical accounts previously advanced to explain the haphazard evolution of the EU’s counterterrorism efforts since September 2001. Specifically, the insights from public policy-making literature shed light on the importance of supranational policy entrepreneurs (in particular the Commission, the EU Counterterrorism Coordinator, and Eurojust) when it comes to the adoption of the new EU Directive on Combating Terrorism, whose provisions provide for a common understanding of key criminal offences of FF across EU Member States. At the same time, however, it appears that existing proposals and initiatives by supranational policy entrepreneurs have not been sufficient when it comes to the (still missing) EU-wide perception of the threats posed by FF and the (thus far inconclusive) debates regarding the causes of (de-)radicalization and

the (im-)plausibility of reintegration and rehabilitation of returning FF. Albeit to some extent this may be due to the relative lack of availability of pre-existing policy proposals at the EU level, or the absence of pressure to implement relevant external counterterrorism standards (e.g., UN Security Council resolutions), overall it appears that even the impact of the shocks produced by major recent terrorist attacks has not sufficiently weakened all Member States' attachment to national sovereignty when it comes to dealing with FF. Thus, it appears that a key challenge of all EU counterterrorism measures is the "cognitive dissonance" of national policy makers and security practitioners, who commit rhetorically to EU action but more often than not remain constrained by their national mindsets.

Taken together, the shortcomings of the EU's response to FF therefore represent an important reminder that EU institutions and agencies themselves can only do relatively little when it comes to tackling FF-related security threats, both abroad and in Europe itself. Outside of Europe, institutional complexity and cross-policy coordination problems (between the external Justice and Home Affairs dimension, the Common Foreign and Security Policy and external economic relations) continue to act as powerful constraints upon the EU's nascent external counterterrorism role. Inside Europe, it is still uncertain whether extra layers of communication systems, databases, and practitioners' meetings at the European level are really the recipe to superior results. A more crowded map of EU counterterrorism arrangements may therefore not always represent the best way forward when it comes to addressing the contemporary terrorist threats in Europe. The EU also faces several crucial structural obstacles since it is still primarily the responsibility of Member States to design and implement social, educational, and economic measures aimed at countering radicalization in general and FF in particular. Moreover, albeit the details of Brexit are yet to be negotiated, the departure of a large Member State with a long history of (counter-)terrorism is likely to further limit the EU's ability to respond to FF-related security threats. After all, the EU is ultimately its Member States, without whose wholehearted support even the most elaborate and innovative supranational counterterrorism structures and mechanisms remain useless.

Alternatively, the historical institutionalist and constructivist accounts allow us to understand why several key, and at times controversial, aspects of the EU's response to FF have been hastily scrambled and rushed through during the windows of opportunity produced by the aftershocks of major FF-linked terrorist attacks in Europe. Albeit this is neither new nor specific to the EU, in the more critical constructivist accounts of EU counterterrorism, the continuing impact of the (counter-)terrorism cycle tends to produce a highly inconsistent (over-)reaction in the aftermath of major terrorist attacks which (at least temporarily) privileges security over justice and liberty concerns. As such, EU counterterrorism policy has been prone to criticisms for both failing to provide greater security for, and excessively undermining the civil liberties of, the citizens of EU Member States. This in turn suggests that turning the various aspects of the EU's response to FF into an effective, accountable, and transparent counterterrorism device will require further adjustments both at the tactical and strategic levels. Whether the leaders of the EU Member States will be willing and able to make these adjustments remains to be seen, but the track record of EU counterterrorism policy thus far offers few reasons for optimism in this regard.

Interviews

Interview 1: Interview with Michèle Coninx, the President of Eurojust and the Chair of the Counter-Terrorism Team of Eurojust. Haag, July 2016.

Interview 2: Interview with an anonymous EU official. Brussels, September 2015.

Interview 3: Interview with an anonymous EU official, Brussels, October 2008.

Interview 4: Interview with an anonymous EU official, Haag, May 2016.

Interview 5: Interview with an anonymous Europol official, Haag, May 2016.

Interview 6: Interview with an anonymous Europol official, Haag, May 2016.

Interview 7: Interview with an anonymous Europol official, Haag, May 2016.

Interview 8: Interview with an anonymous national counterterrorism official, Trier, December 2016.

Interview 9: Interview with an anonymous national counterterrorism official, Trier, December 2016.

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