

# THE FIGHT AGAINST TERRORISM AND SECURITY STRATEGIES IN THE EUROPEAN UNION AFTER 9/11

*The attacks of 9/11 changed the security concept of the world and showed that no country was immune to terrorist offenses any longer. The European Union, as well as the United States of America had to find some new and more efficient measures to fight terrorism. These measures included legislations to prevent terrorist offenses, to stop terrorist financing and other terrorism-related actions. Thus, a series of measures such as establishing an area of justice, or freezing funds suspected of helping terrorist aims has been implemented within the EU. As a result, member states became more cooperative and better coordinated.*

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The attacks of 11 September 2001 have been a turning point in the history of fight against terrorism for the U.S. and for European states. The end of the bipolar system and the emergence of some newly-born nation-states after the collapse of Soviet Union and Yugoslavia, changed the political balance of powers in two ways: Firstly, there was no longer any big “enemy”, i.e. the Soviet Union, to fight against, so there occurred a need for the European states to redefine their foreign policies as well as their security perceptions. Secondly, the emergence of new threats, in the form of some particular groups rather than terrorist-States, changed the meaning of terrorism, giving it a new shape. These groups, often called ‘terrorist groups’ or ‘entities’, were now threatening the European and world security in a way that the world was not ready to deal with. New forms of terrorism such as bio-terrorism or attacks in the name of religion gradually started to make their appearances on the international arena. In this context, September 11 attacks have been, with no doubt, the culminating point of these new threats, showing the whole world that no one or no country was any longer immune to terrorism.

Even before 9/11, there were specific measures to combat terrorism in the European Union (EU).<sup>1</sup> But it is true that a particular attention has been given to some major issues since this attack – many involving the fight against terrorism such as the definition of ‘terrorism’ and ‘terrorist act, the freezing of financial assets of some terrorist groups, the creation of a new European security strategy, the birth of multi-dimensional cooperation, the broadening of security and justice issues and so on.

The EU deals with these questions under its Security and Defense policy and Home and Justice Affairs (second and third pillars of the Maastricht Treaty).<sup>2</sup>

### ***The Fight against Terrorism***

The European Union has two working groups focusing on terrorism: the Terrorism Group, which has the role of exchanging police techniques and defining the best practices to take, and the COTER (Commission for Territorial Coherence Policy) which is a diplomatic forum dealing with terrorism from a political aspect.

Besides, several European bodies have made jurisdiction in the area of the fight against terrorism, such as the SITCEN (The EU Situation Center for Threat Analysis), EUROPOL (European Police Office), EUROJUST (International Judicial Cooperation and Coordination of Investigations and Proceedings) and the Counter-Terrorist Group of the Club of Berne, which brings together national security services of the 19 countries.

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<sup>1</sup> See Yves Guchet, ed. ; *Les systèmes politiques des pays de l'Union européenne*, Armand Colin, Paris, 1994, pp. 206-211, 267-280

<sup>2</sup> See Yves Doutriaux, *Le traité sur l'Union européenne*, Armand Colin, Paris, 1992.

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After the 2004 Madrid attacks, the EU set a coordinator for the fight against terrorism.<sup>3</sup>

### *The European Strategy in the Fight against Terrorism*

The attacks in Madrid (2004) and London (2005), and the failed attacks in London and Glasgow in 2007 have shown that the European Union had become a target for a new form of terrorism. In order to tackle this, in 2005 the EU adopted a European strategy aiming to “fight against terrorism, while respecting human rights, and to make Europe safer, by allowing its citizens to live in a space of freedom, safety and justice”. The EU strategy has four principles: prevention, protection, pursuit and reaction.

Resolution 1373 of the United Nations Security Council of 2001 underlines the fight against financing terrorism and introduces a general obligation to freeze the assets and economic resources of persons and entities that have committed or have been complicit in terrorist acts.

Having decided to apply this resolution, on 27 December 2001, the EU adopted the necessary legal instruments (joint positions 930 and 931/01 and Community regulation 2580/01). It stated the nature of the sanctions as the freezing of assets on the EU territory, and its scope which includes persons, groups and entities not linked to Al-Qaida or Taliban.<sup>4</sup>

### *The European Security Strategy<sup>5</sup>*

The European security strategy has been released under the Common Foreign and Security Policy, (second pillar of the EU) and adopted by the Brussels European Council of 12 and 13 December 2003. It recognizes the global challenges and key threats to the security of the Union and sets its strategic objectives as building security in the EU's neighborhood and promoting an international order based on effective multilateralism.

### *Global Challenges and key Threats*

The security strategy identifies five key threats facing Europe:

- 1) Terrorism.** Concerted European action against terrorism is essential. The causes of terrorism might be very complex, including cultural, social and political crises, and the alienation of young people living in foreign societies.

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<sup>3</sup> See the web site of the Ministry of Foreign Affairs of France. [www.diplomatie.gouv.fr](http://www.diplomatie.gouv.fr)

<sup>4</sup> Ibid.

<sup>5</sup> <http://europa.eu/scadplus/leg/en/lvb/r00004.htm>.

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**2) Proliferation of weapons of mass destruction (WMD).** This is considered the greatest threat to European security. The most terrifying scenario is the acquirement of WMD by a terrorist group. In this case, a small group would be able to inflict damage on a scale previously possible only for States and armies.

**3) Regional conflicts.** They can have a direct or indirect impact on European territory, regardless of their geographical location. They constitute a threat to minorities, fundamental freedoms and human rights and risk being used to forge extremism and terrorism and provoke state failure.

**4) State failure.** Civil conflict and bad governance - corruption, abuse of power, weak institutions and lack of accountability which corrode States from within. This can lead to a collapse of state institutions. State failure is a real threat to global governance and to regional stability.

**5) Organized crime.** Especially trafficking in drugs, women, children and arms, which does not stop at the Union's borders. Organized crime can have links with terrorism.

According to these statements, the European Union has to follow three strategic objectives:

**1) Facing the threats.** After 9/11, the Union has responded with measures that included the adoption of the European Arrest Warrant and steps against terrorist financing. The Union continues to pursue its policies against arms proliferation. It has intervened to solve regional conflicts and it attached great importance to restore good governance in order to promote democracy and to tackle organized crime. Yet there are still some major efforts to accomplish as regards to the new situation in the Balkans with Kosovo which gained its independence.

**2) Building security in its neighborhood.** It is in the Union's interest that countries on its borders are well governed. The task is to promote good-governance in Eastern Europe and in countries on the Mediterranean shore with whom the EU would like to build up a deep cooperation. The EU gives importance also to the resolution of the Palestine question since this is a prerequisite to the solution of other problems in the Middle-East. Another aspect is the prevention of illegal immigration coming from agitated regions such as the Balkans, Middle-East and North Africa.

**3) Developing an international order by effective multilateralism.** The Union aims to develop a stronger international society, well-functioning international institutions and a rule-based international order. A world of well-governed democratic states is the best protection for European security, and the EU policies are aimed at realizing this. Thus, the EU attempts to implement the

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very principles of its establishing treaties, which are: respect for human rights, protection of fundamental rights and freedoms as well as promoting democracy everywhere.<sup>6</sup>

According to the security strategy, the Union must:

- **be more active in pursuing its strategic objectives.** In order to become a greater political actor and to counter new threats, the EU should develop a more effective strategy and it should intervene to the crises, if necessary, with rapidness and determination.
- **increase its capabilities.** The creation of a European Defense Agency has been a major step. Yet the Union needs to strengthen its armies and transform them into more mobile forces to face the new threats. The Union also needs more capacity to bring all necessary civilian resources to bear in crises and post-crisis situations.
- **pursue coherent policies.** The challenge is to bring together the different tools and capabilities of EU policy. The Union must pursue its politics such as diplomatic efforts and development, trade and environmental policies, in a coherent way.
- **work with its partners.** Multilateral cooperation and bilateral partnerships with key actors are a priority and a necessity to tackle with the new threats. The relationship with the USA is very important. However, the EU must also work for closer relations with partners such as Russia, Japan, China, Canada and India.<sup>7</sup>

### *Background of Fighting Terrorism in the European Union*

The issue of terrorist offences was raised at the Tampere European Council in 1999 and again at the Santa Maria da Feira European Council in June 2000. In recent years, a number of measures against terrorism have been adopted by the Member States, such as:

- The Europol Convention supplemented by the Council decision of 3 December 1998
- Joint Action 96/610/JHA on the creation of a Directory of specialized counter-terrorist skills
- Joint Action 98/428/JHA on the creation of a European Judicial Network
- Joint Action 98/733/JHA on making it a criminal offence to participate in a criminal organization

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<sup>6</sup> See the Treaty of Rome, Title XIV: Economic and social cohesion, and Title V, Article J.1-10 of the Treaty of Maastricht setting out the Common Foreign and Security Policy.

<sup>7</sup> Ibid.

- The Council recommendation on combating the financing of terrorism.<sup>8</sup>

Only the Framework Decision of 13 June 2002 can be considered as a direct consequence of the 9/11 attacks. This was the first move to identify certain acts, already punishable under national laws of the Member States, as terrorist offences on account of their commission with a terrorist intent, thus increasing penalties provided for in the relevant provisions.<sup>9</sup> This Framework Decision has been designed to make the fight against terrorism at EU level more effective<sup>10</sup> It urges the Member States to align their legislation and sets out the major rules on terrorist offences. After defining such terrorist offences, the Framework Decision lays down the penalties that Member States must incorporate in their national legislation.<sup>11</sup>

This incorporation cannot, in itself, be enough to tackle terrorism if the Member States do not harmonize their legislations with each other and do not cooperate closely. Stronger implementation is needed in the fields of border control, preventing drug trafficking and detecting/arresting suspects. Free movement of people does not ease the work of the Member States since there are no border controls between countries within the Schengen Area.

The Framework Decision gives a definition of what is considered a terrorist group<sup>12</sup> and asserts that states which help, encourage and attempt to commit terrorist offences will be punishable.

The Member States should establish their jurisdiction with effective action to tackle terrorist offences and coordinate their actions.<sup>13</sup>

### *The Hague Program*

One of the most important attempts of the European Union to combat terrorism has been the Hague Program, adopted at the European Council of 4 and 5 November 2004. The European Commission, searching for answers to strengthen the area of freedom, security and justice within the European Union, while combating terrorism, has stated ten priorities for the 2004-2009 period. An Annex to the communication sets out specific measures and a timetable for their adoption.

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<sup>8</sup> <http://europa.eu/scadplus/leg/en/lvb/l33168.htm>.

<sup>9</sup> Jürgen Jekewits, "The action of the European union to combat terrorism", in Société Française pour le Droit International, *Les nouvelles menaces contre la paix et la sécurité internationales / New Threats to International Peace and Security*, Journée Franco-Allemande, Editions A. Pedone, Paris, 2004, pp. 77-95.

<sup>10</sup> Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism.

<sup>11</sup> <http://europa.eu/scadplus/leg/en/lvb/l33168.htm>.

<sup>12</sup> A terrorist group as a structured organization consisting of more than two persons, established over a period of time and acting in concert.

<sup>13</sup> <http://europa.eu/scadplus/leg/en/lvb/l33168.htm>.

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Among the top ten priorities of the Commission, we can enumerate topics such as strengthening fundamental rights and citizenship (to improve children's rights and to combat violence against women, working against all kinds of discrimination and paying particular attention to the protection of personal data)<sup>14</sup>, defining a balanced approach to migration (a new approach dealing with illegal immigration, (there is a unproven yet very strong belief that there is a link between illegal immigration and terrorism, for those who migrate into the EU States and cannot integrate themselves to European societies and thus become marginal, even terrorists to challenge, or to avenge that very order of society which exclude them) involving fighting illegal immigration and trafficking in human beings, especially women and children), setting up a common asylum procedure, maximizing the positive impact of the immigration (immigrant communities must be integrated if they are not to become isolated and excluded from society), developing integrated management of the Union's external borders (the free movement of persons requires greater efforts to strengthen the integrated management of external borders), and attaining the right balance between privacy and security while sharing information (law-enforcement authorities must be able to share information if they are to fight terrorism effectively and investigate cross-border crime).

But the most important part of this Program involves anti-terrorist measures; developing a strategic concept on tackling organized crime, a genuine European area of justice, and sharing responsibility and solidarity.

a) Anti-Terrorist Measures:

The Commission has the intention to support the Member States in their fight against terrorism by focusing on terrorism recruitment and financing, prevention, risk analysis, protection of vulnerable infrastructure and consequence management. Cooperation with non-member states is needed to effectively fight terrorism. The measures adopted by the Commission thus include strengthening cooperation between the law-enforcement services of Member States, particularly by improved exchanges of information, the protection of related data, the radicalization and recruitment of terrorists, the protection of critical infrastructure, the prevention of and the fight against terrorism financing, preventing misuse of charitable organizations for the financing of terrorism, and monitoring the pilot project in place for the victims of terrorism.<sup>15</sup>

b) Developing a Strategic Concept on Fighting Organized Crime:

Cooperation between the Member States' authorities, such as the police or customs, must be improved in the fight against organized crime. To work for a European model for criminal intelligence is a priority.<sup>16</sup>

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<sup>14</sup> Communication from the Commission to the Council and the European Parliament. The Hague Program: ten priorities for the next five years. The Partnership for European renewal in the field of Freedom, Security and Justice COM(2005) 184 final.

<sup>14</sup> <http://europa.eu/scadplus/leg/en/lvb/l16002.htm>.

<sup>14</sup> Ibid.

c) A Genuine European Area of Justice:

The Union must establish mutual confidence between Member States by setting up minimum procedural standards which safeguard, for example, the right of defense.

The Hague Program aims at a new perspective where Member States share more responsibility and solidarity in the fields of freedom, security and justice.

In order to implement the Hague Program, the Council and the Commission have accepted an Action Plan to strengthen freedom, security and justice in the European Union and it is intended to serve as a frame of reference for the work of the Council and the Commission for 2004-2009. It contains a timetable for the adoption and implementation of the actions contained therein to put into practice the priorities and objectives of the Hague Program: Strengthening freedom, security and justice in the European Union adopted was a result of the Commission communication "Ten priorities for the next five years. The Partnership for European renewal in the field of Freedom, Security and Justice." These measures - legislative proposals, consultation documents (green papers) and reports - are designed to give practical effect to the Hague Program in an efficient way.<sup>17</sup>

Stating that the international stability depends not only on the internal issues of the Union, and especially after the 9/11 attacks, the Commission has issued another communication establishing a strategy for reinforcing the justice, freedom and security aspects of the EU's external relations policy.<sup>18</sup> It underlines how the external aspects of justice and home affairs at global level contribute to create an area of justice, security and freedom within the EU. This area must face up to a range of challenges which originate both outside and inside the EU, especially:

- Terrorist attacks such as those of 11 September 2001
- The growth of organized crime
- Illegal immigration
- The failure of institutions, the judiciary and law enforcement agencies
- Guaranteeing legal certainty and predictability for cross-border trade in a globalized economy.<sup>19</sup>

The Communication points out the need to reinforce international cooperation. Since the free movement of people within EU, more open borders, and increased global integration have added a new dimension to international cooperation and

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<sup>17</sup> See the *Report on the implementation of the Hague Program for 2005 (the "Scoreboard Plus")*. COM(2006)333 final – Official Journal C 184 of 8.8.2006.

<sup>18</sup> Commission Communication: A strategy on the external dimension of the area of freedom, security and justice COM(2005) 491 final.

<sup>19</sup> <http://europa.eu/scadplus/leg/en/lvb/l16014.htm>.

in order to fight against terrorism or organized crime and built up good relations with neighboring countries, an efficient border management is necessary. For instance, cooperation with the Turkish authorities has led to major seizures of drugs within the EU.<sup>20</sup>

The Communication also recommends promoting the rule of law through cooperation to guarantee security both inside and outside the EU. Besides, regional cooperation should be encouraged as cross-border problems such as migration and border management are often a subject of concerted regional action. The Commission supports multilateral approaches in international organizations while enhancing its role in those organizations and promoting the development of new international instruments.<sup>21</sup>

There are also principles set out by the Commission to implement policies towards non-EU countries, such as:

- establishing geographical priorities within policies on enlargement, development and external relations in accordance with the EU's special relations with certain regions and non-EU countries;
- appropriate strategies to find responses to the specific situations of individual countries and regions;
- close coordination between the Council and the Commission in order to guarantee coherence between different policies under the second and third pillars; :
- partnership with non-EU countries in enlargement, external relations and development policies in the fields of justice, freedom and security;
- establishing a link between internal and external activities concerning the area of freedom, security and justice;
- regular exchange of information between the Commission and the Member States on the activities conducted in non-EU countries;
- all actions must include evaluation mechanisms to evaluate progress made in non-EU countries and the relevance of the action for its objectives.<sup>22</sup>

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<sup>20</sup> This includes also data sharing between Member States authorities. In particular after September 11, new legislation granting security administrations easier Access to information have significantly lowered barriers to invasions of privacy which some police authorities regard as being an unwanted impediment to their work. See Michael Bothe, "The international community and terrorism" in *Société Française pour le Droit International, Les nouvelles menaces contre la paix et la sécurité internationales / New Threats to International Peace and Security, Journée Franco-Allemande*, Editions A. Pedone, Paris, 2004, pp. 47-63.

<sup>21</sup> *Ibid.*

<sup>22</sup> <http://europa.eu/scadplus/leg/en/lvb/l16014.htm>.



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The core of a strategy covering the external aspects of policy on justice, freedom and security are already in place. Thus the EU has established a partnership on security with the United States, cooperation with the western Balkans, a strategic partnership with Russia and cooperation with Ukraine to secure stability and support the reform process and is contributing to the progress of good governance and the rule of law in the Mediterranean countries. This has especially been seen recently, when Kosovo declared its independence and the Serbians had a completely opposite position about it. It is true that new policies are necessary to tackle the very strong yet dismantling feeling of the old-traditional nation-states within European Union and the burden that this will be likely to bring. The Commission lists a number of political priorities derived from the Hague Program and its Action Plan, which provide the general basis for relations with non-EU countries. They include human rights, institution building and good governance, and enhancing non-EU countries' capacity to manage migration and fight terrorism and organized crime.

The effectiveness of the strategy must be improved through mainly:

- coherence of the EU's external actions;
- rapid reaction to emerging threats;
- an greater role for the EU in international organizations;
- regional cooperation on justice, freedom and security.

### ***Specific Program 2007-2013: Prevention, Preparedness and Consequence Management of Terrorism***

Another specific program of the European Union has been established for the period 2007-13 and aims to support projects in the field of prevention, preparedness and consequence management for terrorist attacks and other security-related risks. This Program, along with the "Prevention of and Fight against Crime" Program, is a part of the "Security and Safeguarding Liberties" Framework Program.

The Specific Program has been established by the Council Decision 2007/124/EC of 12 February 2007, where the EU stipulates that the above mentioned areas are one of the key issues in protecting the people and critical infrastructure within the area of freedom, security and justice. This program aims to support Member States' efforts to prevent, to prepare for, and to protect people and critical infrastructure against terrorist attacks. It also aims to ensure protection in the field of terrorism and other security related risks.<sup>23</sup>

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<sup>23</sup> See Council Decision 2007/124/EC of 12 February 2007 on [http://ec.europa.eu/justice\\_home/funding/cips/funding\\_cips\\_en.htm](http://ec.europa.eu/justice_home/funding/cips/funding_cips_en.htm).

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To prevent terrorist offences and to be prepared for them, this program aims to:

- promote the risk assessment to critical infrastructure and develop protection methodologies and security standards;
- reinforce shared operational measures to improve security in cross-border supply chains;
- exchange know-how and experience in protecting critical infrastructure.

The Specific Program aims also to organize joint exercises to enhance coordination between the relevant departments.<sup>24</sup>

### ***3) Freezing Terrorist Funds and Capital Movement Restrictions***

Even before the 11 September 2001 events the control of flows of finance has moved progressively to the center stage as a means to fight terrorism and organized crime.<sup>25</sup> The events of 9/11 have been a turning point for the EU in combating acts which help terrorist attacks. To stop terrorism involves some efforts in fighting its financing as well. Three major legal instruments embody the Union's initiative in fighting the financing of terrorism: the Directive against money laundering of 4 December 2001, the Council Regulation of 27 December 2001 and the Council Regulation of 27 May 2002.<sup>26</sup>

The Directive against money laundering widened the scope of the Directive to notaries and to other self-employed legal practitioners. In addition, initiatives were taken to strengthen cooperation between competent national authorities and the action of Europol. An instrument to implement the Decisions of freezing assets was adopted, and a Framework Decision on confiscation orders is in the process of being adopted. An agreement was also reached on a Framework Decision concerning the confiscation of the instrumentalities and proceeds of crime.<sup>27</sup>

With the Council Common Position 2001/931/CFSP of 27 December 2001, which aimed to draw up a list of individuals, groups and entities involved in terrorist acts and freeze their funds and financial assets, the EU has shown again its will to fight terrorism and its core element which is terrorist financing.

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<sup>24</sup> <http://europa.eu/scadplus/leg/en/lvb/l33262.htm>.

<sup>25</sup> Jürgen Jekewitz, op. cit. See also Loretta Napoleoni, *Terror In., Tracing the Money Behind Global Terrorism*, Penguin Books, New York, 2004, pp. 102-185, 231-279.

<sup>26</sup> Isabelle Pingel, "L'action de l'Union européenne face au terrorisme", in Société Française pour le Droit International, *Les nouvelles menaces contre la paix et la sécurité internationales / New Threats to International Peace and Security*, Journée Franco-Allemande, Editions A. Pedone, Paris, 2004, pp.63-77.

<sup>27</sup> Commission Staff Working Paper, Annex to the Communication from the Commission: Area of Freedom, Security and Justice: Assessment of the Tampere Program and future orientations, COM(2004) 401 Final. See [http://ec.europa.eu/justice\\_home/doc\\_centre/intro/docs/sec\\_2004\\_693\\_en.pdf](http://ec.europa.eu/justice_home/doc_centre/intro/docs/sec_2004_693_en.pdf)

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This Common Position includes some important definitions as well. Knowing that to give a specific definition to terrorism, or terrorist group has been the main discussion topic among political scientists, the definition made by the European Union has been welcomed by Member States, for it gave them some solid basis to make the difference between real terrorism and the insurgency movements.

#### a) Definitions

The Commission position gives some definitions on crucial concepts. According to it, "Persons, groups and entities involved in terrorist acts" means individuals, groups and entities on whom there is real information proving that they have committed, are attempting to commit or are facilitating the commission of terrorist acts.

**Terrorist acts** are defined as intentional acts which may seriously damage a country or international organization by intimidating a population, or by destabilizing or destroying its fundamental political, constitutional, economic or social structures. The list of terrorist acts includes:

- attacks on a person's life or physical integrity;
- kidnapping or hostage-taking;
- causing extensive destruction to a public or private facility, including information systems;
- seizure of means of public transport, such as aircraft and ships;
- manufacture, possession, acquisition, transport or use of weapons, explosives or of nuclear, biological or chemical weapons;
- release of dangerous substances, or causing fires, explosions or floods;
- interfering with or disrupting the supply of water, power or any other fundamental natural resource;
- directing or participating in the activities of a terrorist group, including by funding its activities or supplying material resources.

Simply threatening to commit any of these criminal acts is also to be treated as a terrorist offence.

The common position also defines terrorist group as a structured group of persons, acting in concert to commit terrorist acts, regardless of its composition or the level of development of its structure.<sup>28</sup>

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<sup>28</sup> See Council Common Position 2001/931/CFSP of 27 December 2001

b) List of individuals and entities concerned

The list<sup>29</sup> is drawn up on the basis of investigations carried out by the competent judicial and police authorities in the Member States; it may be added to and revised every six months, in order to keep it up to date. The list includes ETA (Basque Fatherland and Liberty), the IRA (Irish Republican Army), GRAPO (the First of October Anti-Fascist Resistance Group), the terrorist wing of HAMAS, Palestinian Islamic Jihad and other revolutionary activist groups, as well as the names of individuals belonging to such groups.<sup>30</sup>

c) Measures that the Community and the Member States should take

Within the limits of its powers, the European Community is to freeze the funds and other financial assets of the individuals and groups on the list and ensure that they do not gain access to them.

Through appropriate police and judicial cooperation, the Member States are to afford each other assistance in preventing and fighting terrorist acts. In order to investigate and prosecute any of the persons and entities on the list, they may fully exploit the powers conferred on them by acts of the European Union and under any other bilateral or international agreements.

The names on the list are to be reviewed at regular intervals, at least once every six months.

In the same way as Regulation 2580/2001 EC<sup>31</sup> implementing measures under *Common Position 2001/931/CFSP, Council Common Position 2001/930/CFSP* of 27 December 2001 on combating terrorism sets out the freezing of the funds and other financial assets and economic resources of individuals and groups facilitating, attempting to commit or committing terrorist acts on the territory of the Member States.<sup>32</sup>

d) Specific measures against Al-Qaida

Two major Regulations on fighting Al-Qaida have been released within the European Union after the attacks of September 11 2001. Regulation (EC) 2580/2001

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<sup>29</sup> The measures in this common position were implemented by Regulation (EC) No 881/2002, adopted on the same date.

<sup>30</sup> Osama bin Laden and individuals and groups associated with him do not feature on the list, as they are already listed in Council Common Position 2002/402/CFSP of 27 May 2002 concerning restrictive measures against Osama bin Laden, members of the Al-Qaida organization and the Taliban and other individuals, groups, undertakings and entities associated with them and repealing Common Positions 96/746/CFSP, 1999/727/CFSP, 2001/154/CFSP and 2001/771/CFSP. <http://europa.eu/scadplus/leg/en/lvb/l33208.htm>

<sup>31</sup> This regulation is a necessary Community-level measure that builds on the administrative and judicial procedures to deal with terrorist organizations in the European Union and non-member countries. It sets out to clamp down on any sort of financing of terrorist activities; to this end, it specifies what is meant by “funds and other financial assets” to be frozen, “banking and other financial services” and “controlling a legal person”. The Regulation also provides for exceptions to unfreeze assets in certain circumstances. <http://europa.eu/scadplus/leg/en/lvb/l33208.htm>.

<sup>32</sup> <http://europa.eu/scadplus/leg/en/lvb/l33208.htm>.

and Regulation (EC) 881/2002 aim to stop the financing of terrorist activities of the terrorist group.

This Regulation (EC) 2580/2001 encloses the administrative and judicial procedures relating to terrorist organizations in the European Union (EU) and in third countries. However, it does not cover the persons and groups covered by United Nations Security Council Resolutions 1267(1999) and 1390(2002), implemented by Regulation (EC) 881/2002 on freezing the funds of certain persons and entities associated with the Al Qaida network. The aim of the Regulation is to prevent and prohibit the financing of terrorist acts.<sup>33</sup>

The financial assets in question are listed in the Article 1 of the Regulation. They include funds, economic resources, financial assets of every kind, insurance, lending of all types, guarantees and commitments. Natural or legal persons who are listed in this Regulation should not, directly or indirectly, use or take benefit from these financial assets.<sup>34</sup>

The Regulation leaves certain areas of authority to the Member States. So the latter may authorize:

- the use of frozen funds for essential human needs of a natural person included in the above-mentioned list or a member of his family, to be fulfilled within the Community,
- the payments from frozen accounts for paying taxes, compulsory insurance premiums and fees for public utility services such as water and gas,
- the unfreezing of funds or other financial assets, or the granting of financial services to a person in order to protect the interests of the Community, of its citizens and residents.<sup>35</sup>

The second major Regulation in this field is the Regulation (EC) 881/2002 of May 2002 which imposes certain specific restrictive measures directed against certain persons and entities associated with Osama bin Laden, the Al-Qaida network and the Taliban. It stipulates among others that the United Nations adopted Resolution 1390(2002) condemning the Al-Qaida network and other associated terrorist groups for their terrorist acts and destruction of property; the Commission and Member States should inform each other of the measures taken under this Regulation and of other relevant information at their disposal in connection

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<sup>33</sup> <http://europa.eu/scadplus/leg/en/lvb/l24402.htm>.

<sup>34</sup> Banks and other financial institutions, and all other nationals or legal persons in the Member States are required to provide immediately any information that facilitates compliance with this Regulation, subject to confidentiality and professional secrecy. See the Regulation. <http://europa.eu/scadplus/leg/en/lvb/l24402.htm>

<sup>35</sup> See the Regulation (EC) 2580/2001.

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with this Regulation, and cooperate with the relevant UN Sanctions Committee, in particular by supplying it with information.

In this context, the Regulation adopted the following measures as for the definition of some key concepts:

1. "Funds" means financial assets and economic benefits of every kind, including but not limited to cash, cheques, claims on money, (...) including stocks and shares, bonds, notes, warrants, or other income on or value accruing from or generated by assets; all kind of financial resources, and any other instrument of export-financing. (Article 1)<sup>36</sup>
2. "Economic resources" means assets of every kind, whether tangible or intangible, movable or immovable, which are not funds but can be used to obtain funds, goods or services; (Article 1)
3. "Freezing of funds" means preventing any move, transfer, alteration, use of or dealing with funds in any way that would result in any change in their volume, amount, location, ownership, possession, character, destination or other change that would enable the use of the funds, including portfolio management; (Article 1)

### **Conclusion**

Terrorists have recourse to violence against the proprietors of the monopoly on the legitimate use of violence, i.e. states. All terrorists have a common objective, which is the destruction of the existing political regime embodied by the target-State. Yet we cannot say that all terrorists are the same, as they vary from individuals to States. Many difficulties arise from this heterogeneity as to the question of combating terrorist attacks.<sup>37</sup>

Fight against terrorism became one of the key issues within the European Union especially after the 9/11 events. Although terrorism has always been present in the history of political life, since the 9/11 attacks it gained a new form of threat. In a globalized world, terrorism is a common international problem influencing the economic and political situation of every country. Even international organizations like the UN or NATO have remained helpless in some specific cases such as the terrorism of Al-Qaida.<sup>38</sup>

So, with the attacks of 9/11, terrorism has become a real global challenge for

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<sup>36</sup> Yet there are still some other actions realized by the terrorist and that cannot be controlled by the official bodies, and the transactions on Internet had made it very difficult to catch the financial flows in a very small globalized world. <sup>36</sup> There is an urgent need to get improvements in this field as well.

<sup>37</sup> Hervé Ascencio, « Terrorisme et juridictions internationales », in Société Française pour le Droit International, *Les nouvelles menaces contre la paix et la sécurité internationales / New Threats to International Peace and Security*, Journée Franco-Allemande, Editions A. Pedone, Paris, 2004, pp. 271-287.

<sup>38</sup> See Pierre-Marie Dupuy ; « La Communauté internationale et le terrorisme », in Société Française pour le Droit International, *Les nouvelles menaces contre la paix et la sécurité internationales / New Threats to International Peace and Security*, Journée Franco-Allemande, Editions A. Pedone, Paris, 2004, pp. 35-47.

Europe. Not only terrorism itself, but issues such as good governance, democracy, bordering regions, illegal immigration and human rights have gained a special place in the EU policies' scala. Some measures/bodies other than the above mentioned regulations and decisions have been implemented as well, such as European Arrest Warrant<sup>39</sup>, CEPOL<sup>40</sup>, Joint Investigation Teams<sup>41</sup>, FIU.NET network<sup>42</sup> and Schengen Information System<sup>43</sup> but it is still a fact that the collaboration between these bodies or their functioning are not processing as desired. It is also necessary to reinforce justice, freedom and security aspects of EU's external relations policy. For this reason, the EU has established a partnership on security with the U.S., cooperation with the Western Balkans, a strategic partnership with Russia and cooperation with Ukraine to secure stability and good governance and the rule of law in the Mediterranean countries. The idea of setting up a supranational body to be responsible for security and terrorism issues and to coordinate policies of different states, whether in or out of the EU, should be considered. Deeper cooperation, better coordination and harmonization of the national policies and a well-organized data sharing system between the EU Member States and other major international actors are needed in order to cope with the ever growing terrorist threats of the 21st Century.

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<sup>39</sup> Any judicial decision issued by a Member State with a view to the arrest or surrender by another Member State of a requested person, for the purposes of conducting a criminal prosecution; executing a custodial sentence; executing a detention order. See <http://europa.eu/scadplus/leg/en/lvb/l33167.htm>.

<sup>40</sup> European Police College, bringing together senior police officers across Europe with the aim to encourage cross-border cooperation in the fight against crime, maintenance of public security and law and order. See <http://www.cepol.europa.eu/>.

<sup>41</sup> Holding cross-border investigations of terrorist financing.

<sup>42</sup> Exchange of intelligence among Financial Intelligence Units of the EU Member States.

<sup>43</sup> A secure government database system used by several European countries for the purpose of maintaining and distributing information related to border security and law enforcement. The data collected concern certain classes of persons and property. SIS lists people who are undesirable, suspects or requested for extradition.

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