



Justice and Home Affairs

Introduction

One of the main EU bodies which addresses the issue of terrorism directly and indirectly is the Directorate General of Justice and Home Affairs. This was created on the basis of the mandate of the Amsterdam Treaty and was implemented by the Council in Tampere in October 1999.

Priorities mandated to Justice and Home Affairs by the Treaty

1. The EU must be "maintained and developed as an area of *freedom, security, and justice*;
2. The EU must be (an area) in which the free movement of persons is assured;
3. The EU must have appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime."¹

Justice and Home Affairs is part of the *Commission*.² Thus, its purposes are to propose legislation to the Council and the Parliament, as well as to ensure and evaluate the implementation of legislation in the Member States. The Directorate-General JHA is split up into four separate directorates:

- **A - General Affairs** dealing with strategic policy, evaluation and institutional affairs, external relations including enlargement, budget and control, and information and communication
- **B - Immigration, Asylum and Borders** (also including large scale information technology systems and financial solidarity for asylum, immigration and borders)
- **C - Civil Justice, Rights and Citizenship** (also including the coordination of anti-drugs policy)
- **D - Internal Security and criminal justice** (including the *fight against terrorism*, law enforcement and cooperation, fight against economic, financial and cyber crime)

It is important to note that Justice and Home Affairs not only initiates legislation, but also ensures the implementation of agreed legislation. Like all other Commission Directorates General, it only has an EU agenda and Commissioners and staff are expected not to have a political agenda based on their country of origin. Even though JHA monitors implementation of relevant EU legislation within Member States, it is still up to the Member States to

¹ *Justice and Home Affairs* "Area of freedom, security and justice European Commission." EU 5 September 2004 <http://europa.eu.int/comm/justice_home/fsj/intro/fsj_intro_en.htm>.

² As we will see, it has quite a different agenda and framework than the CFSP. It is also interesting to point out that the *Parliament*, although it has committees consulting with both the Commission and the Council, does not have jurisdiction to create any agencies or policies which have as much influence as the JHA or the CFSP.

implement and enforce the legislation within a certain timeframe.³ JHA develops legislation which reflects the EU common position.

It is also important to note that the JHA only has one Directorate (D) that specifically mentions terrorism in its purposes. Nevertheless, JHA deals with many issues that relate directly and indirectly to terrorism. It is impossible to address all these issues exhaustively. This Briefing Paper, therefore, focuses on the most important aspects only.

This paper attempts to set out factually the initiatives, measures, and systems, which the EU has put in place in the context of 'Justice and Home Affairs' which, at least in part, reflect the EU's response to the threat of terrorism. We have deliberately attempted not to comment on these but simply to present them.

Common Definition of Terrorist Offences⁴

The European Union definition⁵ of terrorism is:

"any acts committed with the aim of seriously intimidating a population, or unduly compelling a Government or international organisation to perform or abstain from performing any act, or seriously destabilising or destroying the fundamental political, constitutional, economic or social structures of a country or an international organization shall be deemed to be terrorist offences."

This includes in particular:

- a. attacks upon a person's life which may cause death;
- b. attack upon the physical integrity of a person;
- c. kidnapping or hostage taking;
- d. causing extensive destruction to a Government or public facility, a transport system, infrastructure facility, including an information system, a fixed platform located on the continental shelf, a public place or private property likely to endanger human life or result in major economic loss;
- e. seizure of aircraft, ships or other means of public or goods transport;
- f. manufacture, possession, acquisition, transport, supply or use of weapons, explosives or of nuclear, biological or chemical weapons, as well as research into, and development of, biological and chemical weapons;
- g. release of dangerous substances, or causing fires, floods or explosions the effect of which is to endanger human life;
- h. interfering with or disrupting the supply of water, power or any other fundamental natural resource, the effect of which is to endanger human life;
- i. threatening to commit any of the acts listed in (a) to (h)

Below, we will examine in turn a number of different aspects (both in terms of legislation and in terms of Institutions) of the approach to the threat of terrorism taken by the EU in

³ This is regardless of whether the Member State agrees/politically accepts the European legislation because it is only necessary for the Council to agree.

⁴ Please note, the following citations in this section are taken from: *Council of the European Union*, "Framework Decision on Combating Terrorism." 13 June 2002. (2002)/475/JHA).

⁵ The definition was developed in the Framework Decision on Combating Terrorism of 13 June 2002

the context of Justice and Home Affairs. Unlike the approach taken under the CFSP which is examined in Briefing Paper 4 in this series, the approach taken in this context is focused more on ensuring security within the EU. However, it is not always simple to draw clear lines of distinction between internal and external focuses of action because some of the lines are, of necessity, blurred.

The Common Definition:

- **will not** alter the Member States' obligation to respect the fundamental rights and principles in the Treaty on European Union as defined in Article 6.
- **further** defines a 'terrorist group' as "a structured group of more than two persons established over a period of time and acting in concert to commit terrorist offences" while a 'structured group' is a "group that is not randomly formed for the immediate commission of an offence and that does not need to have formally defined roles for its members, continuity of its membership or a developed structure."
- **defines** the two major intentional acts that are punishable:
 - "directing a terrorist group, or
 - participating in the activities of a terrorist group" in any way.
- **defines** offences linked to terrorist activities;
- **points to the imperative** to punish anyone inciting, aiding, abetting, and/or attempting terrorist activities;
- **defines** minimum sentences;
- **addresses** the need to aid and protect terrorists' victims.

This is a very important decision because it provides the legal basis for addressing terrorism at an EU level. In addition, the European Union is one of the first multinational bodies to actually define terrorist offences and groups. However, and according to Euractiv, 6 Member States have still not transposed this common definition into national law.⁶

However, the definition remains unclear on how the EU can address "state terrorism" or terrorist activities carried out by or incited by a State Government masked as political action or retaliation. For example, in its preface the framework decision states that "actions by the armed forces of a State in the exercise of their official duties are not governed by this Framework Decision."

Eurojust

Eurojust was created on December 6, 2001 with its headquarters in The Hague, Netherlands. Eurojust was established by Council Decision on 28 February 2002 as an "independent body with a legal personality."⁷

Eurojust is composed of legal experts such as senior magistrates, prosecutors, and judges from all Member States who work in the same building to promote rapid consolidation, access and discussions.

Eurojust gives legal assistance and advice to Member States on cross-border cases.

Eurojust can recommend investigations, although it cannot carry them out itself.

⁶ Euractiv, "Terrorism Threat: Much Talk but How Much Action?" 9 Mar. 2005. EU. 12 June 2005. <<http://www.euractiv.com/Article?tcaturi=tcu:29-136504-16&type=News>>.

⁷ Europa, "EU Counter Terrorism efforts in JHA field." 12 Mar. 2004. EU. 22 Dec 2004. <<http://europa.eu.int/rapid/pressReleasesAction.do?reference=MEMO/04/59&format=HTML&aged=0&language=en&guiLanguage=en>> (MEMO/04/59).

Eurojust does not change or harmonize national laws; it provides a central European legal body to provide legal advice.

Eurojust works alongside Europol.

Eurojust is independent of any other European Institution, but is fully associated with the Commission and certain procedures and appointments must be approved by the Council.

Europol

Europol was formed by the Maastricht Treaty in 1992, but its modern form was not realized until 1 July 1999.

Europol is also called the European Police Office or the European Police Force and is located in the Hague.

Europol is funded by contributions from the Member States based on their GNP with a budget of 58.8 Million Euros in 2003.⁸

Europol's main purpose is to gather and analyse intelligence information on international criminal matters through cooperation with police forces of EU Member States and other international crime fighting organisations such as *Interpol*. In addition, "its aim is to improve the effectiveness and cooperation between the competent authorities of the Member States in preventing and combating serious international organised crime."⁹

Europol has a Counter Terrorism Unit (CTU) which works on intelligence information gathered from all Member States through the Analytical Work File on Islamic Terrorism. In addition, they produce a "Situation and Trends Report on the terrorist activity in the EU" (TE-SAT) every year.¹⁰

Europol can participate in Joint Investigations Teams and Multinational ad hoc teams.

Europol's Counter Terrorism Units within the Member States and Europol meet with the EU Police Chiefs' Task Force to share information.

The Council Recommendation on Terrorist Profiles of November 28, 2002 stresses the fact that cooperation between the responsible authorities/organizations in Member States and Europol must be improved.

European Arrest Warrant (EAW)

The **EAW** was developed by the framework decision adopted on 13 June 2004 (certain Member States delayed until March 2004).

The **EAW** replaces the extradition mechanisms for certain serious offences.

The **EAW** "is a judicial decision delivered by a Member State for the arrest and surrender by another Member State of a requested person."¹¹

The **EAW** does not apply to all offences; it is restricted to offences which - within the Member State in which the offender is to be arrested - are subject to a minimum 12 month sentence or a minimum sanction order of 4 months.

The **EAW** has simplified the process of arresting terrorists and other offenders especially because it no longer requires numerous official documents. It is enough to give specific details of the case.

The **EAW** abolishes the intervention of diplomatic authorities, instead it is direct judge to judge contact and communication.

The **EAW** has a 60 day time frame for the execution of the European Arrest Warrant.¹²

⁸ *Europol*, "Factsheet on Europe.," January 2004 EU 22 Dec 2004. <<http://www.europol.eu.int/index.asp?page=facts>>.

⁹ *Europol*, "Factsheet on Europe.," January 2004 EU 22 Dec 2004. <<http://www.europol.eu.int/index.asp?page=facts>>.

¹⁰ [*Europa*, "EU Counter Terrorism efforts in JHA field"]

¹¹ *Europarl*, "AFSJ – European Arrest Warrant." EU 15 December 2004 <http://www.europarl.eu.int/comparl/libe/elsj/zoom_in/16_en.htm>.

"The creation of the **EAW** represents a true step forward in the field of mutual assistance in criminal matters. Eliminating interference from political powers or establishing a time limit to execute a warrant represents real progress in comparison with the old system of extradition."¹³

The main benefits of the EAW are that it speeds up the extradition process and that no EU Member State can refuse a valid EAW from another Member State. Thus, criminals will have a harder time escaping justice.

According to the Home Office of the UK, the **EAW** will not replace Habeas Corpus. The only difference is that "the existing right of appeal via statutory habeas corpus will be replaced by an equivalent right of appeal to the High Court against a decision of the District Judge."¹⁴ According to Euroactiv, Italy still has not implemented the EAW.¹⁵

Mutual Recognition of Judicial Orders

The idea for Mutual Recognition of Judicial Orders was developed by the Tampere European Council in 1999 which stated the following:

- 1) "Enhanced mutual recognition of judicial decisions and judgements and the necessary approximation of legislation would facilitate co-operation between authorities and the judicial protection of individual rights. The European Council therefore endorses the principle of mutual recognition which, in its view, should become the cornerstone of judicial co-operation in both civil and criminal matters within the Union. The principle should apply both to judgements and to other decisions of judicial authorities."
- 2) "The European Council considers that the formal extradition procedure should be abolished among the Member States as far as persons are concerned who are fleeing from justice after having been finally sentenced, and replaced by a simple transfer of such persons... Consideration should also be given to fast track extradition procedures, without prejudice to the principle of fair trial."
- 3) "The principle of *mutual recognition* should also apply to pre-trial orders, in particular to those which would enable competent authorities to secure and seize quickly evidence and assets which are easily movable; evidence lawfully gathered by one Member State's authorities should be admissible before the courts of other Member States, taking into account the standards that apply there."¹⁶

The EU has adopted a series of framework decisions to set minimum and maximum levels of penalties in criminal matters across the EU.¹⁷ In addition, there are many framework decisions such as the one in the field of illicit drugs which are still undergoing discussion and ratification.

The EU is developing mutual recognition of judicial orders to freeze and confiscate assets through two framework decisions:

1. *Framework Decision on the Execution in the EU of Orders Freezing Property and Assets* which was adopted on 22 July 2003. This framework decision replaces the former

¹² For specific details, please see the References section.

¹³ [Euroactiv, "AFSJ – European Arrest Warrant"]

¹⁴ Home Office of the UK, Gov. of UK. 10 June 2005.

<<http://www.homeoffice.gov.uk/crimpol/oic/extradition/bill/faq2.html#Are%20you%20planning%20to%20abolish%20Habeas%20Corpus?>>.

¹⁵ [Euroactiv, "Terrorism Threat: Much Talk but How Much Action?"]

¹⁶ Tampere European Council. 19 Oct. 1999. EU 22 December 2004

<http://europa.eu.int/comm/justice_home/doc_centre/criminal/recognition/wai/doc_criminal_recognition_en.htm>.

¹⁷ To see exactly these Council Framework Decisions, please refer to

<http://europa.eu.int/comm/justice_home/news/consulting_public/gp_sanctions/green_paper_en.pdf>

“request” procedure whereas now a judicial authority of one Member State is allowed “to send a relevant order direct to the judicial authority of another Member State where it will be recognised and executed without further formality, unless one of the grounds for non-recognition is invoked.”¹⁸

2. The *Framework Decision on the Application of the Principle of Mutual Recognition of Confiscation Orders* is still under negotiation.

Terrorist Working Group (TWG)¹⁹

The TWG²⁰ produces a report every six months to assess the terrorist threat. It should be noted that the Counter Terrorist Unit (CTU)²¹ also produces a yearly report on the “Situation and Trends of Terrorist Activity in the EU”.

The TWG continually updates the common terrorist list which identifies the “most significant” terrorist groups.

The TWG “defines new co-operation instruments” within the EU.

Co-operation

Since 11 September, co-operation among already established institutions in individual Member States has been of primary concern especially to formulate EU standard procedure. Thus, in addition to the coordination mechanisms mentioned above, co-operation problems have also been specifically addressed in many Council decisions regarding JHA initiatives.

1) *Council Framework Decision on Joint Investigation Teams (13 June 2002)*

This states that “by mutual agreement, the competent authorities of two or more Member States may set up a joint investigation team for a specific purpose and a limited period...to carry out criminal investigations in one or more of the Member States setting up the team.”²² (Art. 1.1)

Such joint investigation teams can only be set up in two cases where:

- a. “A Member State’s investigations into criminal offences require difficult and demanding investigations having links with other Member States;”²³ (Art. 1.2)
- b. “A number of Member States are conducting investigations into criminal offences in which the circumstances of the case necessitate coordinated, concerted action in the Member States.”²⁴ (Art. 1.2)

This decision enables better communication and co-operation between Member States to combat terrorism efficiently and effectively.

2) *Council Decision on Multi-National Ad-hoc Teams (26 April 2002)*

This enables the setting up of specialist investigative teams which work to exchange intelligence information in the pre-judicial processes.

¹⁸ *EUROPA – JHA*, “Freezing and Confiscation of Property across Borders.” EU 22 December 2004

<http://europa.eu.int/comm/justice_home/fsj/criminal/recognition/wai/fsj_criminal_confiscation_en.htm>.

¹⁹ Please note that all information cited in this section is provided by: *EUROPA – JHA*, “Terrorism 2004.” 24 March 2005

EU 10 June 2005. <http://europa.eu.int/comm/justice_home/news/information_dossiers/terrorism_2004/documents_en.htm>.

²⁰ This is a part of the Commission within JHA

²¹ This is a part of the Council within the context of the CFSP

²² *Council of the European Union*, “Council Framework Decision on Joint Investigation Teams.” 13 June 2002 (2002/465/JHA)

²³ *Council of the European Union*, “Council Framework Decision on Joint Investigation Teams.” 13 June 2002 (2002/465/JHA)

²⁴ *Council of the European Union*, “Council Framework Decision on Joint Investigation Teams.” 13 June 2002 (2002/465/JHA)

3) *Programme to Combat Chemical, Biological, Radiological and Nuclear (CBRN) Terrorist Threats (20 December 2002)*²⁵

This is an extension of the 2001 Programme to combat CBRN threats. Its purpose is:

- a) to develop co-operation in the EU designed to prevent a CBRN attack including co-operating with outside countries;
- b) to strengthen risk assessment;
- c) to develop protective measures to prevent large-scale risk to the civilian population;
- d) to develop quick detection, information exchange and coordination of response among Member States;
- e) to limit the possible consequences of a potential chemical, biological, radiological and nuclear (CBRN) terrorist attack, (for example, promoting research for vaccines).

This programme was largely political and not legislative and presents a strategy for Member States to adopt.

In addition to this programme, the EU set up the *Health and Security Committee* in 2001 which in turn set up the *BICHAT programme* to respond to biological and chemical attacks. Furthermore, in 2002 the *Rapid Alert System* was set up for quick notification in the case of an actual or possible CBRN attack.

Despite these efforts, Euractiv reports that the EU is largely unprepared for a possible bioterrorism threat. Currently there are no early warning systems developed, few and limited quantities of vaccines and unprepared/outdated health service capacities.

Transport and Border Security

This section sets out the systems and measures taken with regard to border security to enable free movement of people within the EU area without compromising security.

1) *Visa Information System (VIS)*

VIS is an international system that will monitor visa applicants by creating a database called the Central Visa Information System (CS-VIS) including their personal information and digital photograph. It will be interfaced with each Member State through the National Interface (NI-VIS).²⁶

“The objectives of the VIS are...to facilitate the fight against fraud, to contribute to the prevention of “visa shopping,” to improve visa consultation, to facilitate identifications for the application of the *Dublin II regulation*²⁷ and return procedures, to improve the administration of the common visa policy and to contribute towards internal security and combating terrorism.”²⁸

The system is expected to be completed by 2006. Later, it is expected that fingerprints and even other information such as insurance policies and travelling documents will be able to be scanned into the system.

There is a new proposed Framework Decision on Attacks against Information Systems

²⁵ Please note, most information given here is cited from: Euractiv, “EU Unprepared for Bioterror Threat.” 11 February 2005. EU 6 June 2005. <<http://www.euractiv.com/Article?tcaturi=tcu:29-135340-16&type=News>>.

²⁶ VIS and the Schengen Information System (SIS II) are not the same system. They have separate data and access.

²⁷ The Dublin II Regulations determine which Member State is responsible for deciding asylum matters.

²⁸ *eGovernment News*, “EU Visa Information System gets go-ahead.” 24 February 2004 European Communities 2004. 22 December 2004 <<http://europa.eu.int/ida/en/document/2186/330>>.

which would require Member States to criminalize attempts to illegally access information systems with appropriate penalties. This has not yet been ratified.

2) *Biometric Identifiers*

Biometric Identifiers are automatic methods of identifying individuals based on their physical appearance.

The EU has adopted a plan in December 2004 to include biometric identifiers in EU-issued travel documents for **non-EU nationals** by 2007. Facial images and fingerprints are to become mandatory for all EU passports by 2007.

The United States has made it mandatory for all Visa Waiver Program (VWP) Countries (which a number of EU countries participate in) to have biometric identifiers in all passports by 26 October 2005.

3) *Security Measures in Airports, Harbours, Aircraft, and Shipping*

There have been a variety of transport security measures both within and outside of the EU. Some examples include:

- A Framework decision with the United States for the exchange of Passenger Name Records (PNR) on flights to the US.
- Mandatory global adherence to the provisions of the International Convention for the Safety of Life at Sea (SOLAS Convention) and the International Ship and Port Facility Security (ISPS) Code which require, among many other things, that all ships are permanently marked with an identification number and are equipped with an Automatic Identification System (AIS).

Two new European Commission inspectorates have been created to monitor mandatory security implementation.

4) *European Agency to Monitor External Borders*

- This is formally called "European Agency for the Management of Operational Co-operation at the External Borders" proposed by the Commission on 11 November 2003.
 - It will create a body of about 30 personnel with a budget of initially 6 million Euro in 2005 and rising to 10 million Euro in 2006.
 - It will be a legally autonomous body as a "specialized community structure with a view to promoting solidarity between Member States in respect of Community policy."²⁹
 - It will provide training and risk analysis, and will have specialized branches that will deal with specific aspects of control such as land surveillance and protection of maritime borders.
 - Its main purpose is to "coordinate operational cooperation between Member States as regards surveillance and control of the external borders" by providing research and technical and operational assistance and by supporting joint operations.³⁰
- The proposal for the establishment of this Agency was passed on 26 Nov 2004. Operations began 1 May 2005 in Warsaw, Poland.

²⁹ *Europa*, "SCADPlus: European Agency for the Management of the External Borders." 22 June 2004. EU 30 December 2004 <<http://europa.eu.int/scadplus/leg/en/lvb/l33216.htm>>.

³⁰ [*Europa*, "SCADPlus: European Agency for the Management of the External Borders"]

5) Schengen Information System II (SIS II)

- The original Schengen³¹ area began in 1985 when France, Germany, Belgium, Luxembourg, and the Netherlands decided to create a territory without internal borders to promote the free movement of persons. In 1997, the Schengen Agreement was written into the Treaty of Amsterdam and became EU law on 1 May 1999.
- SIS II is an updated version of the original Schengen Information System. It will be an information system that will allow "competent authorities in the Member States to obtain information regarding certain categories of persons and property."³² The development of SIS II is to be a priority by 2006.
- The SIS II information system raises questions about the individual's rights to privacy.
- The expansion of the Schengen area makes the securing of external borders in the EU harder. It also requires nations to coordinate and rely more heavily on each other's security apparatuses rather than on their own.
- SIS II is intended primarily to help cooperation across the EU in police and criminal matters and will create more efficient security control.

Terrorist Finance

This section sets out the initiatives taken in the area of terrorist finance.

1) Council Decision On the Execution in the European Union of Orders Freezing Property or Evidence (22 July 2003)

- This is based on mutual recognition of Member State's orders on both civil and criminal matters.
- It establishes the rules under which a Member State may recognise and execute a freezing order on property, evidence, and assets.
- It includes a long list of offences including terrorism, participation in a criminal organization, unlawful seizure of aircraft/ships, fraud, corruption, and hostage-taking.
- The main effect of this law is making the process for freezing of assets across Member States explicit and much easier and quicker.
- Member States are expected to comply completely by 2 August 2005.
- This Council Decision has to be seen in the context of UN Security Council Resolutions which list terrorists and terrorist groups and order the freezing of all of their assets and funds financing them.

2) Anti-Money Laundering Directives³³

- There have been three anti-money laundering directives, each building upon the next.
- The latest directive was proposed in June 2004 and was approved in May 2005.
- The latest directive applies to all financial institutions, lawyers, notaries, accountants, real estate agents, casinos, trust providers, company service providers, and all providers of goods exceeding 15 000 Euros.

³¹ The Schengen area is so called because the agreement to set up this system was signed aboard the ship *Princesse Marie-Astrid* on the Moselle River, near Schengen, a small town in Luxembourg on the border with France and Germany.

³² *Europa*, "SCADPlus: Schengen Information System II." 23 May 2005. EU. 10 June 2005. <<http://europa.eu.int/scadplus/leg/en/lvb/l33183.htm>>.

³³ Please note all information in the section was taken from: *Finfacts Team*, "EU Says Adoption of Anti-Money Laundering Directive will Strike a Blow Against Crime and Terrorism." 7 June 2005 <http://www.finfacts.com/irelandbusinessnews/publish/article_10002122.shtml>.

- It requires that both the customer and the beneficial owner of any asset must be identified, their business relationship with the customer must be monitored, and any suspicions of money laundering or terrorist activities must be reported to public authorities.
- In addition, businesses must put in place preventive policies and “supporting measures, such as ensuring the proper training of personnel.”

3) *Other Actions Against Terrorist Finance*³⁴

- Financial Investigative Units (FIUs) have been set up by the EU to “intensify the exchange of information on suspicious transactions between Member States.”
- An EU Electronic Database has been created which contains all relevant information of entities which are subject to EU financial sanctions.
- There are proposed measures to restrict the movement of cash across the EU’s external borders.

Implementation

The success of all these initiatives depends on the co-operation and effectiveness of the Member States’ governments. Unfortunately, the process of implementation on the national level is difficult. The EU has repeatedly been highly criticized by outsiders (notably the United States) for not ensuring fast and complete implementation. Thus, the Council has adopted measures to monitor Member States’ implementation, but their effect has been limited.

Council Decision for Establishing a Mechanism for Evaluating the Legal Systems and their Implementation at National Level in the Fight Against Terrorism (28 November 2002)

This is an extension of the Joint Action of 5 Dec 1997 which evaluates Member States’ fight against organized crime.

It specifically addresses the need to improve national legal systems in the fight against terrorism through a quicker and easier process than the 1997 Action.

It has set up teams of experts to evaluate the progress and implementation efforts of Member States.

Conclusions

After only five years of existence, Justice and Home Affairs has achieved a considerable amount in trying to achieve its goal of establishing an area of freedom, security, and justice. According to their 2004 Assessment, the Justice and Home Affairs’ efforts are overwhelmingly supported by European public opinion³⁵ and their programmes have become one of the Union’s top priorities.

Nevertheless, many of the initiatives mentioned above are the product of a slow and painstaking process that has been hindered by both legal and institutional constraints of the European Union. As stated by JHA in their assessment of progress, “the original ambition

³⁴ Please note all information in the section was taken from: EU, “European Union Fact Sheet: EU and the Fight Against Terrorism” June 2004 < <http://ue.eu.int/uedocs/cmsUpload/TERRORISM.pdf> >.

³⁵ Although, support, of course, also varies from issue to issue.

was limited by institutional constraints, and sometimes also by a lack of sufficient political consensus. The step by step approach was often the only possible way of moving forward.”³⁶

The result is a series of young, usually under-staffed and under-funded programmes, which are not universally implemented across the European Union despite the Commission's efforts.

Despite that, the development of this agenda has raised concerns relating to civil liberties and human rights.

A stated concern in all EU legislation regarding terrorism has been the preservation of civil liberties. One of the best examples of this is the US-EU conflict over the *Passenger Name Records Agreement*.³⁷

As the EU develops programmes, many Members of the European Parliament (MEPs) and EU citizens believe that the EU is heading down a dangerous path in which the individual's basic human rights may be threatened in the name of counter-terrorism.

Others argue that legislation passed provides substantial protection of civil liberties. In the end, this line is very hard to define and the consequences of EU anti-terrorism legislation are still extremely difficult to assess this early in the process.

Alvaro Gil-Robles, the Commissioner for Human Rights of the Council of Europe³⁸, takes a clear position. He stated in his 2 February 2005 *Opinion on the draft Convention on the Prevention of Terrorism*, that he

“does not support the approach that advocates a “balance” between human rights and security issues. Protecting human rights is a **precondition** for any anti-terrorist measure...National and international responses to terrorism must be compatible with the rule of law and must not threaten the human rights *acquis* that constitutes the cornerstone of our democratic societies.”³⁹

He believes that if all EU legislation provides *strict legal safeguards*, EU citizens' human rights will not be violated. The question is whether the “strict legal safeguards” are strict enough to provide adequate protection and whether they are even included in all EU legislation. Alvaro Gil-Robles in his role as the Council of Europe's Commissioner for Human Rights is able to write an opinion about any EU legislative proposal. The extent to which his opinions and those of other Human Rights Institutions and Non-Governmental Organizations (NGOs) will be taken into consideration remains to be seen.

³⁶ *Commission of the European Communities*, “Area of Freedom, Security and Justice: Assessment of the Tampere programme and future orientations.” Brussels 2 June 2004 [SEC(2004)680 and SEC(2004)693].

³⁷ Please see Briefing Paper 7 on EU-US Joint Actions.

³⁸ The Council of Europe is not part of the EU but is, rather, a completely separate international organisation with 46 member states. All EU Members are also members of the Council of Europe and bound by the agreements and treaties entered into there. The protection of Human Rights is one of the key matters within the remit of the Council of Europe and thus the views of its Commissioner for Human Rights is relevant and important for this discussion.

³⁹ Gil-Robles, Alvaro, “Opinion of the Commissioner for Human Rights.” *Office of the Commissioner for Human Rights*. 2 Feb 2005. EU. 21 June 2005 <www.coe.int/T/E/Commissioner_H.R/Communication_Unit/CommDH(2005)1_E.doc>.

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