

One step forward, two steps back

by Daniel Keohane

After the September 11 2001 terrorist attacks in the US, EU governments directed many more resources into the fight against terrorism.

While terrorists can move easily between EU countries, national policemen cannot. The Union's leaders therefore agreed on a counter-terrorism 'action plan' (which now contains more than 150 measures), drew up a common definition of the crime of terrorism, and drafted rules for more joint operations between national police forces.

Governments gave Europol, the EU police agency, extra resources and a new task force made up of officers from national police services. They also created Eurojust, the EU's nascent law-enforcement agency, to help national magistrates work together on cross-border investigations.

In the aftermath of terrorist bombings in Madrid in March 2004, EU foreign policy chief Javier Solana appointed Gijs de Vries as the Union's 'counter-terrorism co-ordinator', with the approval of the member states.

EU governments also signed a 'solidarity clause', pledging to help any EU country that fell victim to a terrorist attack. Cooperation is likely to intensify following the suicide bombings in London in July 2005 which killed more than 50 people.

Despite these developments, powers to tackle terrorism remain overwhelmingly in the hands of national governments and most cross-border cooperation takes place bilaterally, rather than at the EU level.

National intelligence services, for instance, always seek to limit the number of recipients of sensitive information for fear of compromising operations and sources. As a result, where EU-level institutions and powers exist, they tend to be much weaker than national-level equivalents.



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De Vries: has few powers and cannot force governments to act

For example, Europol is far from a European version of the Federal Bureau of Investigation (FBI) in the US, because national security and intelligence services (and some national police forces) do not share information with it and it has no power to oblige national police forces to cooperate.

Gijs de Vries has few powers, a small budget and no right to propose EU-level legislation in his area; nor can he call meetings of national justice or foreign ministers to set the anti-terrorism agenda.

His role is therefore limited largely to making the case for coordination at the EU level, such as encouraging greater cooperation between the Council of Ministers (where national interior and foreign ministers meet to decide EU policies) and the European Commission (which drafts legislation on a range of measures such as tackling terrorist financing and money laundering).

De Vries also audits the progress on the EU's counter-terrorism action plan and

tries to cajole the member states to implement the 150-plus measures.

The action plan looks impressive on paper, detailing measures (under seven headings) that the member states have agreed to undertake. These actions include European police cooperation, new anti-money laundering and asset-freezing laws, transport and border security arrangements, and measures to help protect EU member states' vital services – such as health, food and the water supply – in the event of an attack. The Union also plans to beef up its cooperation with key partners such as the US and the United Nations.

But De Vries cannot force governments to act. For instance, the final country to implement the common European Arrest Warrant, Italy, only did so in July 2005, four years after it had been agreed.

Measures like the arrest warrant should help governments to cooperate more closely. A February 2005 report on the arrest warrant from the Commission said that between January and September 2004, extradition times were reduced

from an average of nine months to just 43 days.

However, in Germany there are doubts about the legality of the warrant after the German constitutional court prevented the extradition of Mamoun Darkazanli to Spain in July 2005, where a prosecutor wanted to try him as an "interlocutor and assistant" of Osama bin Laden and his network. The court judged that the German government had not implemented the European Arrest Warrant in accordance with German law.

For all its counter-terrorism plans – and the difficulties with implementation – the EU plays no role in anti-terrorist operations. Only national governments can infiltrate cells and arrest and prosecute suspects.

After the Madrid attacks, Austria and Belgium proposed that the EU should set up a European version of the Central Intelligence Agency (CIA) in the US. There is, however, no chance of the EU creating an intelligence agency with its own 'Euro-spies' and satellites.

The five EU governments with the greatest intelligence resources (Britain, France, Germany, Italy and Spain) are strongly opposed to such a move. Their intelligence agencies would rather share their most sensitive information with a few countries than with 24 other governments, which would greatly

increase the chance of leaks.

Even so, all 25 governments have agreed that the EU's Situation Centre (SitCen) should provide them with strategic analyses of the terrorist threat. SitCen is located in the Council secretariat and reports to Solana. Previously, SitCen analysts only assessed threats emanating from outside EU territory. Since January 2005, they have combined those external assessments with information from internal security services and from Europol.

This seemingly small development is significant because SitCen can encourage EU foreign, defence and internal security officials, as well as national security services, to better coordinate their thinking on the terrorist threat.

Perhaps more importantly, governments do not need to wait for EU measures if they wish to cooperate more closely.

Since May 2003, the interior ministers from the five biggest EU member states (a grouping known as G5) have met regularly to discuss their counter-terrorism efforts. During a visit to London in July 2005, French Prime Minister Dominique de Villepin proposed that the G5 countries should share information on jihadists in their countries who were trained in Afghanistan and elsewhere. France and Germany already share this information,

and British Prime Minister Tony Blair said he was favourable to the idea.

In May 2005, seven countries – the Benelux three (Belgium, Luxembourg and the Netherlands), Austria, France, Germany and Spain – signed the Treaty of Prüm. It is not part of the Union's *acquis communautaire* (as the main body of EU law which all member states must abide by is known), but its signatories have been careful to ensure that it respects EU law.

The Prüm treaty contains a number of innovations, such as sharing DNA and fingerprint data, and common rules on aeroplane security. In extreme cases, police forces will even be able to pursue criminals across national borders without notification. If the treaty is successful, these seven countries will invite other EU member states to participate in three years' time.

This type of intergovernmental cooperation should help police, judges and intelligence services to cooperate more closely on the ground, instead of having to wait for diplomats to hammer out deals in Brussels.

There are many things the EU can do, and is doing, to help member states counter terrorist groups. However, there is a paradox in the Union's role in counter-terrorism.

On the one hand, governments agree in principle that cooperation at the EU level is necessary because of the cross-border nature of the terrorist threat. On the other, they are slow to give the Union the powers (such as investigation and prosecution) and resources (such as money and operatives) it would need to be truly effective.

This is because security policy – especially protecting citizens – goes to the core of national sovereignty, and governments are reluctant to give the EU powers that could interfere with their existing laws and national security practices.

If this does change, it is likely to happen only slowly.

