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The Next Steps for EU Counterterrorism Policy

Evolving Threats of Jihadism, Right-wing Extremism, and Transatlantic Cooperation

Raphael Bossong

In the wake of the Corona pandemic and the storming of the Capitol, threat perceptions with regard to right-wing extremists and conspiracy theories have increased markedly. The attacks in France and Austria last November showed that the threat from jihadist terrorism also remains acute. Against this background, the counterterrorism agenda of the European Union (EU) was updated at the end of 2020 and covers a broad range of topics. However, it also testifies to the heterogeneity of the Union's competences and the different interests of EU member states. On the one hand, the EU's role remains limited when it comes to the rehabilitation of imprisoned terrorists and to the broad societal prevention of extremism. On the other hand, the EU is pushing forward with a set of regulations to remove illegal online content. This common legislative agenda is also part of a renewed transatlantic partnership. However, proactive measures against right-wing terrorism will, for the time being, be advanced in flexible coalitions.

The dismantling of the territory of the "Islamic State" (IS) in 2019 and intensive efforts by intelligence and law enforcement agencies to pursue terrorists mean that serious attacks, which occurred repeatedly in Europe between 2014 and 2017, have become less likely. Neither the so-called migration crisis of 2015 nor the return of foreign fighters from IS has resulted in an uncontrollable threat to Europe so far, although irregular immigrants and rejected asylum seekers have repeatedly carried out or attempted attacks. These acts have also shown that access to weapons and high-value targets has become more difficult.

An intelligence failure led to the Vienna attack in November 2020, which was perpetrated with a Kalashnikov. By contrast, those who attacked the Paris editorial offices of *Charlie Hebdo* in 2015 used assault rifles that could be legally acquired as dummies in Slovakia and made functional again all too easily. In recent years, the EU states have closed this and other regulatory loopholes that could be exploited by terrorists, for example in the area of financing. Nevertheless, the Union is facing new risks that are calling its relative successes in the fight against terrorism into question.



The Continuing Threat from Jihadist-motivated Terror

The Islamic State (IS, alternatively ISIL, ISIS, or *Daesh*) may regroup in Syria and Iraq. Major suicide bombings in Baghdad this January are signs of such a development. It is likely that IS continues to have access to substantial financial resources. Detained fighters could benefit from regional unrest and targeted operations to liberate them from prisons. EU states are still acting too hesitantly and incoherently when it comes to readmitting nationals who had joined IS. Orderly procedures for repatriation are preferable, both for normative reasons and in light of the security risks that arise from a permanent denial of responsibility and lack of effective jurisdiction.

The Biden administration can help stabilize the situation on the ground, as it is seeking to renew its partnership with Kurdish allies and apparently intends to keep US forces in the region. The appointment of Brett McGurk, the former Special Presidential Envoy for the Global Coalition to Counter ISIL, as the National Security Council's coordinator for the Middle East and Africa is another indication of the continued intensity and regional dimension of the threat. For example, groups and actors affiliated with IS have been able to gain a foothold on the African continent — apparently leading to growing tensions with supporters of al-Qaeda there. European states must therefore continue to help stabilize fragile countries in its wider neighborhood, despite many setbacks. This applies first and foremost to France, which faces a wide range of problems in the Sahel (SWP Comment 5/2021).

At home the EU has to deal with individual jihadists and small cells that, without clear links to organized structures, often act haphazardly, making them all the more unpredictable. In addition, new ideological developments must be kept in mind, such as a violent Takfirism.

A particular challenge is the growing number of individuals who have been convicted in recent years for various terrorist

offenses, including material support (e.g., attempts to leave the country to join IS). Even a comparatively low recidivism rate of less than 5 percent — the estimate for European jihadists these days — represents a considerable threat potential in view of the more than 1,400 persons currently in prison. Over the past two years, this threat has materialized in terror attacks in Vienna, Dresden, and London. In the aftermath, decision-makers have been under intense pressure to explain why former criminals were able to strike again. However, terrorist convicts cannot generally be locked up forever without breaching fundamental principles of the rule of law.

Different Assessments of Transnational Right-wing Extremism

The Corona crisis, meanwhile, has created a huge resonance chamber for conspiracy theories. Violent actions by radical vaccination critics are conceivable. Already long before the pandemic, right-wing extremist terrorism was markedly on the rise. When different forms of right-wing extremist hate crimes are included, one can discern a decrease in violent acts over the past 30 years in Europe. Nevertheless, there is a qualitatively new threat of interrelated terrorist attacks.

The Christchurch 2019 attacker, by his own admission, was inspired by Anders Breivik's deeds eight years earlier. Since then, several copycats have appeared on the scene in the United States and Germany. These perpetrators usually spread right-wing extremist ideas that can be connected across different national and ideological contexts. In particular, the belief in a "Great Replacement," according to which the white population is to be deliberately destroyed by immigration, serves as a unifying element. Online image boards, open and closed social media channels, and parts of the gamer scene support a culture of glorification of violence. However, an intensified cross-border networking of right-wing extremist parties, organizations, and indi-

viduals can also be observed offline, especially at sports and music events.

Since 2019 at the latest, German politicians and security authorities have been stressing jointly that right-wing extremism poses as serious a threat as militant jihadism. The events on Capitol Hill in early January further demonstrated the growing scale and radical nature of conspiracy-theory movements to a global public. Nonetheless, Western states do not share a full or comprehensive threat perception toward this challenge. Right-wing populist forces have not marched from victory to victory in many democratic elections since 2017, as previously feared. In addition to the United States and Germany, explicit right-wing terrorism has so far mainly been concentrated in Sweden, Norway, Finland, the United Kingdom, Italy, Spain, and Greece – and taken various forms in each case. Various Eastern European states have strong right-wing extremist organizations but have not yet experienced attacks.

Overall, there is no uniform recording of politically motivated acts of violence in the EU, despite Europol's regular reports, which are supposed to include all types of terrorism. Hence, there is a discrepancy between the presumed threat potential from transnational right-wing terrorism and the actual shared security priorities of many EU states.

The Recent EU Agenda

The particularly serious attacks in Paris in November 2015 marked a turning point in European counterterrorism policy. Police and intelligence cooperation has been significantly intensified since then. In addition, the EU decided to strengthen controls at its external borders and passed an ambitious reform package on biometric databases that can, among other things, help identify suspected terrorists. Many of these measures have yet to be implemented on a technical level.

In the current EU legislative period, however, the political focus has shifted. The

latest joint EU Security Union Strategy, published in summer 2020, addresses many aspects of the fight against terrorism, especially in the area of early detection or “anticipation” – a new term in the EU's discourse. However, according to this strategy, the most important priorities for the future are “hybrid threats,” cybersecurity, the protection of critical infrastructures, and dealing with the impact of, as well as harnessing, new technologies for security authorities (especially artificial intelligence and encryption). Meanwhile, the Schengen zone and the freedom of movement must be preserved as much as possible during the ongoing pandemic.

In view of these structural challenges and urgent crises, the EU's recent communications and declarations on the fight against terrorism adopted by the Interior Ministers, the Commission, and the European Council in November and December 2020 are unlikely to provide a significant impetus. Arguably, they served primarily as a political signal in response to the attacks in France and Vienna that occurred shortly before, as well as the fifth anniversary of the Paris attacks (Bataclan). It should be noted, however, that the Council of EU Ministers of Interior explicitly welcomed a temporary expansion of internal border controls and wanted to intensify the exchange of information on potentially violent extremists (German “Gefährder”). This may influence the strategic debate on the future of the Schengen regime, which is to be held from autumn onwards, at the latest. Meanwhile, the intelligence exchange on dangerous extremists is to take place within the framework of a new “European police partnership.” This is probably the most important initiative of the past German Council Presidency in the area of internal security. However, this partnership cannot be understood as focusing primarily on the fight against terrorism because it covers a much broader field of police work, including local cooperation in border regions.

The Controversial Scope of EU Counterterrorism Policy

Ascribing various security policy initiatives to the field of counterterrorism has both advantages and disadvantages. On the one hand, such a move may accelerate and facilitate political decision-making. On the other hand, comprehensive counterterrorism packages create coordination and implementation problems. Above all, one needs to avoid distorted assessments about the necessity and proportionality of new security laws in the aftermath of atrocities.

In the early 2000s, for example, the introduction of the European Arrest Warrant and many more measures in the Area of Freedom, Security and Justice were justified on the grounds of combating terrorism. However, rapid progress in integration subsequently entailed numerous legal challenges and repeated amendments.

The EU's recent counterterrorism agenda appears comparatively more mature. For example, the European Commission has taken up issues that a special committee of the European Parliament highlighted in a comprehensive evaluation of EU counterterrorism policy during the last legislative period. Among other things, victims of terrorism are to be entitled to more rights and compensation, while the protection of public spaces should be improved. In contrast, the European Council's renewed call for mandatory data retention must be seen as a rather problematic priority for the next stage of the EU's fight against terrorism. This also applies to the comprehensive reform of Europol's mandate currently under negotiation, which aims to boost the technical capacities of European police authorities and to forge closer cooperation with the private sector. Some aspects of these legislative proposals are suitable for aiding the prevention and prosecution of serious crimes. However, if the emphasis in the political debate is placed on combating terrorism, there is a renewed risk of distorted legal provisions, which could lead to further actions for annulment before the European Court of Justice. Recently, the

Court again formulated strict conditions for the proportionality of mandatory data retention.

Structural Gaps and Limits of EU Prevention Policy

The central task of a revitalized EU counterterrorism policy is to contain the aforementioned structural threat potentials posed by jihadist and right-wing extremists. In the field of terrorism prevention, the EU has been trying to take on a coordinating role since the mid-2000s. In particular, the Commission launched the Radicalisation Awareness Network (RAN), which now has more than 3,200 members from academia, government, and civil society. The network's mission is to promote pilot projects and best practices across borders and to disseminate new research findings. In 2019, an additional steering board was set up to advise member states on their prevention policies.

The concrete effects are unclear. This is exemplified by the correctional system. EU member states have inconsistent and uncoordinated approaches when it comes to dealing with terrorist convicts. Lacking prison chaplaincy and underfunded rehabilitation programs still often characterize practices on the ground. The EU supports a professional association of correctional authorities that provides data on prison conditions, among other things. A recent RAN manual on the rehabilitation of terrorist offenders could serve as a reference work. However, typical European governance instruments, such as mutual periodic evaluations, have not been introduced to date. A recommendation by the EU Council of Ministers in 2019 has not yet resulted in any noticeable consequences.

Regardless of this, the member states each bear responsibility for a prevention and integration policy for society as a whole. Actions in this field require a strong civil society and democratic legitimacy. This has been demonstrated once again in recent months in the debates on "political Islam"

in Austria and France. It would not make sense to decide at the EU level to what extent the work of religious associations may be monitored or in how far their political participation could be deemed appropriate. The idea – raised briefly by President of the European Council Charles Michel – of establishing an EU training center for imams is equally unrealistic, as long as education policy remains predominantly a national or subnational competence. In this respect, it is logical that the European Council at the end of 2020 condemned attacks on freedom of expression and religion only in very general terms and urged harmony between religious education and fundamental European values.

Mandatory Deletion of Terrorist Content Online

In turn, the EU is focusing its efforts on controlling the online space, where it can exercise strong regulatory powers based on the Single Market. So far, only a few European countries, including Germany, have adopted new legal regulations for the rapid deletion of extremist or (popularly) inflammatory online content. In recent years, security authorities have entered into voluntary partnerships with operators of major online platforms (including social media), with Europol taking a leading role with its *Internet Referral Unit and the EU Internet Forum*, which includes representatives of key companies (YouTube/Google, Facebook, Microsoft, Twitter). In coordination with the *Global Internet Forum to Counter Terrorism*, which links the same private-sector actors and the EU with 29 other states and the United Nations, jihadist propaganda has been reduced significantly. The main tool is a hashtag database that captures identified terrorist material and enables cross-platform blocking. In October 2019, after the terrorist attack in Christchurch, state and private actors added a so-called crisis protocol, which should ensure the swift – and, if possible, worldwide – blocking of filmed terrorist acts. In the EU, the application of

this crisis protocol is coordinated by Europol.

In view of the dynamic growth of extremist online content and the large number of platforms that do not yet participate in such partnerships, the EU Commission and Council have been pursuing a legislative initiative for the mandatory deletion of terrorist online content since 2018. In contrast, the European Parliament and representatives of industry and civil society mostly warned against disproportionate censorship and the structural disadvantage of smaller online platforms that do not have the resources to review content and regularly cooperate with security authorities. In the wake of the murder of the teacher Samuel Paty in France, which could clearly be traced back to incitement on social media, a political compromise could now be found: In the upcoming EU regulation, the strict deadline for deleting marked terrorist content within one hour is to be maintained, although certain exceptions apply for small providers. Similarly, the rule that deletions can be ordered across borders is maintained within the Single Market, with only a few ex-post review possibilities for the state in which the online service concerned is located. On the other hand, the obligation to take “active measures,” i.e., to check online content before it is uploaded, has been deleted. The use of possible terrorist content for research and educational purposes is also to remain permitted.

Critics nevertheless see the danger of illegitimate and unbalanced content controls, as different standards could be applied to cross-border deletion requests, depending on the national political and legal system. In addition, extremist users could migrate to communication channels and providers outside of Europe that are difficult to control, such as Telegram.

Experience to date in Germany with the Network Enforcement Act (NetzDG) suggests that at least the risks of unjustified deletion of legal content or the ineffective transfer of illegal content to unregulated platforms are relatively low. The disadvantage of the

partial migration “into the dark” is likely outweighed by the more limited reach of those alternative communication channels. The following points are more problematic: the ability of users to find and effectively use mechanisms to flag illegal content, the legal verifiability of deletion requests, and the tracking of offenders, since the police and judiciary have too few qualified personnel. A corresponding reform of the NetzDG, which also should massively increase the role of the German Federal Criminal Police Office in the prosecution of online hate crimes, is nearing completion – but it faces several legal and practical hurdles. In light of this example, the upcoming EU regulation on deleting terrorist content will not be easily implemented effectively and in a proportionate manner in other member states either.

Further EU Regulation in the Area of Digital Policy

The debate on the regulation of the Internet or Internet-based business models is developing rapidly. The EU Digital Services Act (DSA), presented at the end of 2020, develops a comprehensive concept of responsibility and accountability of large online platforms and social media. Among other things, uniform mechanisms for reporting suspected illegal content are to be established. The dissemination of extremist or deliberately misleading content is to be countered by regulating recommendation algorithms. Larger platforms would have to provide significant transparency of their content control and moderation systems. The DSA, however, is not intended to create new rules to criminalize specific forms of content.

In the area of jihadist terrorism, as mentioned, some voluntary mechanisms and the forthcoming EU regulation on deleting designated terrorist online content should already provide a reasonably effective set of tools. However, in the area of right-wing extremism and so-called hate speech, which could also fall under the regulatory scope of

the DSA, two particular challenges arise: First, many actors from the online milieu of the “new right” use coded language that hides extremist content in innuendo and is difficult to detect using automated procedures. Second, right-wing extremist speech is assessed differently across EU member states. In 2008, the Union adopted a framework decision on combating racism and xenophobia, according to which member states should penalize such statements. This weakly binding legal act from before the Lisbon Treaty has had little effect.

Consideration is therefore being given within the Commission to extending the areas of crime identified in Article 83 (1) TFEU – for which the EU can perform a harmonization function – to include hate crimes and hate speech. However, such a decision would have to be unanimous in the Council. This is not likely, at least as long as tensions continue between member states over issues of the rule of law and the interpretation of the Union’s fundamental liberal values. The decision by Twitter and Facebook to ban US President Donald Trump from their platforms, for example, has prompted a reaction from the Polish government to plan a national law prohibiting such “censorship” within its sphere of influence.

Unilateral action by the major online platforms, taking advantage of their quasi-monopoly positions, can be critically questioned with good reason. However, individual member states are making it more difficult to arrive at a pan-European approach through new legal acts on the limits of expression on the Internet. This is also true for France, which plans to finalize the DSA in 2022 as part of its next EU presidency, but it is already pushing national laws in this area.

Transatlantic Dimension

The events at the Capitol have triggered a change of heart among many Democrats and also some Republicans when it comes to the traditionally very high value placed

on freedom of expression. Since then, there has been an intense debate in the United States about the responsibilities of large online platforms. Given European market power and the dominance of US companies, it would be highly advisable for Brussels and Washington to agree upon a coordinated approach. Broadly speaking, the following guideline could apply on both sides of the Atlantic: The right to freedom of expression is to be largely preserved, but there should be no “right to amplify.” This would allow for curbing the dissemination of certain online content.

Joe Biden addressed the danger posed by right-wing extremism and racism several times in his inaugural speech, not least to distance himself from the presumed toleration or even support of such groups (e.g., the Proud Boys) under Donald Trump. However, US authorities already banned a right-wing extremist organization, the so-called Russian Imperial Movement, as a foreign terrorist association for the first time in 2020. It is all the more surprising that there is still no federal legislation to prosecute domestic terrorist groups, as such. If this gap were to be closed under the Biden administration, global cooperation against right-wing extremist and potential terrorist actors could gain substance.

In view of the different threat situations and perceptions of right-wing terrorism in various European states, however, flexible bilateral or mini-lateral initiatives are to be expected for the time being, especially when it comes to operational cooperation between criminal justice authorities and intelligence agencies. Germany, in particular, has an important European leadership role to play. It is particularly affected by right-wing extremism and right-wing terrorism and also has developed special competencies in this area. It should draw on this profile to revitalize transatlantic relations. This also applies to the future security relationship with the United Kingdom, which already classified domestic right-wing extremism as a strategic threat several years ago.

Conclusion and Recommendations

Despite years of effort, the EU has reached structural limits with regard to broad, all-of-society efforts to curb extremism and prevent terrorist violence. Within the EU, member states should not drag each other into internal debates about the role of religion and integration in their respective societies. Rather, more targeted efforts can be made at the EU level to create reform incentives in specific areas, such as prevention and rehabilitation in national correctional systems. Even without a competence for legal harmonization, the EU can do more than promote best practices.

At the top of the agenda, however, is how to reach a shared understanding on the limits freedom of expression and on the legal responsibilities of online platforms and service providers. EU member states must continue to work in the long term on approximating their criminal laws on hate speech. First, the implementation of the upcoming regulation on deleting terrorist content online must be closely monitored. To avoid a disproportionate use of the terrorism charges in cross-border contexts, it would be helpful to expand the legal bases for combating hate speech and hate crime. In the medium term, the DSA will create pressure to act in this direction, as cross-border notifications and deletion orders are likely to increase sharply. The consequences of the DSA will extend far beyond counter-terrorism and beyond EU borders. Therefore, the converging perception of right-wing extremism being a threat in the United States must be used now as an opportunity for a transatlantic regulatory framework.

Yet all these steps to regulate the online space can only indirectly impact on different types of religious and political extremism. Most research studies on radicalization processes and terrorist acts show that online communications play an important and growing role, but that personal, social, and political factors remain at least as crucial.

Since right-wing terrorism has so far only been experienced as a priority threat in a minority of Western states, flexible formats should be used to move operational cooperation forward. This applies, for example, to intelligence exchanges on right-wing extremists or to concrete measures that may have cross-border aspects, such as bans on associations and investigative procedures. A comparable pattern of counterterrorism cooperation among “most affected member states” was already used in the early 2010s against the phenomenon of IS foreign fighters – and could later be transformed into common European approaches. Now again, the EU can benefit from committed member states such as Germany and third countries such as the United Kingdom and the United States to advance with tangible counterterrorism measures.

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SWP
Stiftung Wissenschaft und Politik
German Institute for International and Security Affairs

Ludwigkirchplatz 3 – 4
10719 Berlin
Telephone +49 30 880 07-0
Fax +49 30 880 07-100
www.swp-berlin.org
swp@swp-berlin.org

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Dr. Raphael Bossong is an Associate in the EU/Europe Research Division.

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