

## II. The response to the multi-site terrorist attacks in Paris

IAN ANTHONY AND MANJANA PECHT

According to Europol, despite the fact that the majority of terrorist attacks in the EU in 2014—the most recent year for which Europol data was available at the time of writing—were carried out by separatist groups, the main terrorist-related concern reported by member states was religiously inspired terrorism by individuals and groups that plan attacks in the EU.<sup>1</sup> In contrast to many people living in conflict-affected countries in the EU's neighbourhood, most EU citizens still feel secure, however, and the data for arrests related to terrorist offences in the EU in 2014 suggests that the terrorist risk is currently concentrated in relatively few member states.<sup>2</sup>

The national governments of the EU member states are responsible for defining the scope of the response to terrorist attacks. In France, the Paris attacks in January 2015 prompted a range of national measures to reinforce French counterterrorism capabilities. Counterterrorism units were reorganized in a new joint headquarters under the Minister of the Interior and given wider powers of surveillance.<sup>3</sup> Further measures were taken after the 13 November attacks. Following two decisions by the French Council of Ministers on 13 and 14 November, the President of France, Francois Hollande, used his powers under the Act of 3 April 1955 to declare a state of emergency.<sup>4</sup> The Belgian Government also invoked measures prompted by the highest level of terrorist threat alert.<sup>5</sup>

France invoked the mutual defence clause of the Lisbon Treaty after the November attacks in Paris. Given the non-military focus of EU counterterrorism initiatives, this was a break with tradition.<sup>6</sup> In offering their unanimous support to France, the other EU member states agreed that France had been the victim of armed aggression on its territory, and that they had an obligation to provide France with aid and assistance by all the means in their power, although each state was free to determine the precise nature of the assistance provided.

<sup>1</sup> European Police Office, *Terrorism Situation and Trend Report (TE-SAT) for 2015* (Europol: The Hague, July 2015).

<sup>2</sup> The majority of terrorism-related arrests in the EU in 2014 were made in Austria, Belgium, Bulgaria, France, Germany, the Netherlands, Spain and the United Kingdom.

<sup>3</sup> *Projet de Loi Enregistré à la Présidence de l'Assemblée nationale le 19 mars 2015* [Bill Recorded at the Presidency of the National Assembly], 19 Mar. 2015.

<sup>4</sup> French Government, 'Loi n° 55-385 du 3 avril 1955 relative à l'état d'urgence' [Law No. 55-385 of 3 April 1955 regarding the state of emergency], <<https://www.legifrance.gouv.fr/affichTexte.do?cid-Texte=JORFTEXT000000695350>>; and French Government, 'State of Emergency in France: what are the consequences?', 23 Nov. 2015.

<sup>5</sup> Drozdiak, N., Steinhäuser, G. and Fairless, T., 'Brussels terror alert raised amid "imminent" threat of attack', *Wall Street Journal*, 21 Nov. 2015.

<sup>6</sup> Article 42.7, Treaty on European Union.

France called on EU member states to provide three kinds of assistance: (a) direct participation in the coalition against the Islamic State (IS), considered by France to be responsible for the attacks; (b) support for Operation Chammal, the ongoing French military campaign in Iraq and Syria; and (c) increased support for other French missions in Mali and the Central African Republic (CAR), which would release French forces for other duties.

When the French request for assistance was made, all the EU member states, as well as the EU itself, were already participating in the Global Coalition to Counter ISIL formed by the United States in September 2014. After a vote in the British Parliament on 3 December, the United Kingdom expanded the scope of its combat operations aimed at IS in Syria. As of January 2016, Belgium, Denmark, France, the Netherlands and the UK were the EU member states engaged in combat operations in Iraq, while France and the UK were engaged in Syria.<sup>7</sup>

France had been asking EU member states to offer more support for its operations in Mali and the CAR for a considerable time before the November Paris attacks. However, when the request was presented in the framework of the mutual defence clause, Germany and Belgium offered naval and air support to French forces in the Mediterranean, and Germany increased its support for the training of Kurdish Peshmerga fighters in Iraq. Sweden offered to provide France with precision-guided munitions, and Germany and Sweden announced their intention to provide additional assistance to peace operations in Mali, including personnel and logistic support, through existing frameworks—although Germany had decided to increase its support in Mali before the Paris attacks.<sup>8</sup>

### **Indications of intelligence failure**

While the responsibility for combating terrorism in the EU rests, first and foremost, with the member states, national leaders have long recognized the critical role of intergovernmental cooperation, including the use of EU frameworks, in preventing and responding to the threat of terrorism.

Details emerging about the terrorist attacks in Paris in January and November 2015 exposed intelligence failures in EU member states. In the aftermath of the attacks it became clear that most of the perpetrators were well known not only to the French authorities, but also to other European

<sup>7</sup> US Department of Defense, Operation Inherent Resolve, <[http://www.defense.gov/News/Special-Reports/0814\\_Inherent-Resolve](http://www.defense.gov/News/Special-Reports/0814_Inherent-Resolve)>, accessed 31 Mar. 2016. On the military response to IS see chapter 2, section II, in this volume.

<sup>8</sup> On the peace operations in Mali and the CAR see chapter 7, section I, in this volume; on the Mali peace process see chapter 5 in this volume.

and US law enforcement and intelligence agencies.<sup>9</sup> Moreover, a number of them had been categorized as potential threats either because they were known to have radical and extreme views and connections to a long-established European jihadist network, or because they were known criminals or returning fighters who had been affiliated with terrorist groups while in training camps in Yemen or fighting in Syria or Iraq. The perpetrators of the Paris attacks were able to move freely and both plan and carry out a mass impact terrorist attack, raising the issue of public trust in the efficiency of existing internal security systems.

After the January 2015 attacks, it became clear that the perpetrators of the attack on the offices of the satirical magazine *Charlie Hebdo* and the attack on a Kosher supermarket were familiar to the French and international intelligence services. The brothers Chérif and Saïd Kouachi, the perpetrators of the *Charlie Hebdo* attack, had been on a British and a US terrorist watch list, as well as on a US no-fly list.<sup>10</sup> Even so, Saïd managed to travel to Yemen in 2011, where he allegedly trained as part of al-Qaeda in the Arabian Peninsula, and then return to France without being intercepted by the authorities. Saïd was put under surveillance on his return, but this was terminated in June 2014 because French security services judged him to be no longer dangerous.<sup>11</sup> Chérif Kouachi served a prison sentence after being convicted of terrorism offences in 2008 for being part of a recruitment network for al-Qaeda in Iraq. He was also kept under surveillance, but only until the end of 2013. Amedy Coulibaly, who coordinated his attack with the Kouachi brothers, served a short prison sentence in 2010 and had also been on a US terror watch list. Furthermore, the Algerian intelligence authorities had allegedly warned their French counterparts on 6 January that an attack in France was imminent.<sup>12</sup>

In the wake of the November attack, at least six of the eight perpetrators—Abdelhamid Abaaoud, Salah Abdeslam, Ibrahim Abdeslam, Samy Amimour, Salim Benghalem and Omar Ismaïl Mostefai—were identified as foreign terrorist fighters who had travelled to fight in Syria or Iraq, or to train elsewhere in the region, and returned to France or Belgium. Salim Benghalem, believed to be the person who planned the attacks of 13 November, allegedly

<sup>9</sup> MacAskill, E., 'How French intelligence agencies failed before the Paris attacks', *The Guardian*, 19 Nov. 2015; and Camilli, E., 'The Paris attacks: A case of intelligence failure?' NATO Review, 2015, <<http://www.nato.int/docu/review/2015/ISIL/Paris-attacks-terrorism-intelligence-ISIS/EN/index.htm>>. The 2015 terrorist attacks are discussed further in chapter 2, section II, in this volume.

<sup>10</sup> Burke, J., 'Charlie Hebdo suspects on US terrorist watchlist "for years"', *The Guardian*, 9 Jan. 2015.

<sup>11</sup> Callimachi, R. and Yardley, J., 'From amateur to ruthless jihadist in France', *New York Times*, 17 Jan. 2015.

<sup>12</sup> Doward, J., 'Charlie Hebdo: could security services have prevented Paris attacks?', *The Guardian*, 10 Jan. 2016.

made the preparations from Syria, where he lived after 2013.<sup>13</sup> Abdelhamid Abaaoud, who coordinated the November attack, travelled to Syria to join IS some time in 2013. Abaaoud, a Belgian citizen, returned to Belgium where he, with two accomplices, plotted an attack on a police station in the city of Verviers in January 2015. Even though Abaaoud was known to the Belgian authorities as an IS fighter, he was able to travel to Syria and return to participate in the Paris attacks.<sup>14</sup>

Another of the attackers, Omar Ismaïl Mostefai, was subject to a police surveillance notice in 2010, which indicated his status as a potentially dangerous radical. He travelled to Syria in 2013 and is said to have returned to France in the spring of 2014. The Turkish authorities reportedly alerted their French counterparts twice that Mostefai represented a threat: once in December 2014 and again in June 2015, without receiving a response.<sup>15</sup>

Samy Amimour was charged with terrorism offences in 2012. He was placed under judicial supervision and made the subject of an arrest warrant. In 2013 Amimour travelled to Raqqa in Syria, where he joined IS, before returning to France to participate in the attacks.<sup>16</sup>

Furthermore, it is alleged that Belgian authorities had a list of suspected jihadists that included Abdelhamid Abaaoud as well as two of the other Paris attackers, Salah and Ibrahim Abdeslam. Belgian police questioned both brothers in February 2015, and Ibrahim Abdeslam was questioned after he was denied entry to Turkey and returned to Belgium by the Turkish authorities.<sup>17</sup> In addition, French intelligence officials are said to have received prior warnings from both Iraq and the USA that a major attack was probable.<sup>18</sup>

Improved communication between the law enforcement agencies of EU member states might have contributed to a better understanding of the risk of a terrorist attack in Paris. On 5 November, the German police stopped a car full of arms on a motorway in Bavaria and detained its driver. Eight AK-47 assault rifles with full magazines, two pistols, two hand grenades, 200 kilograms of explosives and a revolver were found. An examination of the suspect's mobile phone and the GPS system in the car indicated that the man was travelling to Paris.<sup>19</sup> According to the criminal investigation office

<sup>13</sup> BBC News, 'Paris attacks: was Salim Benghalem the real ringleader?', 26 Jan. 2016.

<sup>14</sup> Clarion Project, 'From hypocrisy to apostasy: the extinction of the Grayzone', Dabiq, no. 7, p. 73.

<sup>15</sup> Yeginsu, C., 'Turkey warned French twice about attacker, official says', *New York Times*, 16 Nov. 2015.

<sup>16</sup> Burgis, T., 'Paris attacks: Samy Amimour, the "nice guy" who became a jihadi', *Financial Times*, 19 Nov. 2015.

<sup>17</sup> Escobedo, T. and Morgenstein, M., 'Who were suspects in Paris terror attacks?', CNN, 18 Nov. 2015.

<sup>18</sup> Abdul-Zahra, Q., 'Iraq warned of attacks before Paris assault', Associated Press, 15 Nov. 2015.

<sup>19</sup> Traynor, I., 'Germany "may have foiled plot to supply arms to Paris attackers"', *The Guardian*, 14 Nov. 2015.

in Bavaria, information about the man's arrest was given to the authorities in France soon after the suspect was detained.<sup>20</sup>

The information available in advance of the Paris attacks, some held by law enforcement agencies and some by the security services, was not assembled in ways that allowed a comprehensive threat assessment to be made before the Paris attacks. While recognizing the difficulty of creating a fully effective system, the attacks have fuelled discussions about the gaps that exist and how they might be closed in order to prevent future attacks.

### **New proposals and decisions on information gathering and sharing**

Analysts have argued that three attacks in one calendar year should be seen not as a 'wake-up' call on the terrorism threat, which was well known, but as evidence that the intelligence services in Europe have inadequacies that need to be addressed. These include inadequate risk assessment methodologies, limited capacities for effective surveillance, an inefficient framework for intelligence sharing and insufficient financial and legal resources.<sup>21</sup>

Following the terrorist attacks in Paris in January 2015, EU leaders agreed to strengthen a number of existing legislative measures, processes and initiatives, rather than create new ones.<sup>22</sup> The statement by EU leaders particularly highlighted more effective intelligence cooperation between member states—both criminal intelligence in the law enforcement community and cooperation between the security services—and the need to strengthen systems for controlling the movement of people into the EU, in particular so-called foreign terrorist fighters.<sup>23</sup>

Luxembourg, in its role as President of the Council in the second half of 2015, invited representatives from five national intelligence services (France, Germany, the Netherlands, Spain and the United Kingdom) to participate in an informal Council meeting on 9 July 2015—the first time this had happened since 2001.<sup>24</sup>

Since 2005, EU member states have been obliged to provide information on terrorist offences to the judicial cooperation unit (Eurojust), Europol and each other, but there are significant gaps in compliance.<sup>25</sup> Strengthening the

<sup>20</sup> Koch, J., 'Germany probes Paris link after arrest of man smuggling arms', *Bloomberg Business News*, 14 Nov. 2015.

<sup>21</sup> Camilli (note 9).

<sup>22</sup> European Council, 'Statement by the members of the European Council, following the informal meeting of the Heads of State or Government', Press statement 56/15, Brussels, 12 Feb. 2015.

<sup>23</sup> On foreign terrorist fighters see Grip, L., 'The growth in European foreign terrorist fighters', *SIPRI Yearbook 2015*.

<sup>24</sup> Government of Luxembourg, Presidency of the Council of the European Union, 'Etienne Schneider presented the achievements of the Luxembourg Presidency in the field of internal security to the LIBE Committee of the European Parliament', 21 Dec. 2015.

<sup>25</sup> Council Decision 2005/671/JHA of 20 September 2005 on the exchange of information and cooperation concerning terrorist offences, *Official Journal of the European Union*, L253, 29 Sep. 2005.

role of Europol in counterterrorism is a priority for the EU. In January 2015, Gilles de Kerchove, the EU Counter-Terrorism Coordinator, highlighted the need for member states to provide information to the Europol Focal Point Travellers, which is a point of contact created to trace the movement of foreign terrorist fighters.<sup>26</sup> According to Europol, only 2081 foreign terrorist fighters are recorded in the system, and most of the information reported comes from a small group of member states. At an informal meeting in Riga in January 2015, EU ministers of home affairs and justice promised to strengthen the Focal Point Travellers system.<sup>27</sup>

De Kerchove also proposed the creation of a European Counter-Terrorism Centre (ECTC) at Europol, focused on intelligence sharing, and in January 2016 Europol launched the ECTC as a platform for member states to improve information sharing and operational coordination.<sup>28</sup> Member states will provide experts to staff the ECTC, to enhance support for cross-border investigations related to terrorism. The Council invited member states to establish single points of contact to facilitate information exchange.<sup>29</sup> In addition, the Council invited member states to make more use of Eurojust to facilitate cooperation between prosecutors.<sup>30</sup>

Europol also manages the Secure Information Exchange Network Application (SIENA), which links those national authorities which choose to join it with each other and the databases maintained by Europol. However, as of late 2015, only half the EU member states had connected their national counterterrorism authorities to SIENA, and only 1595 foreign terrorist fighters were recorded in this system. A dedicated area for counterterrorism authorities was created in SIENA in October 2015.<sup>31</sup>

In 2008, the EU incorporated elements of the Prüm Treaty—an instrument that links a sub-group of EU member states, but was negotiated and agreed outside the EU—into EU law as the Prüm Decision.<sup>32</sup> The participating states

<sup>26</sup> Within the overall Europol Analysis System, individual focal points are created to reflect particular priorities as identified by EU member states.

<sup>27</sup> Riga Joint Statement following the informal meeting of Justice and Home Affairs ministers in Riga, 29 and 30 Jan. 2015.

<sup>28</sup> Council of the European Union, State of play on implementation of the members of the European Council of 12 February on counter-terrorism, Report 14734/15, Brussels, 23 Nov. 2015; and European Commission, 'New European Counter Terrorism Centre launched', News release, 25 Jan. 2016.

<sup>29</sup> Council of the European Union, Outcome of the Council Meeting, 3432nd Council Meeting, 14882/15, Brussels, 20 Nov. 2015.

<sup>30</sup> Council of the European Union, Follow-up to the recent terrorist attacks in Paris, 14122/15, Brussels, 16 Nov. 2015, LIMITE.

<sup>31</sup> Council of the European Union (note 28).

<sup>32</sup> The Prüm Convention (sometimes known as the Schengen III Agreement) is a treaty that was signed on 27 May 2005 in Prüm, Germany by Austria, Belgium, France, Germany, Luxembourg, the Netherlands and Spain. It is open to all EU member states, 14 of which are currently parties; and Council Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime, *Official Journal of the European Union*, L 210, 6 Aug. 2008.

have created a system for the rapid exchange of information on fingerprints, DNA and vehicle registration numbers. Where it is believed that it could prevent a terrorist attack, the Prüm Decision pre-authorizes the identified national points of contact to supply each other with the personal data (surname, first names, date and place of birth) of individuals, and a description of why they believe there is reason for concern. Following the Paris attacks, the European Council paid greater attention to the potential role of the Prüm framework in counterterrorism, and the importance of full implementation and effective use of the Prüm Decision.

### **Strengthening border controls**

The number of EU citizens travelling to participate in conflicts outside the EU has increased sharply in recent years, and efforts to recruit fighters from within the EU also appear to have intensified.<sup>33</sup> While most of the terrorist fighters from the EU are in Iraq and Syria, they are also to be found in Afghanistan/Pakistan, Chechnya, Libya, Mali, Somalia, Ukraine and Yemen.<sup>34</sup> Moreover, some individuals move between these conflicts.

While there are no official figures recording the numbers of returnees across the EU, some member states, such as Finland, France, Italy and the United Kingdom, report increasing numbers.<sup>35</sup> Returnees do not necessarily represent a significant threat to security, but the fact that so many have been active in combat is assessed as a risk, particularly in the EU member states currently playing an active role in the military operations in Iraq and Syria.

Some member states report fighters travelling multiple times to conflict zones. They see a pattern of regular travel as a heightened risk indicator because an extended stay or multiple trips might increase radicalization or facilitate specialist training.<sup>36</sup> Most foreign terrorist fighters travel to Iraq and Syria, and Turkey has been the main transit hub, which emphasizes the importance of cooperation between the EU and Turkey. Travel can be by direct or indirect flights or over land.

Monitoring and controlling the movement of citizens who participate in external conflicts is a complicated challenge in an EU that has worked over many years to facilitate movement between its member states. In many cases EU citizens have a right to move freely between member states, and there are very few physical barriers or controls along intra-EU borders. To pre-

<sup>33</sup> Grip (note 23).

<sup>34</sup> Geneva Academy of International Humanitarian Law and Human Rights, 'Foreign fighters under international law', Academy Briefing no. 7 (Oct. 2014).

<sup>35</sup> Reed, A., van Zuijdewijn, J.R. and Bakker, E., *Pathways of Foreign Fighters: Policy Options and their (Un)Intended Consequences*, Policy Brief (International Centre for Counter Terrorism: The Hague, Apr. 2015).

<sup>36</sup> Briggs, R. and Silverman, T., *Western Foreign Fighters: Innovations in Responding to the Threat* (Institute for Strategic Dialogue: London, 2014), pp. 36–37.

serve the freedom of internal movement within the EU, effective systems are needed for control within and between member states, as well as effective control at the external borders of the EU.

It is reported that foreign terrorist fighters often use their own money to finance their travel and use genuine documents.<sup>37</sup> However, there is a growing demand in criminal circles for EU travel documents, and national authorities have reported an increasing number of cases of individuals trying to gain entry to the EU using fake passports, ID cards and travel documents.

The EU has sought to strengthen its partnership with carriers to implement systematic and coordinated checks on individual travellers against databases that contain relevant counterterrorism information using common risk indicators. As part of that process, in December 2015 the European Parliament and the Council reached a provisional agreement on an EU directive regulating the use of Passenger Name Record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime.<sup>38</sup> At present, there is no common approach to the use of PNR data across the EU and while some member states already have national systems for collecting and using PNR data, others do not. An EU directive would require all member states to incorporate the terms of the directive into national law. The proposal for a directive requiring airlines to provide passenger data has been under discussion since 2007, but agreement was delayed by concerns in the European Parliament over whether the benefits from collecting and analysing PNR data justify the cost of establishing a system, and over the procedures for protecting the integrity and use of the information provided to national authorities.<sup>39</sup>

In the light of increasing concern about foreign terrorist fighters, the EU has considered how to help detect and, if considered appropriate, prevent individuals from travelling from the EU to conflict zones. At present the Schengen Borders Code requires participating states to carry out systematic checks on non-EU citizens when they cross any external border of the Schengen area. However, participating states have considerable discretion regarding the rules applied to their own citizens or to EU citizens.

There are also a large number of cases where travel documents are reported either stolen or lost.<sup>40</sup> The International Criminal Police Organization (INTERPOL) maintains a Stolen and Lost Travel Documents (SLTD)

<sup>37</sup> The direct costs of financing mass impact terrorist attacks appear to be low. For example, the bombings in London and Madrid are each estimated to have cost in the region of \$10 000. Financial Action Task Force, *Terrorist Financing* (FATF/OECD: Paris, 2008), pp. 7–8.

<sup>38</sup> European Parliament, Justice and Home Affairs Committee, 'EU Passenger Name Record (PNR) proposal: an overview', Brussels, 14 Dec. 2015.

<sup>39</sup> Council of the European Union, Report of the EU Counter-Terrorism Coordinator to the Council, State of play on implementation of the statement of the Members of the European Council of 12 February 2015 on counter-terrorism, 14734/15, Brussels, 30 Nov. 2015.

<sup>40</sup> Europol, *Serious and Organized Crime Threat Assessment* (SOCTA 2013), 19 Mar. 2013, p.17.

database that is available to its 190 members. The Schengen Information System also includes information on travel documents. The European Commission has encouraged member states to carry out screening at the border against databases of stolen and lost travel documents, and expressed concern that they do not appear to be doing so.<sup>41</sup> In December 2015 the Commission proposed an amendment to the Schengen Borders Code that would oblige member states to carry out systematic checks on all persons, including EU citizens, against databases of lost and stolen travel documents.<sup>42</sup> The current code requires participating states to carry out systematic checks on non-EU citizens at the point of entry, but gives them discretion regarding which checks to apply at the point of exit. Under the proposed amendment, it would become mandatory to make systematic database checks on third country nationals on exit.

## Conclusions

The EU has been engaged in building cooperation on counterterrorism since at least the Madrid European Council of 1995.<sup>43</sup> The attacks in Paris and elsewhere in the EU have added a sense of urgency to the discussion at the highest political level, and have provided momentum to some processes and initiatives that were already under discussion.

Few of the initiatives that are being discussed are new. After the attacks on the USA in September 2001, EU leaders expressed their intention to develop and strengthen measures against all forms of transnational organized crime, including terrorism. At that time, the list of desirable measures already included enhanced exchange of information about terrorism among member states and with Europol, the creation of a specialist anti-terrorist team within Europol, strengthened transatlantic cooperation on counterterrorism and the development of judicial cooperation in Eurojust. While it is true that a great deal has been done, it is equally true that progress towards a more coherent and integrated approach has been slow and has faced many obstacles.

Enhancing intelligence sharing is a much discussed topic following terrorist attacks on European soil. Since the 2015 attacks indicated significant intelligence failures, several proposals and decisions have been made on information sharing and information gathering. The EU has pledged to

<sup>41</sup> Communication from the Commission to the European Parliament and the Council, Eighth biannual report on the functioning of the Schengen area, 1 May–10 December 2015, COM (2015) 675 final, 15 Dec. 2015, p. 9.

<sup>42</sup> European Commission, Proposal for a Regulation of the European Parliament and of the Council amending Regulation no. 562/2006 (EC) as regards the reinforcement of checks against relevant databases at external borders, COM (2015) 670 final, 15 Dec. 2015.

<sup>43</sup> European Commission, EU Counter Terrorism Efforts in JHA Field, Memo 04/59, 12 Mar. 2004.

reinforce cooperation and coordination among national authorities and to improve the effectiveness of intelligence sharing within the EU. The extent to which improvements will follow, however, remains to be seen.