



# TTSRL – Policy Brief

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**Common EU definition of terrorism will work only if adopted by all**

## **TWO KEY POLICY RECOMMENDATIONS FOR THE COMMISSION:**

1. In addition to the EU definition of terrorism, propose a list with obligatory (and if need be facultative) elements that a national definition of terrorism is obliged to refer to and those that can be referred to.
2. Monitor the process of implementation of a national definition along these elements and as such facilitate the comparison of definitions in international fashion.

Sir Jeremy Greenstock, former UK ambassador to the United Nations and special representative for Iraq, once said: 'What looks, smells and kills like terrorism is terrorism'. The mere look and smell may be enough for drafting a general counter-terrorism policy. For adopting specific measures to combat terrorism and concrete legislation in particular, however, it is necessary to define the phenomenon into much finer detail. Not having one universal definition is an impediment to effective legislation and harmonization.

### ***The case for a common definition***

The reasons for arriving at a universal definition are convincing. In today's globalized world, it is impossible to fight terrorism effectively without functional cross-border cooperation. This is true for cooperation between any two states in the world, but twice as much for the European Union with the free movement of persons. Whereas the physical border has been removed between the member states, the legal border has remained. The legal cooperation must, therefore, be much stronger in order to compensate for the open borders.

A universal definition of terrorism would provide for the critical threshold that would allow more effective counter-terrorism cooperation. The conformity of definitions in the respective states' penal codes ensures that the double criminality requirement of extradition treaties is fulfilled. At the same time, it guarantees the "either prosecute or extradite" regime as laid down in many treaties. In extradition, a common definition would delimitate terrorism and political offences having a crucial impact on the transparency of the whole process. Similarly, it would make more transparent the granting of refugee status.

Moreover, a single definition of terrorism would decrease the ambiguity of the phenomenon. This would limit the potential for securitizing terrorism and make it difficult to abuse the terrorist threat through excessive delegitimization and





stigmatization, thus contributing to the legitimacy of the whole counter-terrorism effort.

In spite of these persuasive arguments, the quest for a common definition of terrorism has not been entirely successful. Not only in terms of legal definition in the United Nations where particular interests have hindered an ultimate agreement so far, but also in academia where scholars have been using various definitions depending on their specific field and focus.

Agreement has been possible in limited groups of countries and regional or international organizations after 9/11. The European Union is one example.

### ***The situation in the European Union***

In 2002, reacting to the terrorist attacks in New York and Washington and being aware of the undoubtedly advantageous effects of a common definition, the Council adopted a framework decision on combating terrorism, which contained in the very first article a legal definition of what the EU considers terrorism. The framework decision should provide the member states with a necessary tool to fight terrorism effectively.

Yet, a framework decision is not directly applied in the EU. It must be implemented by the member states into their respective penal codes. Due to the different legal traditions of the member states this "soft" method is more sensitive and politically more realistic than a "hard" harmonization of substantive law. At the same time, in order to provide for efficient *de facto* harmonization, the framework decision in question must be both specific and extensive enough. Moreover, the member states must implement the European measure timely and correctly.

Reviewing the academic discourse on what is terrorism, TTSRL research<sup>1</sup> has identified one nodal point that essentially all scholarly definitions of terrorism contain, namely the double victimization principle. In other words, scholars agree that perpetuating terrorism means that the immediate target of an attack is not, in fact, the real target. The real target is a second entity, connected or not with the victims, whose behavior should be influenced. It should be noted that the European definition, as set down in the Council Framework Decision on Combating Terrorism in 2002, does reflect the double victimization principle and thus satisfies the minimal requirements of the academic discourse.

From the legal point of view, the research has also identified ***six key qualities (definitional elements)*** that a sound definition of terrorism must contain. It should render the intentional character of the committed acts; it should be clear on the purpose of the act; it should qualify the act itself; it should specify the target as well as the perpetrators; and it should define the scope of the act, including the exceptions. The research has stated that the EU definition fulfils the basic requirements. Although rather vague on the target groups and non-binding on delimitation of the scope, the definition is, indeed, employable from the legal point of view. As such, it may serve as a useful tool in harmonizing the penal codes of the member states.

<sup>1</sup> TTSRL (2008) *Defining Terrorism*, Work Package 3, Deliverable 4, available at <http://www.transnationalterrorism.eu/tekst/publications/WP3%20Del1%204.pdf>





### **Implementation is the key**

Even an excellent definition adopted at the European level is not enough if the member states do not implement it properly and efficiently, though. The TTSRL research has analyzed selected member states<sup>2</sup> and their level of compliance with the EU framework decision. Some of these states already had anti-terrorist legislation in place before 2002; others introduced it for the first time as a result of the requirements that the framework decision creates.

Unfortunately, the implementation in the member states has passed with mixed results. Some countries, such as the Czech Republic or Denmark, have adopted new legislation, which mirrors the European definition almost exactly. Others, such as Portugal, have adapted their existing regulation with the same result. But there are member states that have deliberately decided not to comply fully.

Above all, Italy, Poland, Spain, Sweden, and the United Kingdom have not incorporated the second part of the EU definition – the specific list of criminal acts that should be considered terrorism when motivated in the particular manner. This constitutes a serious challenge to the whole harmonization process.

The inconsistent implementation hinders the full exploitation of the common EU definition of terrorism. It opens up room for law suits on extradition, complicates cooperation between the member states, and thus casts doubts on the whole EU counter-terrorism cooperation. Efficient counter-terrorism policy will inevitably rest on many factors, but above all, the countries must agree on what terrorism is. The implementation of the common EU definition should thus be as accurate as possible in all member states. The accuracy does not have to be achieved through verbatim translation of the EU definition into the countries' penal codes, which would infirm the advantages of the harmonization through framework decisions. The definitional elements introduced in the TTSRL research may serve as a check-list for the member states' definitions. Through implementation of the EU definition in all six elements, the member states will maximize the potential that a common definition offers.

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<sup>2</sup> The Czech Republic, Denmark, France, Germany, Italy, The Netherlands, Poland, Portugal, Spain, Sweden, and the United Kingdom.





## The TTSRL project

The project entitled Transnational Terrorism, Security and the Rule of Law (TTSRL) is a research project, conducted by a consortium of research institutes for the European Commission in Brussels. The project is part of the 6<sup>th</sup> framework program specifically that of priority 7 entitled: 'Citizens and Governance in a Knowledge-based Society'. More information about this program can be found [here](#).

### **TTSRL**

Transnational terrorism is one of the most substantial threats to security and the Rule of Law within the European Union. Approaches towards this problem, however, diverge. As Member States implement different policies based on differing basic assumptions, a structured, univocal strategy towards transnational terrorism is absent. Considering the continuing integration within the European Union, a Union-level strategy with regards to terrorism is imperative. In order to support the formulation of such a strategy, this project will study both the conceptual nature of the problems identified here, and the possible measures flowing from these assumptions.

This project will entail the conducting of a structured, well-founded survey into the various response options towards transnational terrorism and the theoretical assumptions on which they are based. A holistic approach has been chosen in which policy-areas specifically dealing with terrorism as well as affected policy-fields are taken into account. In this respect, this project is unique in that it integrates diverse aspects of the issue into one comprehensive and multidisciplinary project.

The TTSRL project proposes to start bridging the gap between the new daunting challenges posed by transnational terrorism and our current conceptual and policy deficiencies. It addresses what we see as the key issues involved: new notions of security and the role played in it by transnational terrorism; the definition and etiology of terrorism; the societal impact of terrorism; its economic impact; and - last but not least - the policy options available to deal with it.

The main added value of the project will lie in the benchmarking of approaches and policy-options in use in the various Member States. Combined with the conceptual underpinnings of this benchmarking exercise, the project will yield insights into the appropriateness and effectiveness of various approaches and measures from a national and a European perspective, the ethical issues related to this field, and cost-benefit considerations.

For more information on the recommendations in this policy brief of the TTSRL project at large, visit our [website](#) or contact the COT:

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