

University of Twente
Bachelor Thesis European Studies

The Rise and the Danger of Right-Wing Terrorism in the EU – Facing the Challenge of Improving Security and Detecting Loopholes

What are the competences of the EU to deal with right wing violence and terrorism as illustrated by the NSU and Breivik cases, and how can they be improved?

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13

Abstract

This thesis argues that the crimes of the NSU in Germany and Anders Behring Breivik in Norway have revealed deficiencies of the EU's counter terrorism policy and strategies to conquer racism, fascism and any kind of hate crime motivated by a certain ideology. It intends to evaluate the current EU security policies and detect loopholes and barriers which are currently blocking further developments and improvements.

Already existing institutions and policies are described along with the correspondent articles from the Lisbon treaty, and compared to the policies actually utilized to solve the problems of hate crime, racism and the rise of the right wing political parties in EU Member States. It is not a moral approach dealing with the question of how far does freedom of speech reach and when does public harassment and crime begin, but rather sets as a basis that any crime and harassment, coming from a large group or a small group and dealing with violent expression of a certain ideology, is considered an issue the European Citizens, regardless of sex, race religion or country of origin, have the right to be protected from, as stated in the Charta of Fundamental Human Rights in the EU.

On the basis of the fundamental human rights, loopholes and problems that need to be addressed are identified in this paper. The thesis argues that there are various incentives for underestimating the threat on the national level, empirical cases of failure to prevent terrorism on the national level, differing opinions on legal interpretations which all together calls for a stronger EU-level counter-terrorism competences and a clear EU-level definition of terrorism which encompasses the recent right wing terrorist attacks of Anders Breivik in Norway and the NSU in Germany.

Table of Contents

1	INTRODUCTION.....	3
1.1	BACKGROUND.....	4
1.2	THESIS OUTLINE AND CASE SELECTION.....	5
2	THEORY/PROBLEM STATEMENT/CASE PRESENTATION.....	7
2.1	RIGHT WING VIOLENCE AND RADICALIZATION IN EUROPE.....	7
2.2	THE EU DEALING WITH TERRORISM AND RADICALIZATION.....	12
2.3	TERRORISM FROM THE MEMBER STATES’ PERSPECTIVE.....	13
3	LEGAL JUDICIAL COMPETENCES IN THE TREATIES (LEGAL BASIS) AND ACTORS	16
3.1	COMPETENCES BASED ON THE TREATIES.....	16
3.1.1	<i>Legal basis to conquer xenophobia and hate crime</i>	<i>16</i>
3.1.2	<i>Legal Basis to Counter Terrorism.....</i>	<i>17</i>
3.2	EU-ACTORS IN ANTI-TERRORISM – INSTITUTIONS AND OFFICIALS.....	18
4	POLICIES AND STRATEGIES.....	21
4.1	THE EU COUNTER TERRORISM STRATEGY.....	21
4.2	THE EUROPEAN SECURITY STRATEGY	22
4.3	PROGRAMS AND NETWORKS INITIATED BY THE EU	23
5	LACUNAE – LOOPHOLES AND COMMON THREATS - ANALYSIS.....	24
5.1	REVIEWING PROGRAMMES, POLICIES AND ACTION PLANS	26
5.2	TERRORISM: INTERPRETING AND DEFINING THE T-WORD.....	29
5.3	APPROACHING THE PROBLEM – NOT THE DEFINITION	30
6	CONCLUSION	33
6.1	SUBJECT: LEGAL DIMENSION OF THE FIGHT AGAINST TERRORISM.....	33
6.2	ANTI-TERRORISM POLICY OF THE EU – IMPROVEMENTS AND SUGGESTIONS BY THE INSTITUTIONS OF THE EUROPEAN UNION	33
6.3	EU CRIMINAL LAW –APPROACHING THE IDEOLOGY AND MEASURING THE SCOPE OF RIGHT WING GROUPS IN EUROPE	34
7	BIBLIOGRAPHY.....	36

1 Introduction

“The European Day for Victims of terrorism is a time for commemoration and remembrance, a time for solidarity and encouragement. (...) The tragic events in Norway in July last year (2011) which led to the death of so many young people were particularly painful for all of us. It reminds us, that the threat of terrorism remains very real and that we can never let our guard down. We must undermine the efforts of terrorists to radicalize our youth and recruit new members. We must counter their message of destruction and despair. (...) Every day across the European Union people of all walks of life come together to challenge extremist ideas. This is a key priority of my mandate as European Commissioner and is also at the core of the anti-radicalization network I set up last year (2011). (...) Solidarity, tolerance and a firm belief in the respect of fundamental rights must remain our guiding principles.”

(Malmstroem, 2012)

1.1 Background

Since the terrorist attacks of 9/11 in the United States and the bombings in London and Madrid, terrorism and terrorist groups have dominated the agenda of international and European security discussions. Amendments to the Lisbon treaty with regard to the European Arrest Warrant and the Area of Freedom Security and Justice have been made according to the threats coming from fundamental Islamic groups. Since the actions of groups like the “Sauerland-Gruppe” in Germany became public, the focus started to shift from terroristic groups entering the EU and being financed by external force, such as Al Qaeda, to native Europeans engaging in organized groups to perform terrorist acts, which are not affected by border protection.

However, the terrorist acts performed by the Norwegian Anders Breivik and the following crimes committed by the German NSU (National Socialist Underground) in 2011 led the attention to the topic of what defines terrorism, and how the EU can protect ethnic minorities and immigrants from threats motivated by xenophobia and racism. This statement is also supported by statistics by Europol, „the threat of violent right wing extremism had reached new levels in Europe and should not be underestimated”. (Europol, Te-Stat 2012, 2012)

This new threat might seem small in comparison to the organized Islamic groups of Madrid and London. However, there are difficulties in detecting the former, since they are mostly organized by lone actors or organized underground groups with specific targets, only focusing on their home country. Radicalization of these groups takes place largely unnoticed, especially if they are “lone actors” such as Anders Breivik, killing in total 77 in 2011, mostly students and teenagers, to harm the Norwegian political system.

The NSU has been mentioned in the 2012 EUROPOL - report about terror-related activities in Europe. This case has been specifically important, since the murders of several Muslim citizens in Germany took place between 2001 and 2007 and were only detected as right wing crimes when the NSU published a video confessing the crimes in 2011. This stresses again the danger that lies in underestimating radicalization of political groups and the blind approach by national criminal authorities. The “Doenermorde” (kebab-killings), as the NSU murders were called throughout most of the investigation, were associated with drug related gangs and organized crime by immigrants.

Even though the radical right wing group NSU had been under constant observation by local and federal police, they were at no point in time connected to “Kebab-Killings” – so far latest investigations have shown that local authorities were supporting and covering up the actions of the criminal group during the investigation process.

This leads to the question inspiring this thesis. How can the security of the EU citizens be guaranteed, if certain issues that trigger such crimes are ignored or overseen? Should the EU as a central medium get involved in the research of right wing violence and terrorism? Might reframing the term “terrorism” be necessary to avoid excluding radical groups engaged in hate crime and terrorist acts against ethnic minorities? The competences in EU legal framework are found in the Lisbon treaty. The difficulties that this study will be dealing with lie in the legal and judicial frameworks of the Member States to interpret a national threat as an EU threat. In order to give an overview of the status quo, I will present the most recent cases of right wing terrorism and right wing organized crime, and compare it to the radicalization in other Member States. Furthermore I will lay attention

to the definition of terrorism in EU legislation and investigate which institutions are eligible to deal with the threats at hand, and which factors might interfere.

Concerning the normative approach, Europol included NSU and Breivik into their annual report and recommended collective EU action on this issue. The question of “Should the EU deal with right wing violence” is answered sufficiently, since the threat is posed against EU citizens with a different cultural background as well as native Europeans as instruments to proving a point. This study will analyze the status quo of right wing hate crime and terrorism in Europe as well as the current legal and judicial instruments protecting EU citizens from this type of crime. Furthermore, I will assess the difficulties in prosecution of this type of crime/ terrorism in terms of classification, prosecution and national sovereignty. Although Norway is not a EU member state, there is nothing exclusively Norwegian in Breivik’s ideological background, so the case can be said to have a wider European relevance.

The following research question will be addressed as follows:

To which extent are the competences of the EU sufficient to deal with internal (right wing) terrorism in the EU Member States?

The question rests on the assumption that the EU should deal with criminal and terrorist threats coming from the radicalization of the right wing groups collectively, since all EU citizens are concerned. It is motivated by the legal framework of the solidarity and the mutual defense clauses which require collective action from the Member States in case of a threat to one of the EU member states, and by the terrorism paragraphs in the Lisbon treaty. In order to facilitate the research on this topic the research question will be divided into three parts that will be assessed separately.

What is the status quo/ what are the relevant cases concerning the study?

Which actors are in charge and which (legal/judicial) competences exist to improve the level and the means of cooperation in the EU as referred to in the Lisbon treaty?

Which lacunae are apparent in these competences?

1.2 Thesis Outline and Case Selection

The study will feature an investigation of the status quo of hate crime and terrorism motivated by xenophobia and Islamophobia, as well as EU integration and cooperation in criminal matters. Within the context of this study, the status quo is described via an analysis of the relevant cases, including the recent incidents of 2011 of Breivik and the NSU. Additionally I will refer to cases of radicalization in other EU member states, where right wing motivated assaults have been planned or where new problem herds could possibly arise and therefore require the attention of the EU community. The question as we face it today is whether the European Union as an institution can be beneficial in the fight against this type of terrorism. Thus, I will elaborate in the following in which way the institutions of the EU, predominantly Europol, Eurojust and the parliament, are capable of tackling this phenomenon and where the problems and difficulties lie, legally and policy wise.

I will firstly give a general overview of the recent cases of right-wing terrorism as recorded by Europol in their 2012 TE-STAT report. Secondly, I will describe the existing policies, projects and legal basis for cooperation in the EU in conquering right-wing terrorism and extremism. In the following problems such as loopholes, phrasing and national differences among Members States authorities and judgments concerning terrorism and terrorist offenses will be laid out. In the analysis part the advantages and disadvantages will be evaluated and analyzed as well as the different threats and problems to enhanced cooperation and awareness of right-wing terrorism. Specific attention will be laid upon the phrasing and assessment of terrorism in general in the European Union and points of potential for improvement in the regulations and directives of the EU Institutions. Finally, a conclusion of the analysis will be given.

2 Theory/Problem Statement/Case Presentation

The problem of my study and background for my research question is: how to make sure that the Member States together with the EU institutions can fight effectively against right wing violence and terrorism. This thesis is based on the argument that the violent acts by the German NSU and Anders Breivik are to be classified as terrorist acts.

2.1 Right Wing Violence and Radicalization in Europe

This paper will merely focus on those crimes committed by people with a right wing, anti-multicultural attitude, because it is perceived as a new phenomenon in the framework of EU as a counter-terrorism actor, even though the concept of crimes and terrorism by right wing groups is not entirely new. Since the left wing terrorist groups from the 1970s vanished with the fall of the Iron Curtain, the main groups framed as being terrorists were individuals and organizations with an Islamic background, fighting in line with a fundamental Jihad ideology. The widespread media appearances of Al Qaeda and the 9/11 and Madrid and London bombings supported this picture, thus this type of terrorism has been with the focal point in the anti-terrorism policy of the European Union. However, terrorism not coming from organizations such as Al Qaeda, but from the so called “lone wolf” terrorists and secret underground groups with different motivations, has not been regarded, and the perception of right wing ideologies and parties remained a marginal issue on the agendas.

Using the actual crime statistics, the Special Eurobarometer 393 Discrimination in the EU 2012, states that discrimination connected to ethnic origin can be regarded as the most widespread form of discrimination in the European Union, with 56% of the respondents selecting this type. All over Europe, speeches, campaigns as well as publications and programmes spreading hate and intolerance are being allowed, promoted and encouraged by extremist and populist leaders of parties represented in several national governments, such as the populist right-wing Freedom Party of Austria (FPÖ), whose politician Heinz-Christian Strache posted anti-Semitic cartoons on his Facebook page. Anti-Semitic incidents in Austria “doubled from 71 to 135 between 2011 and 2012” (Parliament, 2013), and the “Austrian anti-racism organization ZARA reported 706 cases of racism in 2011” (Parliament, 2013), including crimes such as murder, racially motivated arrests, discrimination and hate speech merely directed against people of African origin and Muslims. In Greece, hate crime and hate speech are encouraged by the populist Neo-Nazi party Christi Avgi and 87 racist crimes have been recorded in the period of January to September 2012, including 15 cases connected to police brutality and racist violence. The main groups of victims among the 600 cases of racist crime recorded between 2011 and 2012 in Greece were people of Afghan or Pakistani origin, and Muslims in general. The problem reflected in these statistics, and found in recent cases such as a Pakistani migrant being stabbed to death by two neo-Nazis while cycling, lies in the lack of identification of these crimes as racist and motivated by hate. Regardless of the fact that the Greek LGBTB community recorded an alarming rise in the level of hate crime and racist crimes, the “Greek police reportedly do not recognize” these crimes as falling within the competence of the new hate crime units, and “refuse to accept complaints from victims of such crimes or from irregular migrants who are victims of hate crime” (Parliament, 2013).

According to the latest statistics published by Europol in their annual trend report, 174 terrorist attacks were recorded in the EU in 2011, 484 individuals were arrested in the EU for terrorist related offences, lone actors were responsible for killing two people in Germany and 77 people in Norway, and 316 individuals were dealt with in concluded court proceedings for terrorism charges (Europol, Te-Stat 2012, 2012). In September 2011 Europol registered heavy unrests in Bulgaria when an angry crowd of 2000 people attacked three houses of a leader of the Bulgarian Roma, shouting anti-Roman slogans, after a family van of Roma ran over and killed a 19 year old man by accident. As a consequence, many other violent demonstrations organized by nationalist youths took place in other cities, and the escalations led to the arrest of 127 people. The Bulgarian authorities registered this escalation as the most violent and extreme since 1997. (Europol, Te-Stat 2012, 2012)

Also in the Czech Republic the violence and tensions against Roma increased in summer 2011 after a member of the Roma attacked an individual with a machete in a bar near Varnsdorf in Bohemia. It seems that the Workers Party of Social Justice took advantage of the incident and established local and regional affiliated organizations and anti-Roma marches across the Czech Republic. (Europol, Te-Stat 2012, 2012)

Interestingly, according to Europol, not a “single religiously inspired terrorist attack on EU territory” has been reported by Member States, nor were any single-issue terrorist attacks registered” (Europol, Te-Stat 2012, 2012). This is important when considering the judgment of national authorities when characterizing a crime as a terrorist act. Europol mentions that in their opinion the killing of two American military personnel at Frankfurt Airport by a religiously inspired individual in March 2011 was a terrorist act, even though the German legislation did not consider this an option.

In 2011, statistics reported that the biggest category of hate crimes in Sweden was xenophobic and racist crimes, and that only 7% of hate crimes are solved by the police compared to a quota of 17% in the section of general crimes. An even worse case is found in Spain where there is no data available on racism and racial discrimination, even though a hate crimes and discrimination service had been set up in 2009 by the Barcelona prosecution office. Following these reports, the European commission against racism and intolerance (ECRI) expressed its concern that the lack of reliable data and the lack of relevance the Spanish lower governments give to racist crimes contributed to the impression that racism did not exist. In Germany, however, police and governments were aware of the fact that right wing groups existed, but didn't suspect those groups of being capable of committing murders and assaults. In many cases, as reported by Human Rights Watch in 2011, victims of hate crimes were facing inadequate treatment by law enforcement agencies and sometimes they were even treated as the aggressor and considered a general suspect instead of given the possibility to file a testimony against the potential aggressor.

While the incidents mentioned above reflect rather minor crimes dealt with purely on national level, two recent cases could be examples of what happens if ideologies and xenophobic hate crimes go a step further to meet the scope of a terrorist attack, and moreover, help identify why this step remained invisible to the national and international authorities and catch the countries by surprise.

On the 22 of July the 32 year old anti-Islamist Anders Behring Breivik set up a car bomb in Oslo's government district and killed 8 passengers, after having published a manifesto condemning multiculturalism in Europe. After that, he went to the Utøya island to a political youth camp two

hours outside of the capital, and disguised as a police man shot 69 people - mostly students and teenagers - leading to a total of 77 deaths. (Europol, Te-Stat 2012, 2012)

Shortly after the shooting he was captured by the police that had arrived after the damage was done. That day the police reported that the two attacks were connected, and the following day Breivik made an initial confession of the murders. (SPON, 2011) Before the manifesto and Breivik's voluntary statement were recorded and published, the international media reported an act of terrorism. However, after Breivik was revealed, the phrasing changed to possibly mentally ill mass murderer, not connecting him to any kind of ideological motive. The prosecution of Breivik did not take place within Europol, however the acts of Breivik were considered by Europol as a dangerous threat to the European Union and the security for citizens in the annual report on terrorist crime assessment TE-SAT for a specific reason (Europol, Te-Stat 2012, 2012). The relevance of Breivik's crimes to the right wing scene's threat to the EU can be supported by the fact that Breivik frequented European right wing and anti-Islam forums on the internet and claimed to be a member of a secret group of new crusaders with members from 8 European Countries. He stated his aim was "to free indigenous peoples of Europe and to fight against the ongoing European Jihad" (Kundnani, 2012) – a statement clearly directed to Europe, not only Norway, and to other right wing groups in the EU. Especially the British English Defense League (EDL) seemed to have caught his attention and the affinity seems to be mutual. They share the same counter jihadist ideology and in his manifesto (2083-A Declaration of Independence), Breivik expressed his admiration for the EDL being "the first youth movement to transcend the old-fashioned race hate and authoritarianism of the far right in favor of an identitarian defence of Western values against Islam." (Kundnani, 2012) In addition, his manifesto which is also directed to other European right wing groups, contains advice on weapons, bomb making and the use of chemicals to create explosives like the ones he used in his attacks. Although his links to members of the organization are considered speculative, he did claim to have several connections on Facebook. The EDL, even though up to this point mainly involved in demonstrations, regularly threatens the Muslim community in Britain with one member, Yaxley – Lennon, stating in September 2011: "We are here today to tell you(...) every single Muslim watching this video on Youtube: On 7/7, you got away with killing and maiming British Citizens. (...)You better understand that we have built a network from one end to this country to the other end. We will not tolerate it. And the Islamic community will feel the full force of the English Defense League if we see any of our citizens killed, maimed or hurt on British soil again!" (Kundnani, 2012)

Even though Norway is not a Member State of the European Union, the country is part of the EEA and the Schengen Agreement, benefitting from facilitated trade across Europe and open borders. Therefore, export as well as import of weapons, explosives and chemicals between EU and Norwegian borders can be observed and controlled. Reflecting on this issue, the 22nd of July Commission released an Official Norwegian Report, which indicated that the Norwegian Police Security Services (PST) had failed to pick up any of the trails that Breivik left behind while planning his attack, though not arguing that they should have caught him). Norway has been a participant of Global Shield, an international counter terrorism project launched in 2010 to map the export of 14 legally traded chemicals that could be used in the production of explosives. A civil servant from the Norwegian Customs Directorate being the contact point noticed a transaction from a Polish firm exporting chemicals. PST, at this point not participating in Global Shield, received a list of 41 Norwegians that included Breivik, but focused only on one individual that purchased on of the Global

Shield chemicals, while disregarding a follow up on the remaining names. At the same time, the Norwegian Customs servant was informed by the Norwegian Postal service about a worrying increase of low value parcels from Poland containing suspicious chemicals, information which was forwarded to the Directorate for Civil Protection and Emergency Planning. They recommended informing the police. After the PST received the information, it struggled to allocate it to an officer until the end of April 2011. Unfortunately, the officer announced he would be on holiday for 10 weeks and that the issue was being dealt with after the summer of 2011, the time of Breivik's attacks. The PST stated in its defense that generally irregularities concerning the transactions of weapons and chemicals alone do not justify further actions. According to the 22 of July Commission however, PST's approach could have been more active in following up the information they were given in December 2010 and do a follow up search of the 41 individuals in all available databases, as the lists then would have shown that Breivik also purchased a bullet proof vest, a helmet with visor and several weapon parts. Furthermore, if the PST had made use of the risk indicators of Global shield, Breivik's transactions from Poland would have indicated several matches that would have merited a closer follow-up.

The second case described in detail is that of the "Zwickauer Terrorzelle", also known as the "Nationalsozialistischer Untergrund" or short NSU which became public in summer 2011. A trio consisting of the German nationals Uwe Böhnhart, Uwe Mundlos and Beate Zschäpe was discovered to have been responsible for several bombings in areas with a high proportion of immigrants, and for the murders of eight Muslim citizens all across Germany, to that point publically known as "Dönermorde", and the murder of a police woman, between 2001 and 2007. This case is relevant for the argumentation of the thesis, because firstly, similar to the Breivik case, sufficient information transfer and in depth research on the suspects could have prevented at least some of the crimes committed, and secondly, the existence of right wing extremist groups especially in former eastern Germany has been known for many years, but the risk apparently underestimated. The major difference to the Breivik case is that the existence of the NSU had been well known among federal and national police officials long before the crimes began and the group went underground, and that the group had been periodically observed by the German National Criminal Office (BKA) until 2011, while the connection between the crimes and the group was not detected to the very end. Shortly before the trio went underground to pursue their plans, the police discovered nail bombs and other explosive equipment in the former residence of one of the suspects, but due to a lack of evidence to connect them to a crime, the suspect was released. Shortly after that, the responsible investigation teams lost touch of the trio and the first bomb exploded in a metro station in Cologne injuring 20 immigrants.

At several points in time, from the moment the NSU went underground to the point they were detected, investigators suspected connections between several bombings and bank robberies, but during the process important information and reports of the investigations vanished in the database of the Federal Criminal Office (LKA) Thuringen, which was mainly responsible for the investigation. While some of the bomb assaults and robberies were indeed connected to the NSU, the murders of 8 mainly Turkish immigrants were regarded as part of the drug and car mafia crime scene, and the victims as well as their relatives were considered suspects rather than victims that need protection.

The investigation of the murder of the police woman went completely in the wrong direction when a special investigation team was set up to follow genetic traces of an unknown woman that appeared

in more than 35 other crime scenes from 2007 to 2009 – until they found out that the traces belonged to an employee in the crime lab that accidentally contaminated the evidence.

The NSU reappears when investigation teams receive information about plans to supply the suspects with false passports in order to escape to South Africa. Because of an informant that had access to confidential information about the investigation and warned the suspects, the plan was cancelled. The investigation was continued and in 2011, the police cornered two of the suspects, Böhnhart and Mundlos, right after a bank robbery. But before they could be arrested, they escaped in to a caravan where both of them committed suicide. At the same time a house in the neighborhood caught fire, and the police was able to collect evidence that lead to Mundlos and Böhnhart being the murderers of the immigrants and the police woman. The woman that lived in the house was identified as the third member of the NSU, Beate Zschäpe, and finally the main evidence connecting the trio to all of the crimes, an animated DVD featuring pink panther and the confessions of the trio, was found. After old files had been opened, information about supporters of the NSU coming from the active German National Party (NPD) were published and a widespread network of supporters all over Germany and in the neighboring countries became center of the investigation.

While this case mainly concerns Germany, it does show that right wing ideologies and extremist groups, as they are found in many EU Member States, might be a bigger threat to the EU Member States than predicted, and since the motives of the NSU reflect the ideologies of many right wing groups in the EU, it becomes a supranational issue involving all Member States.

TE-STAT 2011 reports the trend that “the professionalism of their propaganda shows that right-wing extremist groups have the will to enlarge and spread their ideology and still pose a threat in EU Member States. (Europol, General Report on Europol’s Activities in 2011, 2012) In fact, Europol states in the most recent TE-STAT that “serious threats emanate not only from established terrorist organizations but increasingly from lone actors and small groups in EU Member States, whose radicalization takes place largely undetected. (...) The existence of a group of right wing terrorists in Germany, connected to alleged politically- motivated murders committed between 2001 and 2007, is another example and an illustration of the fact that it is extremely difficult to detect terrorists operating individually or in small groups.” (Europol, Te-Stat 2012, 2012)

Another point here is financing of terrorist activities since “religious or political boundaries are easily ignored if they stand in the way of the acquisition of funds” (Europol, Te-Stat 2012, 2012). These organizations were employing licit and illicit methods of fundraising including donations from sympathizers, as in the case of the NSU, and extortion. Particularly the internet is used for fundraising and support of terrorist or extremist activities also by self-radicalized terrorist supporters. Another growing concern referring to the cases of Breivik and the NSU is assumed to be the use of improvised explosive devices (IEDs) by terrorists of various affiliations, since the production of those devices requires expertise that can be found in open sources on the internet and is spread in various protected forums of the specific groups. Whereas the use of commercial explosives continues to decrease (Europol, Te-Stat 2012, 2012), IEDS are currently the main weapon of choice of ethno-nationalist terrorists in Spain, France and the UK, and were also used to cause the detonation in the government district in Oslo (Breivik) and to construct the nail bomb in Cologne (NSU).

Europol states, with regard to Breivik, that this case “illustrates the precursor chemicals are easily obtainable for anyone capable of inventing a plausible reason to procure them. The man responsible for the death of 77 people had been able to procure several tons of ammonium nitrate-based fertilizer to produce his explosives, on the ostensible grounds that they were intended for agricultural use. The materials were shipped from the member States.” (Europol, Te-Stat 2012, 2012)

Europol further suggests more focus on Internet forums and social media since they are “effective means to address targeted audiences including supporters who have no off-line link to terrorist organizations” and most of the forums cannot be easily observed because they are strictly controlled and the members were strongly encouraged “to use encryption software for direct communication” (Europol, Te-Stat 2012, 2012). In addition, the internet and the above described forums attract thousands of people and can enable radicalization, control and guidance of individuals by terrorist organizations and radicalized groups without undergoing the process of recruitment.

The principal concern of the EU however is religiously-motivated terrorist networks from the radical Islamist ideology. Most suspects with connections to training camps of Al Qaeda outside of the European Union were counted in Germany and the United Kingdom, and despite the failure of home-grown groups in the EU to actually commit a terrorist attack, they are seen as the biggest threat to the security of the EU. (Europol, Te-Stat 2012, 2012)

2.2 The EU Dealing with Terrorism and Radicalization

“The European Union and EU Governments still remain vigilant about the diversity of security threats”

(Kerchove G. d., *Countering Violent Extremism: Governments can't do it alone*, 2012)

Cooperation between Member States in conquering terrorism is established by the Lisbon Treaty. However, the direction in which the investigations and the support of Europol are used does not specifically cover the right wing terrorism. In the wording of the official EU Strategy for Combating Radicalization and Recruitment to Terrorism the Council arguments that “while other types of terrorism continue to pose a serious threat to EU Citizens, the Union’s response to radicalization and recruitment focuses on this (Al Qaeda) type of terrorism” (Council/COREPER, 2005). Two years after the terrorist attack of Anders Breivik the threat assessment of the European Union did don’t radically change to investigate the origins of this phenomenon and establish specific policies to deal with it. The main focus of the EU security policy is still placed on Al Qaeda related terrorism, aside from the fact that its core might today not be strong enough to plan a large scale attack on European ground. It is assumed that Al Qaeda is encouraging lone actors to attack western targets. (Kerchove G. d., *Countering Violent Extremism: Governments can't do it alone*, 2012)

The EU Antiterrorism Coordinator Gilles de Kerchove commented on the issue in an article published in 2012 criticizing the prioritization of Al Qaeda terrorism and the ignorance of other forms of violent extremism. “The EU and EU Governments still remain vigilant about the diversity of security threats,

especially given that left wing and right wing violent extremism are gaining importance. The attacks of Norway were a grim reminder of that” (Kerchove G. d., *Countering Violent Extremism: Governments can't do it alone*, 2012).

Getting Europol involved in cases like the ones mentioned above cannot be the primary solution, since a number of Member States “only share information that is related or relevant to cases they are directly involved in and in which they consider Europol’s role to be of benefit for their investigation”. (Kerchove G. d., *EU Counter Terrorism Strategy- Discussion*, 2011) The current rules of Europol and the Council decision leave it to the Member States “to provide Europol and Eurojust systematically with information concerning investigations, prosecutions and convictions for terrorist offences” if two or more Member States are involved (Kerchove G. d., *EU Counter Terrorism Strategy- Discussion*, 2011). According to Kerchove, all terrorist incidences were relevant to two or more Member States and that a “narrow interpretation of this provision can lead to delays in the provision of information because the impact on other Member States may not be apparent in the immediate aftermath of an incident and can only be established in the course of investigation” (Kerchove G. d., *EU Counter Terrorism Strategy- Discussion*, 2011).

2.3 Terrorism from the Member States’ Perspective

What defines terrorism? It is a fact that defining something or some group as terrorist is not only a legal but also a political issue. Europe and specifically the EU are very heterogeneous with independent states following mainly their own legislations and definitions, carefully avoiding any determining statement or definition. Whereas the US has long defined the Hezbollah as a terrorist organization, the EU did not recognize the organization as such. While the United States act as a nation and see the threat from fundamental groups as an attack to the freedom of its people, the European Union cannot make this decision that easily. There are countries more likely to face an attack of extremist groups than others, and to stabilize and keep diplomatic relations even to extremist groups the EU cannot act as a union in all cases. Given that right wing terrorism is a very sensitive topic that no European nation, let alone Germany the UK or France, want to be connected with, making this a threat to the European people can be difficult and hardly negotiable.

The NSU had only acted in Germany and is therefore primarily an issue the German legislation has to deal with. And how likely does it seem that Germany addresses the issue of a right wing terrorist threat on a European level? Violence that comes from within member states means of course a lack of preventative methods and therefore mistakes in the national legislation and justice. No EU state would like to admit that they might have underestimated a threat, that the threat originates in its homeland, let alone that this might be a threat to other member states. As we can already see, the Breivik and NSU issue have led to some investigations on a national level, but as long as there is no cross border organization openly posing a threat to the EU territory, the willingness to make this an EU wide issue is relatively low.

According to the EU anti-terrorism coordinator M. Gilles de Kerchove, putting groups on the list of terrorist organizations “is not a question of definition. (...) In order to put someone on the list, you first must meet the legal conditions. Then, the consensus of the 27 member states is needed on the fact that politically speaking- not legally- it is a good idea to put a terrorist organization on the list. In

the past, we have had organizations that would qualify to be on the list from a legal point of view but politically it would be a bad idea because there were diplomatic efforts going on behind the scene.” (Kerchove G. , 2012)

Especially his last point does not only refer to Hezbollah and similar organizations, but also to the right wing threat. He underlines this point again in an interview stating that “My job and counterterrorism in general, is not only about Al Qaeda. And it is not at all about Islam. The EU rejects violence regardless of the motivation – be it right wing, left wing extremist, separatists or Al Qaeda related terrorism.” (Kerchove G. d., 10 years, 10 lessons: What we should learn from post 9/11 era, 2011) Even though Kerchove states that “there is nevertheless a growing consensus worldwide that targeting civilians – be it in an armed conflict or outside an armed conflict- is terrorism and should not be accepted at all”, and therefore technically includes criminals such as Breivik and the NSU into the framework of terrorism, the biggest problem lies in the political relations between the member states.

In July 2011 the European Economic and Social Committee (EESC) published its opinion on the “Communication from the Commission to the European Parliament and the Council – the EU Counter Terrorism Policy: main Achievements and Future Challenges” COM(2010) 386 final. With regard to the economic crisis the EESC points out the growing dangers of radicalization not only from Islamist groups. ‘The EESC recommends that the term “terrorism motivated by bigotry, racism and xenophobia” be used in official documents of the EU and its agencies instead of “Islamist Terrorism” (2011/C 218/17).

Kerchove has repeated the importance of an efficient counter terrorism strategy and criticized the execution and organization of the current strategy. A good strategy “prevents ups and downs, including overreaction in the direct aftermath of an attack (...) and Counterterrorism fatigue in between attacks, equally unhelpful based on the paradoxical belief that when there have been no attacks there is no threat” (Kerchove G. d., 10 years, 10 lessons: What we should learn from post 9/11 era, 2011). He suggests a good and precise data collection in order to keep track of suspicious individuals and transactions especially focusing on lone actors like Anders Breivik. Lone actors are not considered in the traditional interpretation of the concept of terrorism, and are therefore hard to detect. The conflict with the general opinion of many heads of state and the majority of EU citizens to protect data and avoid becoming an observation state with passenger name records and mobile phone data is countered by Kerchove’s suggestion to “design robust data protection regimes, without which we will not get the support we need in parliament and public opinion” (Kerchove G. d., 10 years, 10 lessons: What we should learn from post 9/11 era, 2011). In order to ensure a safe handling of private data and an efficient use of the collected information he also suggests an increase of cooperation between the public and governmental instrument and the businesses specialized on those issues in order to ensure “measures for maximum effect with minimum impact on the public” (Kerchove G. d., 10 years, 10 lessons: What we should learn from post 9/11 era, 2011) It needed to be carefully considered whether the privacy of individuals or the security of the community is to be given priority. This argument is followed up when he criticizes the level of resilience of the citizens and the critical infrastructure stating “the more society is willing to accept risks the less its government is pushed to adopt intrusive counterterrorism measures that restrict freedom and privacy.” (Kerchove G. d., 10 years, 10 lessons: What we should learn from post 9/11 era, 2011).

The fact that most terrorist organizations have international connections does not only concern the border controls between the EU and Arab countries and observing the actions of Al Qaeda related individuals, as seen when the NSU tried to hide in South Africa and arranged visa and travelling documents. Terrorists, no matter from which side they are coming, “do not respect borders. Law enforcement must do so, but it needs to be more effective at working beyond them” (Kerchov G. d., 10 years, 10 lessons: What we should learn from post 9/11 era, 2011).

However, while looking for answers in the field of anti-terrorism policy that could explain why certain strategies do not or did not work in conquering the right wing threat, It might be useful to clearly identify the ideologies that form the basis for these crimes and which could help finding a different approach to the problem.

3 Legal Judicial Competences in the Treaties (Legal Basis) and Actors

“Terrorism is a threat to all states and to all peoples. It poses a serious threat to the security of the European Union and the lives of its citizens. The European Union remains determined to tackle this scourge.”

Anti-terrorism measures and policies are mainly directed by the Commission and the Council with cooperation with the EP. The communication and actions proposed are firstly and most influentially initiated by the Council and the Commission on a rather intergovernmental basis, with the individual states negotiating for their nations with respect to the wellbeing and functioning of the European community as such. The parliament functions mostly as the voice of the people i.e. the citizens of the member States, and the initiatives are driven by party orientation and individual independent approaches which often collide with the decisions and propositions of those on the intergovernmental side. Therefore the propositions from the commission and the Council are very general, not touching upon the sovereignty of the individual governments and broadly structured for every government to decide what to implement and what not to implement. The Parliament often opposes action plans and defends the individual freedom of the citizens and functions as a counter weight to the decisions made at state level.

3.1 Competences Based on the Treaties

3.1.1 Legal basis to conquer xenophobia and hate crime

The fundamental legal basis to conquering xenophobia, hate crime and violent acts against immigrants is laid down in Article 2 of the Treaty of the European Union (TEU) stating that the European Union’s Indivisible and universal values include respect for human dignity, non-discrimination, solidarity among other within the territory of the EU.

Article 14 of the European Convention on Human Rights “prohibits discrimination on any grounds such as (...) religion or belief and (...) on grounds of nationality” and therefore forms the fundament for TFEU Articles 10,19 and 67, which state that the EU shall aim to combat these types of discrimination by defining and implementing policies and activities, take appropriate action to combat these types of discrimination and “shall endeavor to ensure a high level of security through measures to prevent and combat (...) racism and xenophobia”. (Parliament, 2013) Article 83(2) TFEU enables the EU to adopt directives in order to “establish minimum rules with regard to the definition of criminal offences and sanctions in the area concerned if the approximation of criminal laws and regulations of the Member States proves essential to ensure the effective implementation of a Union policy in an area which has been subject to harmonization measures.” (Art.83 (2)TFEU)

Regarding the contributions to OHCHR on relevant legislation, good practices and reports related to child protection against many forms of racism, racial discrimination and xenophobia articles 21 and

51 from the Charta of fundamental human rights comes to attention: “The Charter of Fundamental Rights of the European Union prohibits in its Article 21 any discrimination on any ground such as sex, race, color, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age, sexual orientation or nationality. As stated in Article 51 of the Charter, its provisions apply to the EU institutions, bodies, offices and agencies and to Member States only when they are implementing Union law.”

The Council Framework Decision 2008/913/JHA of November 28 2008 defines a common and EU wide approach in criminal law and criminal justice in order to combat certain forms and expressions of racism and xenophobia by means of criminal law. It permits Member states to punish such conduct likely to disturb the peace as well as conduct with abusive or threatening content, by criminalizing such conduct even if the offender was at that time not present in the country. Additionally, it is stated in the decision that it has to be ensured by the concerned Member State, that the investigation of such crimes does not depend on a filed report or an accusation by the victim. (Union, 2008) Included in this decision are crimes such as public incitement to violence. It specifically states that: “The public condoning, denial and gross trivialization of Nazi crimes, crimes of genocide, crimes against humanity and war crimes, when the conduct is carried out in a manner likely to incite to violence or hatred against such a group or member of such a group, are also to be punished. These conducts are to be punished at national level by criminal penalties of a maximum of at least 1 to 3 years of imprisonment. Furthermore, for any other criminal offences than those covered by the Framework Decision, Member States are obliged to ensure that racist and xenophobic motivation is considered as an aggravating circumstance, or alternatively that such motivation may be taken into account in the determination of the penalties. Member States were obliged to take the necessary measures to comply with the Framework Decision by 28 November 2010.”

The Council Directive 2000/43/EC of 29 June 2000 deals with the implementation of the principle of equal treatments between persons irrespective of their racial or ethnic origin and directed to not only children but also all citizens of the EU and includes also social protection. Concerning the spreading of racist, fascist or similar contents in audiovisual media the Directive 2010/13/EU “prohibits incitement to hatred on grounds of race, sex, religion or nationality in all audiovisual media services, both those broadcast or provided on demand, whatever their means of delivery, including the Internet” also provided in a third country. The rules of this Directive are to be applied in the Member states individually whilst respecting the fundamental human rights but also while acknowledging the main points of prohibited behavior such as hate speech and seriously harmful content towards a special group in society. Actual application of this directive has been introduced in Germany and is now run by Europol in order to monitor extremist propaganda which is promoting violence and hate crimes.

3.1.2 Legal Basis to Counter Terrorism

Generally, the legal basis for counter-terrorism initiatives of the EU is found in the post- Lisbon Treaty versions, where is Articles 21-46 TEU the provisions on the Common Foreign and Security Policy (CFSP) are laid down. Equally important Articles 82-89 TFEU present provisions on police and judicial cooperation in criminal matters. The solidarity clause is enshrined in the Article 222 TFEU. It says in

Art.222(1), that “The Union and its Member States shall act jointly in a spirit of solidarity in a member State is the object of a terrorist attack or the victim of a natural or man-made disaster. The Union shall mobilize all the instruments at its disposal, including the military resources made available by the Member States, to: prevent the terrorist threat in the territory of the Member States” which includes preventing the terrorist threat in the territory of the member States and assisting a Member State in its territory, at the request of its political authorities, in the event of a natural or man-made disaster. (TFEU, 2010)

Art.222(2) states that, “Should a Member State be the object of a terrorist attack (...) the other Member States shall assist it at the request of its political authorities. To that end, the Member States shall coordinate between themselves in the Council” (TFEU, 2010). Art.222(3) states, that “The arrangements for the implementation by the Union of the solidarity clause shall be defined by a decision adopted by the Council acting on a joint proposal by the Commission and the High representative of the Union for Foreign Affairs and Security Policy. The Council shall act in accordance with Article 31(1) of the Treaty of the European Union where this decision has defence implications. The European Parliament shall be informed. For the purposes on this paragraph and without prejudice to Article 240, the Council shall be assisted by the Political and Security Committee with the support of the structures developed in the context of the common security and defense policy and by the Committee referred to in Article 71; the two committees shall, if necessary, submit joint opinions ” (TFEU, 2010)

Finally Art222(4) states that “The European Council shall regularly assess the threats facing the Union in order to enable the Union and its member States to take effective action” (TFEU, 2010).

In the field of right-wing terrorism this could apply to the question, if this threat really concerns more than one Member State and if the Member State is able to deal with the prevention and persecution of the criminals by itself.

3.2 EU-Actors in Anti-Terrorism – Institutions and Officials

EU Counter Terrorism is viewed as a cross-cutting task, where all three pillars in the four strands of work were being covered. In the 2nd pillar TEU the areas CFSP were affected by the individual measures, the 3rd Pillar TEU was covered by police- and judicial cooperation and the 1st Pillar was covered by areas that fall within the Community’s competence. There are several central EU Institutions involved in counter terrorism policy and strategic dialogue. While the European Council is mainly dealing with political monitoring, the high level political dialogue on Counter Terrorism is organized by the Council, the European Parliament and the Commission who meet once during each presidency for the purposes of inter-institutional coherence. Responsible for the monitoring of progress made by implementing the strategy is COREPER, that is regularly adapted and updated by the Counter Terrorism Coordinator and the Commission. The first European Counter Terrorism Coordinator was appointed following the Declaration on Combating Terrorism (Council T. E., 2004) in order to strengthen the coordination in the implementation of Counter Terrorism Measures of the Member States and within the EU. The European Counter Terrorism Coordinator has his office in the Council General secretariat and seeks to coordinate the work of the Council in the field of counter-terrorism, to maintain an overview of all the instruments at the Union's disposal, to closely monitor

the implementation of the EU counter-terrorism strategy, and finally to support better communication between the EU and third Countries while ensuring that the EU maintains an active role in the fight against terrorism. He does not have the right of initiatives, nor any decision making powers or a budget at his disposal. The importance of the role was reaffirmed by the European Council in the adoption of the Stockholm Programme (December 2009).

Gilles de KERCHOVE was appointed EU Counter-Terrorism Coordinator on 19 September 2007, taking over this position from the former Minister for the interior of the Netherlands, Gijs de Vries. On the European Day on remembrance of victims of terrorism in March 2012, Kerchove did not only address the incidents in Norway as acts of terrorism, but also the topic of terrorism in general and expressed a warning and a need for a different approach from the member states.

The legal basis for Europol was provided by the Europol Convention with its entry into force on 1 October 1998, with its establishment being foreseen in the Maastricht Treaty of 1992, now Article K.3 TEU. Europol is not a typical EU agency, since it was founded as an international organization, funded directly by Member States and holding its own legal aquis. Europol's legal basis changed when the Europol Convention was turned into a Council Decision giving Europol an extended mandate and improving its operational and administrative capabilities. In January 2010, after the launch of the Council's decision (2009/371/JHA), Europol became a complete EU agency and is now seated in The Hague and directed by Europol Director Rob Wainwright. It was originally established to facilitate the exchange and the analysis of criminal investigations and to improve the efficiency, effectiveness and cooperation between EU police offices in the prevention and conquering international crime and terrorism. It supports EU Member States' investigation offices in topics like Illegal Drug trafficking, terrorism, human trafficking, piracy, money laundry and money forgery by using the information and analysis system SIENA, delivering strategic reports on the basis of information given by the Member States, delivering operative analyses of national operations, and providing specific knowledge and technical support for investigations. Its annual reports called TE-SAT provide an overview of criminal proceedings and the threat of terrorism and other criminal offences to the European Union and specific Member States, as well as delivering accurate crime statistics. Besides that Europol delivers on a regular basis recommendations for actions on specific topics. The individual connection between Member States and Europol is found in the Europol National Units (ENU) in each Member States creating a link between the national police authorities and Europol and through a network of liaison officers in The Hague. Europol's Computer System provides wide databases including the European Information System (EIS), storing data of individuals suspected or likely to commit an offense in Europol's remit, and the Analysis Work Files (AWF).

Eurojust is the EU Agency for Judicial Cooperation in Criminal Matters and was founded in 2002 with the purpose to support and improve the coordination of Investigations and persecution of criminals between the judicial agencies of the different Member States, if two or more nations are involved. Besides that, it is supposed to improve the cooperation and coordination between Member State's agencies in terms of European arrest warrants and a facilitation of the international judicial aid. In some cases Eurojust can also support investigations and judicial processes if only one Member State or a third state which unfortunately can be a disadvantage for the financial interests of the European Community. To keep the spectrum narrow and to consider mainly the most important cases, the focus of Eurojust lies in the field of terrorism, human trafficking, drug trafficking, fraud and money

laundering. Eurojust cooperates with the European Judicial Network, Europol and OLAF and consists of a collegium of one representative of each of the 27 Member States. All members have a background related to experiences as judges, state attorneys and police officers.

4 Policies and Strategies

As a reaction to the terrorist attacks in Madrid (March 11, 2004) and London (July 7, 2005), the EU proposed the introduction of institutional and legal measures related to Counter-Terrorism. In 2004 a legally binding Declaration on Combating Terrorism was adopted by the European Council, calling the Member States to put the measures approved after 9/11 into practice. Involvement of the civil society as well as preventing and being prepared for terrorist events were included in the plans of making the fight against terrorism a fundamental part in EU policy. The Commission, the Council and the Parliament set up two communications dealing with two important approaches to further develop anti-terrorism policy as part of EU policy:

The first communication *COM(2004)698 final* deals with prevention, preparedness and response to terrorist attacks within the scope of the AFSJ and seeks to integrate and combine measures to make the policies and actions plans more efficient. The second communication *COM (2004) 701 final* deals with preparedness and consequence management and is directed towards dealing with a terrorist attack that has been suspected or already executed, and includes crisis management and civil protection as main points of action. This second communication forms the basis for the mutual defense and solidarity clauses of the Lisbon treaty by referring to the Civil Protection Community mechanism established in October 2001. It features measures and instruments to improve preparedness of the Countries involved and the facilitation of mutual assistance in event of a disaster and real time support in emergencies within that scope. One unit designed to provide assistance is the Monitoring and Information Centre (MIC), which is responsible for receiving and dealing with requests for assistance from the countries facing a threat and forwarding them to all other countries. Technical aid and information management are supposed to provide assistance in several forms of disasters such as fires, industrial disasters and terrorist attacks. Several programs have been set up including training, simulation and courses on psychological aftercare and a database established by the Commission stores information supplied by the member states experts and civil protection teams. On the basis on this database and the evaluations drawn from the information can be used as a policy tool for the EU. Furthermore Community rapid alert systems and rapid response systems (RAS) have been set up in order to increase the efficiency and effectiveness of information exchange networks. Further measures included the formation of the EU Joint Situation Center (SitCen) and the institutionalization of cooperation related to Counter Terrorism with the Police Chief Operational Task Force (PCOTF).

4.1 The EU Counter Terrorism Strategy

The EU Counter Terrorism Strategy was introduced by the Council of the European Union in 2005 under the title “The European Union Counter-Terrorism Strategy” in a cooperation of the EU and the United Nations. It is supposed to offer a “framework for Member States to coordinate their policies and share information about the responses they are developing at national level.” (Kerchov G. d., *Countering Violent Extremism: Governments can't do it alone*, 2012) It has since its introduction been augmented with measures not only related to terrorism exclusively, but moreover developed to respect human rights and increasing the safety in the EU while combatting terrorism.

The EU Counter-Terrorism Strategy consists of the focus of four major goals:

Preventing Terrorist Attacks - This objective deals with the beginnings of terrorism. Its aim is to prevent persons from becoming involved with terrorist activities and extremist groups, and therefore includes an analysis of the causes for terrorism in order to be able to develop counter measures in the very beginning. (Council T. , The European Union Counter-Terrorism Strategy, 2005)

Protecting from Terrorist Attacks- The protection focuses mainly on the security for citizens and the infrastructure of the affected Member States. The vulnerability of certain regions and places, as well as of potential victims, is being assessed and strengthened from the inside. FRONTEX, the Schengen Information System II (SIS II) and the Visa Information System (VIS) are the instruments to maximize the effectiveness of border controls. (Council T. , The European Union Counter-Terrorism Strategy, 2005)

Pursue and Investigate Terrorist Attacks - This Pillar of the European Security Strategy is aiming at the persecution of terrorists across borders under the framework of fundamental rights and international law, as well as organizing a blockage of attack materials such as explosives, disrupting terrorist networks and preventing the misuse of non-profit associations. (Council T. , The European Union Counter-Terrorism Strategy, 2005) The main instruments for this pillar are EUROPOL and EUROJUST, in order to be able to prepare joint analyses and the exchange of information. Analyses should be carried out by the Joint Situation Centre (SITCEN) and Europol; further responsive instruments are the European Arrest Warrant, the European Evidence Warrant, Joint Investigation teams, the principle of availability of law enforcement information, VIS and SIS II and the Financial Action Task Force (FATF), with the Commission being an active, recommendation-giving member. (Council T. , The European Union Counter-Terrorism Strategy, 2005)

Response to Terrorist Attacks - Under the assumption that terrorist threats cannot be completely prevented, this pillar deals with the accurate response mechanisms to terrorist attacks. Therefore the ESS regards the full use of the existing structures and the European Civil Protection Mechanisms as well as the use of the EU database as necessary instruments (Council T. , The European Union Counter-Terrorism Strategy, 2005)

4.2 The European Security Strategy

The European Security Strategy (ESS) was adopted in December 2003 under the title of “A secure Europe in a better world” and can be seen as declaration on combating terrorism inside the European Union. The ESS commits the EU to a multilateral approach to security challenges and embraces a comprehensive concept of security. It is an alternative approach to unilateralism using comprehensive or holistic measures to security. (Quille, 2007) In the ESS it is stated, that the Member States of the EU will cooperate in order to tackle the security priorities “in a framework that emphasizes multilateral institutions and the rule of law” (Quille, 2007). The ESS is strongly connected to the other security strategies and programs of the EU and its global perspective is giving the framework for the EU internal security strategy. (MEMO/10/598, 2010) It identifies terrorism as a major threat to the interests of the European Union (Quille, 2007) and therefore it should be tackled through effective multilateralism such as the strengthening of national responses through EU synergies and by identifying and addressing root causes on the basis of regional dialogues and community instruments. The strategic objectives of the ESS are developed by a comprehensive security concept and a multilateral approach and include the tackling of given threats, the extension

of a security zone within and around Europe and the strengthening of the international order. In total the Security Strategy identifies five key threats facing Europe and the European Union: Terrorism, Proliferation of Weapons of Mass Destruction (WMD), Regional Conflicts, State Failure and Organized Crime. With regard to the policy implications for Europe, the EU has, according to the ESS, be more active in pursuing its strategic objectives to enable an effective countering of new threats, to increase the capabilities concerning the European defense agency and to increase cooperation between member States, since multilateral cooperation and bilateral partnerships with the key actors are seen as a priority and necessary to address the threats the EU is faced with.

4.3 Programs and Networks initiated by the EU

The Stockholm Programme is built upon the Tampere Programme and the Hague Programme, and is representing the European Union's priorities for the area of justice, freedom and security for the period of 2010 till 2014. It was adopted by the EU heads of State and Government at the summit in December 2009. The Stockholm Programme focuses on the priorities of a "Europe of Rights", a "Europe of Justice", a "Europe that protects", "Access to Europe", a "Europe of Solidarity" and a "Europe in a Globalized world". Together with the action plan, the Stockholm Programme is a political document with no legal force or legally binding obligations for the Member States. It is laid emphasis on the point of Europe of rights, that racism and xenophobia are tackled. It strives for a good balance between measures for increased security and measures to strengthen the rights of the individual. For instance, for an increased security in order to combat terrorism and organized crime several measures are named in the action plan.

The radicalization awareness network (RAN) was established by Cecilia Malmström, Commissioner for Home affairs. Its function, as already seen in the naming, is mainly directed to radicalization rather than extremist acts such as terrorism. It is an "EU wide umbrella network of practitioners involved in countering violent radicalization and extremism" (Malmström, 2012) It is a network of networks set up on a voluntary basis including "practitioners' field experts and local actors youth leaders, civil society organizations, including victims groups as well as academics, policy makers, law enforcement and security officials" with the purpose of identifying good practices and to promote the cross-fertilization and exchange of information and experiences in different fields of countering violent- radicalization and extremism. (17594/1/11 REV 1, CON) The background for RAN is the "EU Internal Security Strategy in Action" adopted by the Commission in 2010, and the network belongs to the first pillar of the ESS on prevention of radicalization. In recent context it was referred to by Anti-Terrorism coordinator Giles de Kerchove as an initiative "to prevent violent radicalization among youth" (Kerchove G. , 2012).

5 Lacunae – Loopholes and Common Threats - Analysis

This section contains an analysis of the information about treaties, acts and institutes given above regarding the challenges and problems facing the European Union in terms of efficiently detecting, preventing and combating terrorism motivated by xenophobia, nationalism and anti-Islamism. It will include a precise evaluation and analysis of the wording in the treaties and the directives the counter terrorism policies are based on. Furthermore this section seeks to uncover the loopholes in the treaties and assesses the implementation of the policies since their entry into force.

The assessment of terrorist threats on a European level is bothered with several loopholes. One specific lacuna in this respect is the field of specific identification of a terrorist motivation. Religion, political ideology etc. as well as individual, lone wolf or organized group actors and computer, electronic or other forms of action are incorporated in the same heading of terrorist offences and not differentiated. Also, after the Commission was criticized to include urban violence in the terrorism definition, it was officially omitted aspect from the association with a terrorist act. (COT, 2007)

However, what made the definition difficult was the fact that, when including anti-national or politically extremist violent actions against the state or the population, there lies the danger of limiting the peoples right of demonstration and the “potential for Member States to limit the scope of political action by encapsulating (...) political protests and the right of self-determination under the terrorism label.” (COT, 2007) Because of this danger, the Council has included a non-binding paragraph stating that “the definition cannot be construed so as to argue that the conduct of those who have acted in the interest of preserving or restoring these democratic values(...) could now be considered terrorist acts”(Van Ginkel, 2003:224) Looking at the definitions of terrorism in the individual member states, terrorism is often included in the clauses under their respective criminal codes and leaving the judicial system to decide which threat is at hand. The common position of the EU in that matter is therefore depending on the member states’ interpretation of the obligations.

According to Konstatidines, the structure of the solidarity clause and its implications could be a “challenge to the traditional notion of criminal law being firmly attached to national structures” (Konstatidines, 2011), meaning in particular the cooperation with respect to the criminal justice system, the national police forces and the Member States ‘secret intelligence services. Applying the implications of the solidarity clause to the latest problems and to the main research question of this thesis, Article 222 would possibly be applicable in this context. It specifically states that “the Union and its Member states shall act jointly in a spirit of solidarity if a Member State is the object of a terrorist attack or the victim of a (...) man-made disaster.” And further, that the Union “shall mobilize all the instruments at its disposal, including the military resources made available by the Member States” to “prevent the terrorist threat in the territory of the Member States” and to “assist a Member State in its territory, at the request of its political authorities, in the event of a terrorist attack” (Art. 222 TFEU).

However, as clearly as the clause states joint action and support for a Member State, as broad is the definition of methods and situations it applies to. Firstly, in order to prevent a threat, the threat has to be defined as such, and further, communicated as such. This specifically concerns situations in which a terrorist threat or a man-made disaster is happening in one Member State only. In this case, it depends on the evaluation and analysis of the concerned Member State to communicate the

threat as one that could concern the whole European Community. This is specifically emphasized in the former Article III-329 and in the second half of Article 222 TFEU of the Lisbon Treaty, where it says “at the request of its political authorities” (Art 222 1. a) TFEU). Concerning the threat assessment “the European Council shall regularly assess the threats facing the Union in order to enable the Union and its Member States to take effective action.” However, an efficient threat assessment depends on the willingness of the Member States to share its secret service data with the specific institutions. Therefore the importance of the Solidarity Clause is directly connected to the assumption that a Member state requests assistance but a priori only few Member States would actually transfer their national issues to the Union’s responsibility. (Fuchs-Drapier, 2011)

Art.222 (4) TFEU enforces the legal obligation for the Member States to act; it is, however, somewhat vague about the procedures it entails. “At the request of its political authorities” also means that the threat needs to be addressed and the attack considered being a threat – from the Member State that is concerned and of its fellow Member States. “The Lisbon Treaty does not contain any details of any kind on the application of the clause, details which would have been an extremely useful guide for the legislator in its task and would therefore have facilitated the rapid adoption of the implementing measures” (Keller-Noellet, 2011) Concerning the practical aspects of the Article, there are mainly two ways of measuring the justification for application. There is the magnitude of the event that might overwhelm the response capacity of a single Member State, and if it is of cross- border nature and has a “multi-sectorial impact”. (Keller-Noellet, 2011) Another point of concern in the phrasing of the treaties could be the wording of “territory of the Member State” which, according to Keller-Noellet, could be interpreted mainly “strico-sensu”. This means a clear threat to for example an embassy, European Delegation, or incidents on ships or planes of the Member State. (Keller-Noellet, 2011) The incident in Norway would, according to his opinion, qualify for an EU-action discussion, the murders of the NSU and the radicalization of the violent extreme right in Germany and across Europe would not qualify.

Regarding the case of the NSU in Germany and the case of Anders Breivik in particular, an effective communication on the national level and Schengen level, as well as an active participation of police offices in Projects such as Global Shield, could possibly have prevented some of the attacks.

The first problem in this perspective is the communication on the national level. The NSU investigations in Germany were connected to a lack of internal communication between the special investigation force of the LKA and the BKA and the federal government in Thüringen. In the Breivik case the communication issues were linked to difficulties in organizing who was responsible at that time and the follow-up of communication between the Customs Directorate, the Postal service and the PST, and especially the lack of will and resources of PST to further investigate leads related to capacities rather than intention. But also between national and international officials the roles were not clearly defined, and the need for investigations of transnational purchase databases through Global Shield was not clearly expressed towards the national police departments. Naturally, the incidents could not have been addressed on EU level, let alone addressed by national German authorities as mentioned in the treaties. This specifically points out where the solidarity clause and the EU cooperation are lacking strategy and organization.

5.1 Reviewing Programmes, Policies and Action Plans

The Stockholm Program is mainly in one respect problematic that is its lack of legal binding premises. It does come up with a structure breaking the approach down to several sub points, however, it is claimed that the Stockholm Program simply papered “over pre-existing cracks, leaving the EU with a continued credibility gap in this important and developing area of cooperation.” (Brown, 2011) As an internal security program, and in this respect the third one in the history of the EU, the Stockholm solution did not push forward the level of cooperation through regulations or fixed agreements, it just tries to cover up the faults of the former programs through even more paper that eventually is relatively meaningless, because it is not binding. One major principle in this context is: “ a mutually reinforcing relationship between security, freedom and privacy; cooperation and solidarity between Member States, involvement of all EU Institutions, addresses the causes of insecurity, not just the effects and enhancing prevention and anticipation” (Brown, 2011) that sounds very promising, but crimes such as terrorism and hate crime, even though they might share a common anti-European, xenophobic ideology, will be viewed, as long as they are confined to one country, through different lenses of national laws and criminal institutions. Even though there are EU surveys and studies comparing and assessing the threat terrorism poses to the European Union’s member states as mentioned in the case presentation, the data collected reflects how the individual member States perceive the situation and the danger of the threat.

What is completely ignored in this respect is the actual nature and scope of terrorism in any form confronting the Member States. What does terrorism mean, who and what does it include? This is a question reflected in almost all counter terrorism measures, policies and agreements on EU level. Because as long as the estimation and classification of the threat is left to the effected member state only, there can never be a system of solidarity and cooperation, since one approach might not fit into another States framework. One approach to tackle this problem is to classify a new group of terrorists as “Cluster terrorism” (Brown, 2011) including left, right, nationalist and separatist groups or lone wolf actors, all being narrowed down to the key states: UK, France, Spain, Germany, Italy and the Netherlands. Then the solidarity, and especially the preventative cooperation aspect, is also narrowed down to those key states. To Brown, Internal terrorism in the EU is not necessarily a threat to all 27 Member States, and it would be bureaucratically and organizationally more efficient and effective to run the preventative cooperation programs and the enhanced police cooperation mainly in those key states, possibly also neighboring or in-between States. Including EU agencies and institutions such as Europol as a routine in the information sharing, as well as making it a rule rather than an exception for special cases for the member states to share certain information on a common EU level, could help clarifying the issue of threat. In a framework built upon these rules, inconsistencies and similar threats arising in several Member States would be automatically classified and detected and could be tackled and dealt with on EU level, rather than waiting for a member state to approach the Union. Looking at the status quo, the Commission argued that “the continued existence of bi- and multilateral agreements between member states which either geographically restricted or do not oblige member states to provide information” (Brown, 2011) is one of the main obstacles to wider European information transfer. In fact, when Eurojust in 2008 examined the reasons why it did not utilize its powers to act collectively as a college, the conclusion was, that “Member States have reached agreements themselves through cooperation and coordination” (Brown, 2011). This statement reflects the tendency of the Member States to act in smaller

functional interest groups instead of sharing everything on EU level, and this is actually something the EU can use. To group the Member States in interest groups could make the information sharing more efficient, strategic and less federal. The willingness of a Member States to share relevant police information might be higher when only shared with a few fellow member states facing similar issues than with the whole group of Member States.

In the end, Europol remains a rather weak counter terrorism actor, despite the expanded mandate: Its lack of power on a supranational level under the term of the Europol Convention and the current treaties as well as its lack of trust by Member States consequently lead to a lack of indispensable functions in the fight against terrorism and finally to fewer supranational delegated functions. The whole framework on counter terrorism, be it political, administrative or judicial, differs strongly between Member States, for instance national counterterrorism is in some Member States delegated to police agencies and in others to intelligence agencies. And in several cases these agencies do not want all the efforts to be centralized in Brussels, mainly because intelligence sharing between Member States is voluntary and even though some agencies might regularly share information, they can be reluctant to sharing specific information. Thus the data bases of Europol are only a limited source of information and Member States and their agencies keep the focus on bilateral and multilateral networks outside of the EU framework. With the USA being a major actor in international terrorism and providing databases such as Global Shield, Europol as it is now, only has little space to evolve in the framework of intelligence sharing connected to counter terrorism on international level.

There are two Council groups, the Terrorism Working Party and the COTER, which got involved straight after the attacks in Norway. Convened by the Polish Presidency, on the 28 of July 2011 they got together in order to discuss the further developments, and the need for intensifying the emergency and intelligence driven policy approach guiding the Internal Security Strategy (ISS) and the initiatives of the Commission on counter-terrorism (PRES/11/265, 2011). The threat has been recognized as such by the European Member States; however it also uncovered several deficiencies of the European Counter Terrorism Strategy. Ensuring the security and the trust of the EU citizens, it is important to close the gap between the research in social science and the European Policy making, since only through a realistic picture made by professionals the situation can be assessed correctly. (Carrera, Faure Atger, & Guild, 2012)

One of the main areas of concern in the EU Counter Terrorism strategy is that its justification is non-evidence based, and therefore it is unclear what the EU considers a threat to the Union and how to approach it with common policy responses. Especially the Breivik case led to reconsiderations and reevaluations of the strategies guiding approaches and principles (Carrera, Faure Atger, & Guild, 2012). As mentioned above, the very first assumption after the attacks was that a group of international terrorists probably connected to Al Qaeda committed the bombings and murders. It came as a surprise that Breivik appeared to be a so called “lone wolf actor” demonstrating against national and EU politics and multiculturalism in Norway and Europe. This could lead to the impression that the EU is in some points prepared and cooperates on a certain level within the framework of the EU counter terrorism strategy, but is merely focusing on a certain type of international terrorism, that is, Islamic radicals. Thus the EU might have to improve the threat assessment.

After the first Al Qaeda attacks in Europe were committed, the EU reorganized its security strategy in order to be prepared for such a threat and most importantly prevent it, but objectively the damage was already done and those involved could only learn from their mistakes. The cases of Breivik or the NSU are not as simple as that. Firstly, it is a big step for a country or an institution like the EU to admit that terrorist organizations are coming from the population, and in these two cases not even immigrants or Islamic converts. Putting such a threat on a supranational level might as well indicate weakness or lack of control which no nation likes to admit. Because of this, it is important to move it from the national level to the EU level, since it is a threat that concerns all member states: no state can guarantee that this won't happen in their territory, and no nation alone should be handling this issue by itself. That is what the EU counter-terrorism strategy and institutes like Europol were founded for. Some countries might be more prone to such attacks than others, and this is where a threat assessment becomes relevant.

Before the attacks in Norway Europol reported a significant professionalization in right wing propaganda, but so far nobody suspected that this could lead to crimes connected to mass murder, even though at that time the crimes of the NSU had already taken place. Looking at the measures that have been taken so far, it is visible that the EU focuses on counter radicalization. This is of course a valid and valuable instrument for tackling the problem, but it is questionable if this is sufficient to prevent such crimes in the future. Another measure taken by the EU was to propose control regulation of the trade with industrial fertilizers and other legally tradable explosives, previously tried and failed in 2010. (Carrera, Faure Atger, & Guild, 2012)

This seems to be a logical response to the attacks; however a regulation of those goods provokes discussions about fundamental rights: how would the agencies determine what a suspicious transaction is? Already while tackling the problem of Islamic terrorism, the issue of general suspects came into discussion, but a supervision of Islamic organizations and groups seemed legitimate considering it was dealing with a minority based outside the European Union. It could be very difficult to observe and keep record of people dealing with these goods, and national politicians will not likely desire to make their citizens general suspects without sufficient evidence. However, this remains a term of interpretation. If Breivik, after postal service discovered some transactions of chemicals from Poland, would have been routinely checked in the data base of Global Shield for instance (at this point in time there were only 41 suspicious purchases therefore the search would have already been refined) by the PST) they would have seen several matches to other suspicious purchases making him a subject of investigation. As discussed previously, Breivik avoided suspicion since this can of lead was not at all prioritized by the security service. The question is when law enforcement authorities shall have the right to use legal transactions as the justification for further inquiries. Security systems and policies are usually criticized first for making individuals a suspect and promoting the idea of general suspicion. The Norwegian security had been criticized in the 90ies for this behavior and had thus developed a caution about caution to not start investigations on every suspect right away. It should be the countries and also the EU Member States' goal to establish a general procedure when it comes to checking databases about suspicious purchases that ideally matches the different purchases of an individual and rank it in a scheme of level of danger or suspicion. This way, investigation could only been justified if the individual matches several criteria in several purchase databases and the focusing on real suspects could be more efficient in the end.

5.2 Terrorism: Interpreting and Defining the T-Word

One of the major problems when facing the issue of terrorism is the phrasing, since this concerns international law as well as the estimation of concerned States. Within the EU it is even more difficult, since the term terrorism is laid down in the treaties: it is, however, not clearly defined, and is open for differing interpretations. This creates room for problems and disputes: as critics state, the European Convention on the suppression of terrorism “does not offer a comprehensive definition of terrorism, since its objective is of a procedural nature (the prosecution of terrorist acts by contracting parties” (Dumitriu, 2004).

“Terrorisms threat to democracy, human rights and general social development has been reverberated in numerous conventions and official government documents, including the Commission of the European Communities in their proposal for a Council Framework Decision on Combating terrorism of September 2001” (COT, 2007) A clear definition of terrorism in the EU could facilitate several processes such as executing international obligations based on the Convention, and avoid the confusion between political offences and terrorism. Three documents are of particular interest due to their use of a definition of terrorism: the Common Position on the application of specific measures to combat terrorism, EC Council Regulation No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism (see Table 10) and the Council Framework Decision on Combating Terrorism of 13 June 2002 (2002/475/JHA). (COT, 2007)

Whereas the September 11 events set off some major developments and the actual legal basis for combating terrorism and cooperation on this issue is stated in the Treaty of the European Union, a clear phrasing of the matter is nowhere to be found. In the Council Framework Decision 2002/475/JHA of June 2002 the definition of terrorism is stated as follows: “an objective element, as it refers to a list of instances of serious criminal conduct (murder, bodily injuries, hostage taking, extortion, fabrication of weapons, committing attacks, threatening to commit any of the above, etc.); a subjective element, as these acts are deemed to be terrorist offences when committed with the aim of seriously intimidating a population, unduly compelling a government or international organization to perform or abstain from performing any act, or seriously destabilizing or destroying the fundamental political, constitutional, economic or social structures of a country or an international organization (2002/475/JHA)”.

Furthermore, in the amendment of 2007 it is clearly stated that “The achievement of a legal framework common to all Member States, and in particular, of a harmonized definition of terrorist offences, has allowed the counterterrorism policy of the European Union to develop and expand, subject to the respect of fundamental rights and the rule of law” (2008/919/JHA), but also that “The definition of terrorist offences, including offences linked to terrorist activities, should be further approximated in all Member States, so that it covers public provocation to commit a terrorist offence, recruitment for terrorism and training for terrorism, when committed intentionally”. The definition up to now is "terrorist offences include the following list of intentional acts which, given their nature or their context, may seriously damage a country or international organization were committed with the aim of:

- (i) seriously intimidating a population, or*
(ii) unduly compelling a Government or international organization to perform or abstain from performing any act, or
(iii) seriously destabilizing or destroying the fundamental political, constitutional, economic or social structures of a country or international organization”

The EU definition of terrorism is widely considered as being too vague and makes it difficult to implement cooperation measures among the Member States. This difficulty is reflected in the example of the Hezbollah, who is blacklisted as a terrorist group in the US but not recognized as such by the European Union. (Allam & Gadzinowski, 2009) Since the attacks have been committed separately in single Member States, the definition of terrorism becomes a clear obstacle to the co-operational combating on EU level. However point i) and iii) of the definition could actually be applied to the right wing terrorist acts, since both, an intimidation of a big part of the population, Germany currently has about 15 million citizens with immigrant background, and the social structures are being destabilized. Groups such as the Basque National separatist Organization (ETA) in Spain and the IRA in Ireland have been widely considered as terrorist threats, but to the national identity of a country. Since they were of separatist nature, did not concern any other country or proclaimed a cross border ideology, they have been dealt with purely on national level.

5.3 Approaching the Problem – not the Definition

There are several articles to be found in both documents that can be used in the elaboration of the right wing terrorist threat and could work as a tool to solve the problem as addressed in this thesis.

In Article 1 Terrorist offence are defined and elaborated. According to the document a crime is considered terrorism if the aim is” seriously intimidating a population, unduly compelling a government or international organization to perform or abstain from performing any act, or seriously destabilizing or destroying the fundamental political, constitutional, economic or social structures of a country or an international organization” (Council T. , 2002/475/JHA, 2002) Article 2.1 of the Framework decision 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. Structured group shall mean 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.” (Council T. , 2002/475/JHA, 2002) Article 3 about the offences linked to terrorist activities was amended by the framework decision of 2008 and is relevant regarding the two major cases described in this thesis: the Breivik Case and the NSU case. The NSU was a group of 3 actual actors building the bomb and committing the murders, supported and organized from a bigger underground network providing the center with information, material and shelter. Breivik as a lone actor does not fall into this perspective, however it has been considered that Breivik was in contact with individuals sharing similar or the same ideals and plans.

In Article 3 1.a) it is stated that a public provocation to commit a terrorist offence “shall mean the distribution, or otherwise making available, of a message to the public, with the intent to incite the commission of one of the offences listed in Article 1(1)(a) to (h) , where such conduct, whether or not directly advocating terrorist offences, causes danger that one or more such offences may be committed.” (Council T. , 2002/475/JHA, 2002) This article is directly applicable to the publications of

the NSU and Breivik: The NSU published a video message mocking the politics and the police officials and encouraged people to also take action. Breivik published a manifesto in which he explicitly calls for followers to join his mission to clean the toxic multi-cultural society of Europe from other cultural influences and individuals at any cost. Article 3(1)c TFEU refers to training for terrorism stating that this includes “providing instruction in the making or use of explosives, firearms or other weapons (...) for the purpose of committing one of these offences listed in article 1(1)(a) knowing that the skills provided are intended to be used for this purpose” (Council T. , 2002/475/JHA, 2002) This article is applicable to the underground network of the NSU, that provided the 3 direct actors with guns, in order to murder a police woman and 11 Turkish/German citizens, with expertise about bombs, which they used to bomb a underground station in Cologne.

Article 3(3) TFEU could be directly referred to the failure of the German investigation by stating “for an act as set out in paragraph 2 to be punishable it shall not be necessary that a terrorist offence be actually committed” (Council T. , 2002/475/JHA, 2002) This means, the NSU, which has been investigated, searched and followed for 10 years could have been arrested if they would have been considered terrorists. Already during the preparation of their murders the NSU was searched and partly arrested, and material for nail bombs and other explosives as well as fire arms were confiscated in their shelter, which should have clearly indicated a motivation and preparation of an attack against humans. While Article 4 TFEU generally states that the Member states shall ensure that terrorist offences as listed in the articles are made punishable “each Member State may decide to take the necessary measures to ensure that attempting to commit an offence referred to in Article 3(2)(b) and (c) is made punishable” (Council T. , 2002/475/JHA, 2002) This gives the responsibility to the Member State, the actual decision making is not made on EU level.

Concerning Council Decision 2005/671/JHA 2005 on the exchange of information and cooperation concerning terrorist offences Article 2(3) TFEU states that each member states shall ensure that the information regarding criminal investigations and information on the subjects possibly affecting 2 or more Member States are transmitted to Europol, Eurojust including (in Article 2(4) all relevant information about possession of arms, prosecution, identification, terrorist threat and communication technologies. (Council, 2005/671/JHA) This did not happen in the NSU case since definitions apply to the framework decision 2002/475/JHA which requires a prior clear identification as a terrorist group. If that is not the case, all other articles of framework decisions are not applicable.

Taking into account the Framework decisions 2002/475/JHA and 2008/919/JHA which require the individual Member states to define a criminal offense as being of terrorist nature, it is necessary to redefine the nature and characteristics of terrorism as published by COSI and transfer the definitions from the old analysis to trends in terrorism as they are found today, including the use of the internet. This also requires looking at national case law and giving each Member State the possibility to provide input based on incidents in each respective country, and carefully evaluate the Framework decisions mentioned above in terms of effectiveness and sensibility.

However, there have already been several recommendations dealing with the issues described above, and the judicial dimension of proposed actions are laid down in the Proposal 13318/1/10REV1 by the Counter Terrorism coordinator through the Council of the European Union: In this recommendation it is argued that a basic strategy of effectively conquering crimes with racist or

fascist background is to criminalize behavior and actions that may lead or precede terrorist crimes. Especially when dealing with terrorist acts such as the crimes of Breivik and the NSU, it is vital to be able to monitor online and offline behavior of certain groups and individual with extremist potential if it is directly directed towards immigrants and non-western citizens. Several terrorist acts coming from Islamic fundamentalist such as the Sauerland-Gruppe in 2007 where prevented through observation of online activity and connections to Islamic extremist groups. When talking about ideologies not fitting into the radical Islamic perspective, European security institutions are still careful not to touch their protection by the fundamental human rights. The recommendations in this proposal also include an adoption of measures “by which Europol and Eurojust should always be involved in joint investigation teams concerning terrorist cases”.

6 Conclusion

6.1 Subject: legal dimension of the fight against terrorism

Being subject to a terrorist attack can also mean a “failure to stop people from becoming terrorists” (Kerchove G. , 2012) and that efforts to prevent radicalization and recruitment are necessary to tackle the problem right at the root. What the EU is lacking is a “policy of international solidarity with the victims of terrorism” in order to create a “strong preventative value by mobilizing the population against the consequences of terrorism on ordinary citizens” (Kerchove G. , 2012). In this comment Kerchove is referring to the means and possibilities of the solidarity clause, emphasizing the necessity of making use of it: “the promotion of international solidarity should remain a priority for our counter terrorism policies in and outside the EU” (Kerchove G. , 2012) This meaning is not explicitly found in the wording of the article but remains a question of interpretation, therefore cannot be demanded from the member states. However, as recommended by the Coordinator of Anti-Terrorism in the EU, it is specifically addressed in his speech in order to present an efficient tool to prevent terrorist attacks in the near future. In his speech Kerchove refers to the problem that a terrorist attack from a radical non-Muslim group in the EU is seen as an issue and a threat to the nation and not to the construct of the Union as a whole. The legal dimensions can be considered as sufficient if the policies and plans are acted out thoroughly by all Member States equally.

6.2 Anti-Terrorism Policy of the EU – Improvements and suggestions by the Institutions of the European Union

With regard to the opinion of Europol as stated in the TE-SAT report of 2012, which states that the mass murderer Breivik as well as the German NSU should be considered terrorists and the ideology they followed a threat to the peace of the Union, this paragraph will deal with the rephrasing of terrorism and the inclusion of right-wing terrorism and extremism in the field of threat to the European Union. Looking at the anti-terrorism and anti-organized crime policies existing today, it appears very inefficient to find the solution in a new policy and new discussions. As already mentioned by Kerchove, the existing policies theoretically cover the basis of conquering right wing terrorism. The problematic lies in the depth and direction of these legislative and policy measures:

An efficient and effective solution to the problem could be a careful review of the current policies and regulations in order to redefine, refine and adjust the documents to the right wing problem. Europol is a very effective tool if utilized properly – it has the means and the legal basis to share information about crimes and criminals and to investigate cases such as Breivik and NSU precisely. If right wing terrorism, extremism and hate crime are included in the framework of general threats to the European Union, including threats to the protection of the rule of law and the fundamental rights of EU citizens and not only dealt with in an incident driven approach, could ensure the effectiveness of security strategies and decision making process. An Independent evaluation ex ante, focusing on impact assessments, and ex post, focusing on Article 70 TFEU could be essential in the redefining process. If the policies and decisions can be linked to, for instance, the Charta of Fundamental Human Rights, the definitions of terrorist offences with respect to Council Framework Decision 2002/475/JHA could be better refined. The EU could also go further as to set up a new interdisciplinary and independent EU wide network of academics to assess the EU Security and counter terrorism policies and test their compatibility with the EU Charta. This would be in line with the recommendations of Europol to create a task force on violent extremism and the development of

a portal for the exchange “of best practice, analysis and assessments in relation to the use of internet by individuals and groups associated with violent extremism” (Europol, 2011)

6.3 EU Criminal Law –Approaching the Ideology and Measuring the Scope of Right Wing Groups in Europe

Even though the connections between Breivik and other European right wing groups could not be definitely proven, Breiviks approach to other groups such as the NSU and the EDL should be considered. Breivik might have only committed attacks in his own country, but his roll call in his manifesto, and also in the law suit, was directed to the European Community, and he shared knowledge about chemicals and explosives and advice in pertinent forums of European groups. Therefore one major advice for the EU agencies such as Europol, as well as for the Member States, is to not underestimate the scope of Breiviks crimes and to follow up on traces he left behind while planning his manifesto and the attacks. The consequences of underestimating other groups, which are inspired by the attacks of Breivik, can be clearly seen in the NSU case. It is now the task of those parties involved to jointly investigate the step from talking to acting, in other words at which point should a right wing group be considered a threat to the security of fellow citizens. A fact actually facilitating this process of investigation is that these groups, even though exchanging information and advice on a cross-border level, mainly act within their own country of origin. Contrary to Al Qaeda groups, who might attack in any EU country, the actions and proceedings of right wing groups can be narrowed down to a national level. On the basis of the recommendation to redefining terrorism in the paragraph above, meaning the acknowledgement of the fact that right wing extremist are capable of committing terrorist attacks by all Member States, the information sharing system on a supra national level could be also narrowed down observing groups with anti-Islam ideologies. This could be a solution to the problem of trust and information sharing with support from Europol mentioned in the analysis, because it does not affect all areas of data collection, merely a small part. However, in order to realize such a project, the sharing of information concerning these groups and their suspicious purchases does require a mandatory regulation to ensure that every Member State has to equally contribute to the data base. Building trust is an important issue in this respect.

These suggestions should be dealt with carefully in order to make a distinction between freedom of speech and acts of racism and xenophobia. Especially the right wing parties in the individual Member States and in the parliament would probably not agree with an observation system on right wing groups similar to the once established on national and international level on fundamental Islamic groups. To tackle these discrepancies, a first step could be to carefully control the implementation of Council Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law on a national basis. According to Article 1.2 “Member states may choose to punish only conduct which is either carried out in a manner likely to disturb the public order or which is threatening, abusive or insulting.” (2008/913/JHA) This directive allows the Member States to punish behavior such as the public hate speeches of the EDL cited in the case presentation. Nevertheless, this needs to be approached carefully in order to avoid groups going underground to pursue their plans and information exchange in hidden forums invisible to the public officials. Germany has taken the first step to such a database, when the Bundesrat approved the “Act to Improve the Fight Against Right-Wing Extremism” (Scholz, 2012) which consists of “merging information on violent right-wing extremist acts from 36 police and intelligence services across the

country” (Scholz, 2012). It is supposed to keep track on potentially violent neo Nazi groups and right wing extremists with violent tendencies. This database is in fact built upon the model of the existing anti-terrorism database, established in 2007, which contains evidence collected on dangerous Islamists within the country and abroad. This could serve as an example to other Member States. Along with the recommendation above, the Member States should, in cooperation with Europol, develop an EU wide assessment on the threat of right wing groups and their likelihood of involvement in terrorist acts. After the threat has been clearly defined and approached they should continue developing strategies to create a cross-national database following the example of Germany.

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