

EU Counterterrorism Policy and the 2004 Eastern Enlargement

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Introduction

The purpose of this article is to analyze the European Union's (EU) counterterrorism policy with a special focus on its extension to the ten new member states that have joined the organization on May 1, 2004. Following the September 11, 2001 terrorist attacks on the United States (US), the EU has acted on several fronts to reinforce its existing nascent capabilities to combat terrorism. Along with championing the cause of enhanced counterterrorism cooperation among its existing fifteen member states, the EU has simultaneously attempted to bolster the counter-terrorism capabilities in Europe en masse. These efforts have been especially apparent in the successful enlargement process which was completed on May 1, 2004, when ten new member states joined the EU: Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, the Slovak Republic, and Slovenia (further referred to as the former candidate countries – FCCs).²

Based on official EU documents, internal reports, and secondary sources, I argue that these FCCs were willing to change their administrative, legal, economic, social, and policy frameworks to conform to the EU's counterterrorism standards but they were not necessarily independently capable of changing, at least within the relatively short accession time frame. It was only through intense planning, monitoring, mentoring, and generous funding assistance that the EU was able to facilitate these countries' successful transitions. There is, however, also a cause for concern that the rapidly negotiated political

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² Throughout the pre-accession process these countries were interchangeably referred to as Candidate, Applicant, Associated, or Partner Countries. Since the primary discussion within this paper is on the pre-accession process, I maintain the term former Candidate Country throughout the paper. This paper does not deal with the pre-accession process of Bulgaria and Rumania, which acceded to the EU on January 1, 2007.

agreements regarding EU counterterrorism policy have not been properly implemented, in large part due to the absence of genuine pro-integration thinking in the area of Justice and Home Affairs (JHA) among both the FCCs and the old EU member states.

The article begins with an analysis of the origins of the EU's counterterrorism policy, followed by a survey of major developments related to counterterrorism policy before May 1, 2004. In the next section, I present a succinct overview of the most recent EU enlargement process, with a special focus on a series of pre-accession planning, monitoring, mentoring, and funding programs and mechanisms devised by Brussels to assist the candidate countries (CCs) in their efforts to conform to the JHA standards of the European Union. Finally, the article offers a summary of the most important developments after May 1, 2004 and concludes with an assessment of the effectiveness of the "EU 25" counterterrorism policy.

EC/EU Counterterrorism Policy Prior to May 1, 2004

The European Union's counterterrorism policy can be traced to the early 1970s, when the European Political Cooperation (EPC)³ came into being. The initial impetus for greater intergovernmental cooperation among Member States was the growth of terrorist incidents perpetrated by indigenous Western European as well as Middle Eastern organizations in the late 1960s and early 1970s.⁴ By the mid-1970s, the European Communities (EC) Member States had become dissatisfied with the existing international policies and procedures which dealt with terrorism⁵ and felt that a regional approach would be more effective.⁶ Consequentially, in addition to the diplomatic efforts taken to combat state-sponsored terrorism within the EPC framework,⁷ the EC Member States began to develop what could be termed as an EC counterterrorism policy at two key levels: the legal and the operational.

At the legal level, the EC Member States adopted a strategy designed to ensure that the existing international anti-terrorist provisions would be fully applied within the EC. Moreover, since the respective national criminal codes and definitions of terrorism diverged so greatly, "the aim was to inject a degree

³ The main feature of EPC was consultation among the Member States on foreign policy issues. Launched in 1970, EPC was formally enshrined in the Single European Act (SEA) in 1987.

⁴ Malcom Anderson, "Counterterrorism as an Objective of European Police Cooperation," in *European Democracies Against Terrorism: Governmental Policies and Intergovernmental Cooperation*, ed. Fernando Reinares (Burlington, US: Ashgate Publishing Company, 2000), 229.

⁵ Paul Wilkinson, *Terrorism and the Liberal State* (London: Macmillan, 1986), 292.

⁶ Juliet Lodge, "Terrorism and the European Community: Towards 1992," *Terrorism & Political Violence* 1, no. 1 (January 1989): 30.

⁷ For further information, see Meliton Cardona, "The European Response to Terrorism," *Terrorism & Political Violence* 4, no. 4 (Winter 1992): 252-53; Lodge, "Terrorism and the European Community: Towards 1992," 36-40.

of predictability into the EC's public position vis-à-vis terrorism."⁸ To this end, in 1979, the EC Member States negotiated the so-called Dublin Agreement that ensured the Council of Europe's 1977 European Convention on the Suppression of Terrorism (ECST) would be applied uniformly within the EC.⁹ The implementation of both the Dublin Agreement and ECST was, however, beset by difficulties as a number of EC Member States refused to ratify these agreements, primarily due to concerns over potential loss of autonomy to deal with terrorism either on their own or on bilateral basis.¹⁰ Consequentially, it was not until the mid-1980s when the idea of a European judicial area was seriously entertained under the banner of the completion of single European market.¹¹

At the operational level, the TREVI (Terrorism, Radicalism, Extremism, and political Violence) Group was established in 1976 as a forum for discussion and cooperation on police and intelligence matters. Within this framework, the justice and interior ministers of EC Member States exchanged intelligence information, compiled a blacklist of terrorists, analyzed external terrorist threats, tracked specific terrorist groups, and facilitated the arrest and prosecution of terrorists.¹² Following a series of terrorist attacks in the mid-1980s, the TREVI Group increased cooperation in combating terrorism even further and a working party was established to study how to improve checks at the European Community's border, the coordination of national visa policies and the cooperation in combating passport fraud.¹³

Overall, there can be little doubt that TREVI's work was considered by both the EC and the contiguous European states to be useful, despite the fact that TREVI's legal basis and its relationship to other EC institutions remained unclear. As Lodge notes, by the late 1980s many EC Member States felt, "TREVI is a more effective forum than Interpol in matters relating to the security of databank and information exchanges on international terrorism."¹⁴ More importantly, it became clear that "the internal market cannot be completed unless the issues currently being addressed by TREVI are discussed within the EC."¹⁵ Consequentially, when the Maastricht Treaty on European Union was signed in February 1992, the previously informal EPC and TREVI frameworks were brought under the new legal and structural framework of the EU and formed the basis of the JHA pillar.

⁸ Lodge, "Terrorism and the European Community: Towards 1992," 30.

⁹ Cardona, "The European Response to Terrorism," 251.

¹⁰ M.P.M. Zagari, "Combating Terrorism: Report to the Committee of Legal Affairs and Citizens' Rights of the European Parliament," *Terrorism & Political Violence* 4, no. 4 (Winter 1992): 292.

¹¹ Lodge, "Terrorism and the European Community: Towards 1992," 32.

¹² Cardona, "The European Response to Terrorism," 252.

¹³ Zagari, "Combating Terrorism: Report to the Committee of Legal Affairs and Citizens' Rights of the European Parliament," 293.

¹⁴ Lodge, "Terrorism and the European Community: Towards 1992," 42.

¹⁵ Lodge, "Terrorism and the European Community: Towards 1992," 42.

The Maastricht Treaty specifically referred to terrorism as a serious form of crime to be prevented and combated by developing common action in three different ways:

1. Closer cooperation between police forces, customs authorities and other competent authorities, including Europol;
2. Closer cooperation among judicial and other competent authorities of the Member States;
3. Approximation, where necessary, of rules on criminal matters.¹⁶

Prior to 9/11, some progress had been made in developing common actions in all three areas but their practical implementation was often painfully slow.

In the area of police cooperation, the Maastricht Treaty made a provision for the establishment of Europol, the EU police coordination unit. Europol started limited operations on January 3, 1994 in the form of the Europol Drugs Unit (EDU). Subsequently, other areas of criminality were added to Europol's mandate, including those "dealing with crimes committed or likely to be committed in the course of terrorist activities against life, limb, personal freedom or property."¹⁷ Nevertheless, Europol was unable to commence full activities until July 1999, when the Europol Convention was finally ratified by all EU Member States.

In the area of judicial cooperation, two important legal instruments were adopted in the 1990s: the Convention on Simplified Extradition Procedure between the Member States of the EU (March 1995) and the Convention Relating to Extradition between Member States of the EU (September 1996). The main purpose of both Conventions was to supplement and improve the application of both the 1957 European Convention on Extradition and the 1977 European Convention on the Suppression of Terrorism by imposing a lower threshold for extraditable offences, and by specifying those offences for which extradition may not be refused.¹⁸ As such, the two conventions represented yet another attempt to ensure uniform application of existing key anti-terrorist provisions within the EU.

With regards to the approximation of rules on criminal matters in the Member States, Article 31(e) of the Treaty of Maastricht already called for the establishment of minimum rules relating to the constituent elements of terrorist

¹⁶ Article K.1. After subsequent Treaty of Amsterdam revisions, Article 29.

¹⁷ Council of the European Union. *Council Decision of 3 December 1998 Instructing Europol to Deal with Crimes Committed or Likely to Be Committed in the Course of Terrorist Activities Against Life, Limb, Personal Freedom or Property*, EN 30/01/1999 0022 (1999)

¹⁸ Monica Den Boer and Jörg Monar, "Keynote Article: 11 September and the Challenge of Global Terrorism to the EU as a Security Actor," in *The European Union: Annual Review of the EU 2001/2002*, ed. Geoffrey Edwards and Georg Wiessala (Oxford, UK: Blackwell, 2002), 21.

acts and penalties. This call was repeated in Paragraph 46 of the Action Plan of the Council and the Commission on how best to implement the provisions of the 1997 Treaty of Amsterdam,¹⁹ which committed EU Member States to constructing an “area of freedom, security and justice.” The Treaty also acknowledged that in order to guarantee freedom and justice while enhancing security, the Member States need to better coordinate their justice and home affairs policies and, in some areas, grant the EU new powers.²⁰

In the subsequent years, however, the EU has made only slow progress in constructing the promised area of “freedom, security and justice.” The October 1999 Tampere European Council attempted to inject new life into the JHA pillar and supplied a number of targets and deadlines for the implementation of policies on immigration, border control, police cooperation and asylum. Few of these targets, however, were met before September 11, 2001 and, as discussed below, some are still to be met as of early 2007.

It is apparent that on the one hand, a number of innovations of the EU counterterrorism policy were adopted well before the 9/11 events. As Monica den Boer and Jörg Monar put it:

“[O]ne could argue that several strata of counter-terrorism activities were already in place within the EU before 11 September: institutionally, a European police office competent to deal with terrorism-related offences; legally, conventions and additional legal instruments to facilitate extradition; and operationally, direct and regular contact between the heads of the European security services, an anti-terrorism repertory, and a regular update of the security situation.”²¹

On the other hand, however, the delays in the ratification of the Europol Convention and other key counterterrorism measures by several EU Member States in the 1990s suggest that the impact of 9/11 on EU counterterrorism policy should not be underestimated. As Anastassia Tsoukala noted, prior to September 11, 2001, “the position of the European Union toward terrorism has been limited to a strictly political level.”²² While the representatives of all EU

¹⁹ European Commission, *Proposal for a Council Framework Decision on Combating Terrorism*, COM (2001) 521 Final (Brussels, 2001), 5.

²⁰ These include: powers to make national criminal laws more similar; make national police forces and prosecutors work together more effectively; build a common border guard; develop common asylum and visa policies; make the EU courts more efficient; and guarantee the rights of individuals. Adam Townsend, “Can the EU Achieve an Area of Freedom, Security and Justice?” Center for European Reform, <http://www.cer.org.uk/pdf/opinion_at_jhaoct.pdf>, October 2003.

²¹ Den Boer and Monar, “Keynote Article: 11 September and the Challenge of Global Terrorism to the EU as a Security Actor,” 21.

²² Anastassia Tsoukala, “Democracy Against Security: The Debates About Counterterrorism in the European Parliament, September 2001-June 2003,” *Alternatives: Global, Local, Political* 29, no. 4 (August-October 2004): 29.

Member States had consistently condemned terrorism before 9/11,²³ the formation of a genuine EU counterterrorism policy had only been fully integrated into the Council's agenda after the terrorist attacks on the US.

In the aftermath of 9/11, the representatives of the EU Member States immediately engaged in a long series of meetings, which concluded with the Extraordinary European Council meeting on September 21, 2001. The Extraordinary Council approved a comprehensive "European policy to combat terrorism," titled the Plan of Action.²⁴ In this document, the European Council called for the adoption of instruments and measures in five areas:

1. Enhancing police and judicial cooperation;
2. Developing international legal instruments;
3. Putting an end to the funding of terrorism;
4. Strengthening air security;
5. Coordinating the European Union's global action.²⁵

One important implication of this Plan of Action is that it binds the EU to a single long-term counterterrorism strategy, implying that the rotating Presidencies will no longer be able to set the EU counterterrorist agenda solely on the basis of their own national priorities. As Dorine Dubois points out, "the events of 11 September have indirectly allowed the EU to become a consistent actor in the fight against terrorism."²⁶

The Plan of Action was subsequently supplemented by a number of other important legal initiatives, including:

- Framework Decision on the European Arrest Warrant;
- Decision on the implementation of specific measures for police and judicial cooperation to combat terrorism;
- Framework Decision on Joint Investigation Teams;

²³ In October 1995, for example, the Council adopted the *La Gomera Declaration*, which "affirmed that terrorism constitutes a threat to democracy, to the free exercise of human rights and to economic and social development." Council of the European Union. *Council Framework Decision of 13 June 2002 on Combating Terrorism*, EN 2002/475/JHA 0003, article 2. The representatives of EU Member States also repeatedly publicly condemned terrorist acts as contradictory to the basic universal values of human dignity, liberty, equality and solidarity upon which is the European Union founded.

²⁴ Council of the European Union, "Conclusions and Plan of Action of the Extraordinary European Council Meeting on 21 September 2001," <http://europa.eu.int/comm/external_relations/110901/actplan01.pdf>.

²⁵ It is important to note that in addition to the comprehensive European policy to combat terrorism, there were two other areas where the Council specifically reaffirmed, "its firm determination to act in concert in all circumstances" – "Solidarity and cooperation with the United States," and "The Union's involvement in the world." Council of the European Union, "Conclusions and Plan of Action of the Extraordinary European Council Meeting on 21 September 2001."

²⁶ Dubois, "The Attacks of 11 September: EU-US Cooperation Against Terrorism in the Field of Justice and Home Affairs," 324.

- Decision establishing Eurojust;
- Framework Decision on Combating Terrorism;
- Common Position on the application of specific measures to combat terrorism;
- Framework Decisions and Regulations on money laundering, the identification, tracing, freezing, and confiscation of instrumentalities and the proceeds of crime.

In light of this wide array of innovative legal measures, some observers suggested that “it certainly must be acknowledged that European Union law contributed to a great extent to the fight against terrorism in Europe, especially through the strengthening of cooperation between Member States.”²⁷ Others noted that the 9/11 events have generated tremendous political impetus, which not only enabled the EU to rapidly adopt a number of significant JHA instruments that attested to the EU’s credibility as a partner in JHA, but also augmented the EU’s capacity to act as a single unit on the international stage.²⁸ For the ten FCCs, however, this unprecedented increase in the number of new JHA instruments also implied the need to accept and transpose a much larger amount of *acquis communautaire* over an extremely short period of time.

The Enlargement Process

Along with championing the cause of transnational counter-terrorism cooperation among its existing member states, the EU has also attempted to bolster the counter-terrorism capabilities of the ten new member states that joined the EU on May 1, 2004. These FCCs were largely willing to change their administrative, legal, economic, social, and policy frameworks to conform to the higher standards of the EU. On their own, however, they were not necessarily independently capable of changing within the relatively short accession time frame. It was only through intense planning, monitoring, mentoring, and generous funding assistance that the EU was able to facilitate these countries’ successful transitions.

The European Union’s accession process is a complex, resource-intensive system that has evolved along with the integration of the EU itself. Over time, it has been refined into an identifiable series of six distinct steps.²⁹ First, the EU clearly defined its standards for accession by adopting the *acquis communautaire* and creating a written agreement with each state desiring membership. Second, the EU identified and prioritized the gaps between each state’s current

²⁷ Nicola Vennemann, “Country Report on the European Union,” 53.

²⁸ Dubois, “The Attacks of 11 September: EU-US Cooperation Against Terrorism in the Field of Justice and Home Affairs,” 330.

²⁹ This is not a “formula” or checklist that the EU consciously uses. I inductively identified this process using steps that the European internal evaluations repeatedly emphasized as decisive for the success of the accession process.

situation and the EU standard. Third, the EU required each state to devise its own (but EU approved) plan to meet the standard. Fourth, the EU identified the available funding, technical assistance, and assisting through twinning for each state to reach the standard. Fifth, the EU provided regular and detailed feedback on each state's successes and failures, relative to the standards identified in its accession agreement. Sixth, which occurred throughout the process, the EU actively communicated to all involved, from heads of state to individual citizens, the benefits of undertaking this dramatic – and at times painful – process.

Already in the pre-accession stage, the FCCs gained a number of privileges in the area of JHA, such as access to European early warning systems, institutional support, and subject matter experts for technical assistance and advice, including all terrorism-related measures. Perhaps most important, the FCCs received significant financial assistance to implement the structural and institutional changes required by the *acquis*.³⁰ The EU judiciously planned its accession program with parallel funding measures, which ultimately enabled the ten FCCs to enter in 2004. The combined pre-accession assistance for the FCCs was €3 billion per year (1997 figures) during the 2000–2006 period.³¹

In May 1998, the EU launched its twinning program as a new way of delivering assistance for institution building programs within the Phare Programme,³² using the same logic but different processes as its popular town twinning program between cities of separate European countries.³³ Although

³⁰ It is important to note that *acquis* implementation requires not only the adoption of appropriate legislation, but also ensuring an adequate level of administrative capacity.

³¹ For 1997-98, seven per cent, or € 71.5 million, of the Phare budget went towards the Justice and Home Affairs chapter of the *acquis*. European Commission, PLS RAMBØLL Management, and Eureval - C3E, "PHARE Ex Post Evaluation of Country Support Implemented from 1997-1998 to 2000-2001: Consolidated Background Report," <http://europa.eu.int/comm/enlargement/phare_evaluation_pdf/consolidated_background_report_english.pdf>.

³² Europe created the first accession funding program, the Phare Program, in 1989 (Council Regulation 3906/89) to assist the dramatic transitions of Poland and Hungary after the Cold War. In 1993, it was reoriented to support all FCCs in their accession process. From 1989 to 1999 the Phare framework existed as the sole instrument to support institution building and *acquis*-related investment to prepare CCs for membership. In 1999 the Council created two other programs for accession: SAPARD (**Special Accession Program for Agriculture and Rural Development**, Council Regulation 1268/99), which contributes to improve the competitiveness of the agricultural sector, with respect to the *acquis*; and IPSA (Instrument for Structural Policies for Pre-accession, Council Regulation 1267/99), which assists with strategic, large-scale infrastructure projects in the transportation and environmental sectors (in a 50-50 proportion). Phare projects did not support Cyprus and Malta, which had their own dedicated financial instruments.

³³ Twinning in Europe has had a long and successful history, with the first modern twinning arrangement forming between Orléans (France) and Dundee (UK) in 1946. Since 1989, Europe has officially funded these efforts, benefiting over 11,000 towns with EU grants, largely aimed at increasing the sense of European identity and sharing lessons throughout the region. In 2003, the EU funded almost 1,400 town twinning partnerships worth €12 million, and 80,000 people in Europe participated in twinning activities co-financed by the EC. A Twin-

not generally considered to be a central component of the EU's accession process, twinning has served as a valuable tool to expedite and facilitate the accession states' implementation of their Europe Agreements (EAs), allowing them to come into compliance with the EU's standards. By pairing the "old" EU member states with FCCs to share their counter-terrorism expertise,³⁴ the FCCs could more quickly create or adapt their administrative and democratic institutions to comply with membership requirements in the area of JHA. According to the Commission, for example, in one of EU's "great success stories," Hungary twinned with the United Kingdom and Germany to counter organized crime activities, harmonize its legislation, and examine systems and structures at its Interior Ministry to implement the "justice and home affairs" chapter of the *acquis*. This program drastically increased in importance after Romania's accession plans were delayed, since this border was to become the "Schengen frontier" – the EU's external border – after accession. Within the project, the checkpoints were renovated; over 300 border guards, customs officials, and police officers were trained for their new tasks; and a completely new information network system was established. They completed this training within a "Training to Combat Organized Crime Activities" project, which covered seven areas, including cross-border criminality, criminal intelligence activities, criminal terrorism, corruption, witness protection, and financial investigation. The Hungarians also created a new unit to fight cross-border crime, and have included a series of enhanced and sophisticated skills into their police academy as a follow-up to the Phare Training Programme. In the area of criminal terrorism, they used improved bomb-scene management, trained officers in specialized analytical skills in the field of detecting organized crime, practiced techniques of undercover work, and introduced improved methods of fingerprinting and photographic evaluation. The drastic changes occurred in only eighteen months (1 February 2000, to 31 August 2001) and cost only €1.4 Million.³⁵

ning Program is drastically different from traditional Town Twinning program's technical advice in that two (or three) partners create a close partnership to complete a complex project in a specific field, which must yield "guaranteed results." European Commission, "Belonging to the European Union," *The Magazine: Education and Culture in Europe* 20 (2003), <http://europa.eu.int/comm/dgs/education_culture/mag/20/en.pdf>.

³⁴ EU twinning projects involve the secondment of EU experts, known as Pre-Accession Advisors (PAA), to the candidate countries. They are made available for a period of at least one year to work on a project in the corresponding Ministry in a candidate country. Pre-Accession Advisors are supported by a senior project leader in their home administration, who is responsible for ensuring the overall thrust of the project implementation and coordinating all other inputs from the Member State. In order to achieve the objective of the Twinning project, it is necessary to combine different means, including short-term expertise, training, services (such as translation and interpreting) and specialized help (such as specialized computer software), in addition to the Pre-Accession Advisor. For more information, see http://europa.eu.int/comm/enlargement/pas/twinning/pdf/twinning_en.pdf

³⁵ European Commission, "On Time, on Target: Training to Combat Organized Crime in Hungary," *Phare National Programmes Highlights* 4 (February 2000), <http://europa.eu.int/comm/enlargement/pas/phare/pdf/phare_highlights_four.pdf>.

Interestingly, countries using the twinning program have been the most successful in instituting changes related to legislation, the judiciary, and administrative procedures. This is in part because the general population does not always have to support these changes for them to be effective, unlike other EU twinning projects with goals such as integrating minorities or changing educational curricula. In addition, twinning incorporated an agreed-upon standard that the “old” EU member states were already successfully employing.³⁶ There were also many indirect benefits from twinning for both the FCCs and member states. For example, one external evaluation of the EU’s Phare Programme found that the EU twinning partners introduced good management practices outside of the specific twinning project. Although the twinning projects do not guarantee lasting relationships, “twinning partners tend to keep in touch through e-mails and phone calls, which is not the case with technical assistance.”³⁷ The evaluators found this was a common occurrence with far-reaching possibilities for sustainability and community building. As one manager in an agricultural agency participating in the twinning program told an evaluator, “When I am encountered with a problem or have some doubts, I simply ring my new friends from Germany and Austria for their second opinion.”³⁸

Since 1998 the EU has also continued to annually complete regular reports on the progress and shortcomings of each FCC with respect to its accession partnership (AP) and *acquis* implementation progress. Together with the AP, the regular reports define the priorities within each FCC for specific institution building, which is generally defined as “the process of helping the FCCs to develop the structures, strategies, human resources and management skills needed to strengthen their economic, social, regulatory and administrative capacity.”³⁹ Within each regular report’s section covering the JHA, the EU recapitulated what was the FCC’s original status as per its July 1997 report, and then described the FCC’s current status in meeting the EU standards specifically pertaining to the

³⁶ In the “legislative and administrative impacts” category, projects with twinning (N=50) had an overall effectiveness rating of 0.72 (on a scale of 0 to 1, with 1 being full achievement of intended impacts); without twinning (N=62), 0.69. For the socioeconomic category, projects with twinning (N=27) had an overall effectiveness rating of 0.63; without twinning (N=45), 0.56. Based on an external review conducted by PLS Rambøll Management, European Commission, PLS RAMBØLL Management, and Eureval - C3E, “PHARE Ex Post Evaluation of Country Support Implemented from 1997-1998 to 2000-2001: Consolidated Background Report,” 129-35.

³⁷ European Commission, PLS RAMBØLL Management, and Eureval - C3E, “PHARE Ex Post Evaluation of Country Support Implemented from 1997-1998 to 2000-2001: Consolidated Background Report,” 135.

³⁸ European Commission, PLS RAMBØLL Management, and Eureval - C3E, “PHARE Ex Post Evaluation of Country Support Implemented from 1997-1998 to 2000-2001: Consolidated Background Report,” 135.

³⁹ European Commission, the Permanent Representation of Sweden to the EU, and Permanent Representation of Austria to the EU, “The Enlargement Process and the Three Pre-Accession Instruments: Phare, ISPA, SAPARD” (2001), 8.

areas of immigration/border controls, asylum, police, drugs, and judicial cooperation. The report clearly identified progress toward and away from the FCC's Action Plan, and prioritized the short- and medium-term objectives that the FCC needed to address to remain in good standing in the accession process.

These reports, and the financial assistance the EU provided to help make the required preaccession changes, have had a significant effect on the compliance of the FCCs' administrative, legal, economic, social, and policy frameworks with the EU *acquis*. Despite the significant hardships that each FCC and its people incurred due to the (at times drastic) changes demanded by Brussels, these efforts yielded some impressive results. For example, before accepting the EAs, which formalized their plans toward accession in the 1990s, the ten FCCs collectively had a 35 percent acceptance rate of the twelve international terrorism-related treaties. After signing the EAs but before Resolution 1373 went into effect in 2001, an additional 32 percent of the treaties were accepted; while 27 percent more have been accepted since Resolution 1373 and before the FCCs were granted EU membership. Combined, the FCCs have accepted 93 percent of all treaties relating to combating international terrorism, and almost 98 percent of the treaties have at least been signed (see Table 1). Moreover, the FCCs were equally successful in implementing the EU legislative instruments listed in the Declaration on terrorism of the European Council of 25 March 2004 as the old EU member states (see Table 2).

The "EU-25" Counterterrorism Policy

A few months before the ten FCCs joined the EU, a series of blasts killed more than 200 train passengers in Madrid. As the implications sank in of an (allegedly) Al Qaeda-linked terrorist attack on their own home soil, the European countries began a much needed appraisal of all the measures they had taken thus far to combat terrorism. At the EU level, a number of internal reports revealed that implementation of the measures agreed upon years prior had been "slow, poor and inadequate"⁴⁰ and top-level EU officials suddenly became unusually outspoken in their sharp criticisms of the tendency of the EU member states to produce "networks and institutions and then refuse to provide them with necessary tools to perform their jobs or simply not [use] them."⁴¹ Perhaps most alarming, however, the Austrian Chancellor Wolfgang Schuessel suggested that the measures previously taken by the EU had been "absolutely not sufficient as a protection against terrorism."⁴²

⁴⁰ European Commission, "European Commission Action Paper in Response to the Terrorist Attacks on Madrid," 19/03/2004 <<http://www.statewatch.org/news/2004/mar/Comm-Action-Plan.pdf>>.

⁴¹ European Commission, "European Commission Action Paper in Response to the Terrorist Attacks on Madrid."

⁴² BBC Monitoring International Reports <18/03/2004>, Lexis Nexis, <Lexis Nexis internet search>, 18/03 2004.

Seizing the momentum created by the Madrid attacks, the European Commission has been particularly outspoken in its sharp criticism of the lack of intelligence data sharing, and has proposed a number of ways to enhance operational coordination and cooperation in the area of counter-terrorism at the EU level, including:

- the development of a new coordination mechanism for the exchange of information;
- implementation of a European information policy for law enforcement purposes;
- the enhancement of controls to prevent goods linked to terrorist actions from entering the Community;
- the outlining of an EU approach to the use of travelers' data for border and aviation security and other law enforcement purposes;
- the development of comprehensive and interoperable European information systems;
- the execution of an "urgent review" to determine if EU member states have adequate measures in place to monitor and trace bomb-making materials;
- the strengthening of the identification, control, and interception of illegal trafficking in WMD materials;
- early ratification of the Protocol to the United Nations Transnational Organised Crime Convention on trafficking of illegal firearms;
- consideration of making fingerprints mandatory for EU Identity Cards and EU Passports;
- the enforcement of a stronger role to the Task Force of EU Police Chiefs in operational activities concerning the prevention and fight against terrorism;
- the fostering of internal coordination within the Commission and within the Council of various policies that are linked to EU counter-terrorism efforts.⁴³

A number of individual member states have also capitalized on this same momentum to enhance the EU counter-terrorism policy in the area of intelligence sharing. Austria and Belgium, for example, put forward a proposal suggesting that the EU should create a "CIA-style intelligence agency to pool information on the extremist threat."⁴⁴ It has, however, failed to generate enough support from either the other member states or the European Commission. In a comment that was subsequently echoed by his French and German counterparts, former British Home Secretary, David Blunkett, suggested the priority

⁴³ European Commission, "European Commission Action Paper in Response to the Terrorist Attacks on Madrid."

⁴⁴ Jitendra Joshi, "EU Holds Emergency Terror Talks After Madrid Blasts," *Agence France Presse*, <Lexis Nexis News Search>, 19/03 2004.

should be implementing those counter-terrorism measures already agreed upon after the 9/11 terrorist attacks: “We don’t want new institutions. What I’m interested in is hard, practical action. Let’s cut out the waffle and let’s make sure that whatever we do, we’re practicing what we preach at home.”⁴⁵

The member states did, nevertheless, agree upon the need to appoint an EU security coordinator, an idea which was first circulated by the Irish EU presidency immediately after the Madrid terrorist attacks.⁴⁶ Quickly nicknamed the EU’s “Mr. Terrorism” and/or the “European terrorism czar” by the media, the EU security coordinator should remedy some of the shortcomings in the coordination of EU counter-terrorism policy. The very acknowledgement of the need to create such a position reflects the fact that despite the frequent calls by European governments to step up cooperation in intelligence sharing, the Council of Ministers, the Commission, and even the member states on a bilateral level, often cannot agree how to coordinate.

The March 25–26, 2004 European Council took notice of many of the aforementioned critiques and confirmed the need to review what has been done to combat terrorism in Europe. It also issued a Declaration on Combating Terrorism, which outlines seven of the EU’s strategic objectives to combat terrorism in a Revised Plan of Action:

1. to deepen the international consensus and enhance international efforts to combat terrorism;
2. to reduce the access of terrorists to financial and other economic resources;
3. to maximize capacity within EU bodies and member states to detect, investigate and prosecute terrorists and prevent terrorist attacks;
4. to protect the security of international transport and ensure effective systems of border control;
5. to enhance the capability of the European Union and of member states to deal with the consequences of a terrorist attack;
6. to address the factors which contribute to support for, and recruitment into, terrorism;
7. to target actions under EU external relations toward priority third countries where counter-terrorist capacity or commitment to combating terrorism needs to be enhanced.⁴⁷

While it is clear that the primary aim of the Revised Plan of Action is to eliminate the previous EU counter-terrorism policy’s tactical shortcomings,

⁴⁵ Joshi, “EU Holds Emergency Terror Talks After Madrid Blasts.”

⁴⁶ Council of the European Union, “European Council to Focus on Fight Against Terrorism,” European Council, <http://europa.eu.int/rapid/start/cgi/guesten.ksh?p_action.gettxt=gt&doc=PRES/04/81/0|RAPID&lg=EN&display=>>, 2004.

⁴⁷ Council of the European Union, “Declaration on Combating Terrorism,” European Council, <http://www.eu2004.ie/templates/news.asp?sNavlocator=66&list_id=462>>, 2004.

the wording of objectives six and seven seems to suggest that some changes may also be necessary at the strategic level. In particular, as David Blunkett suggested, “moves must be made to address the wider context of terrorism by tackling its roots, whether this be the crisis in the Middle East or chronic unemployment [in the Arab states].”⁴⁸ This seems to confirm the conclusion of a recent scholarly study, which suggests that the EU counter-terrorism campaign has been developed primarily as a matter of judicial and police authority and described the current EU efforts to address the underlying roots of terrorism as “woefully inadequate.”⁴⁹

In many respects, the Revised Plan of Action represents the first call to address terrorism in a comprehensive fashion. In November 2004, this call was reinforced at another European Council meeting in Hague, where the so-called Hague Program was adopted. In this document, the heads of state and government of 25 EU Member States declared that:

“The European Union can contribute decisively to the defeat of terrorism, by working together towards a global strategy to be established on the basis of its founding values: democracy, fundamental rights and the rule of law. The Union’s attention must focus on different aspects of prevention, preparedness and response to further enhance, and where necessary complement, Member States’ capabilities to fight terrorism.”⁵⁰

The Hague Program is effectively the EU’s current agenda for further development of the justice and home affairs pillar and counterterrorism is clearly one of the key areas where the Council would like to see a number of policy decisions within the next five years.

The overall priorities set out in the Hague Program were further elaborated by the European Commission in May 2005, when a five year Action Plan for Freedom, Justice and Security was launched. This policy initiative should turn the Hague Program’s agenda into concrete actions, including a timetable for their adoption and implementation. It contains detailed proposals for EU action on terrorism, migration management, visa policies, asylum, privacy and security, the fight against organized crime and criminal justice, while recognizing that none of these issues can be effectively addressed in isolation. Among the measures being introduced by the Commission in the area of counterterrorism are proposals aiming at greater cooperation between the law-enforcement services of Member States, particularly by means of improved exchanging of

⁴⁸ Rory Watson, “Brussels Backs Creation of Anti-Terror Czar,” *The Times* (London), 19/03 2004, London, Overseas news: 18.

⁴⁹ Laurence Thieux, “European Security and Global Terrorism: The Strategic Aftermath of the Madrid Bombings,” *Perspectives: The Central European Review of International Affairs* 22 (Summer 2004): 60.

⁵⁰ European Commission, “The Hague Programme - Ten Priorities for the Next Five Years,” 2005, <http://ec.europa.eu/justice_home/news/information_dossiers/the_hague_priorities/index_en.htm>.

information; a European framework for the protection of related data; a communication on the radicalization and recruitment of terrorists; a communication on the protection of vulnerable infrastructures; a communication on the prevention of and the fight against terrorism financing; a proposal aiming to prevent charitable organizations being used to fund terrorism; and monitoring the pilot project in place for the victims of terrorism.⁵¹

On July 7, 2005, London became the second European capital that was hit by a major terrorist attack since 2001. While the subsequent investigations have not proved any direct links to Al-Qaeda, the attacks definitely confirmed that the threat of terrorism in the EU is a real one. The Member States responded to the attacks with a Council declaration where they reiterated the need to accelerate the piecemeal implementation of the EU Action Plan on Combating Terrorism. The British Council Presidency seized the momentum after the attacks and within a few months prepared a new EU Counterterrorism Strategy that should provide a solid framework for EU activity in this field. Adopted by the European Council in December 2005, the new strategy sets out four key objectives: 1. *prevent* new recruits to terrorism; 2. better *protect* potential targets, 3. *pursue* and investigate members of existing terrorist networks; 4. improve the capability to *respond* to and manage the consequences of terrorist attacks (also see Figure 1). According to the strategy, the EU should help its Member States to achieve these objectives in four ways: 1. promoting international partnership; 2. developing collective capabilities; 3. promoting European cooperation; and 4. strengthening national capabilities (also see Figure 2).⁵² For each of the four objectives of the EU Counter Terrorism Strategy, there is a list of key priorities⁵³ and the updated EU action plan on combating

⁵¹ European Union, "The Hague Programme - Ten Priorities for the Next Five Years."

⁵² Council of the European Union, "European Counter Terrorism Strategy," 2003, <<http://register.consilium.europa.eu/pdf/en/05/st14/st14469-re04.en05.pdf>>.

⁵³ The key priorities for *prevent* are to:

- Develop common approaches to spot and tackle problem behavior, in particular the misuse of the internet;
- Address incitement and recruitment in particular in key environments, for example prisons, places of religious training or worship, notably by implementing legislation making these behaviors offences;
- Develop a media and communication strategy to explain better EU policies;
- Promote good governance, democracy, education and economic prosperity through
- Community and Member State assistance programs;
- Develop inter-cultural dialogue within and outside the Union;
- Develop a non-emotive lexicon for discussing the issues;
- Continue research, share analysis and experiences in order to further our understanding of the issues and develop policy responses.

The key priorities for *protect* are to:

- Deliver improvements to the security of EU passports through the introduction of biometrics;
- Establish the Visa Information System (VIS) and the second generation Schengen
- Information System (SISII);

terrorism (adopted in February 2006) contains more 160 specific counterterrorism measures.⁵⁴

Similarly to all previous EU plans of action, the Revised Plan of Action, the Hague Program, the Action Plan for Freedom, Justice and Security and the new EU Counter Terrorism Strategy must be implemented to make a difference. A key prerequisite for meeting political objectives is adequate funding. In this regard, the Hague Program stands a good chance of being implemented since it was adopted at a time when the Commission was preparing its proposals for the financial perspective 2007-2013. This made it possible to ensure that the objectives of the program were in phase with the financial means available for them. As of 2006, only 0.5% of the total EU budget was dispensed in the area of Freedom, Security and Justice, but the percentage should gradually increase to 1.3% in 2013. This almost amounts to a trebling of the total expenditure. Moreover, if the amounts proposed for 2007-2013 are compared to the current levels of funding, it is obvious that the most significant progression is in the field of Security. In 2013, amounts allocated to this

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- Develop through Frontex effective risk analysis of the EU's external border;
 - Implement agreed common standards on civil aviation, port and maritime security;
 - Agree a European programme for critical infrastructure protection;
 - Make best use of EU and Community level research activity.

The key priorities *on pursue* are to:

- Strengthen national capabilities to combat terrorism, in light of the recommendations of the peer evaluation of national anti-terrorism arrangements;
- Make full use of Europol and Eurojust to facilitate police and judicial cooperation, and continue to integrate the Joint Situation Centre's threat assessments into CT policy making;
- Further develop mutual recognition of judicial decisions, including by adopting the European Evidence Warrant;
- Ensure full implementation and evaluation of existing legislation as well as the ratification of relevant international Treaties and Conventions;
- Develop the principle of availability of law enforcement information;
- Tackle terrorist access to weapons and explosives, ranging from components for homemade explosive to CBRN material;
- Tackle terrorist financing, including by implementing agreed legislation, working to prevent the abuse of the non-profit sector, and reviewing the EUs overall performance in this area;
- Deliver technical assistance to enhance the capability of priority third countries.

The key priorities *on respond* are to:

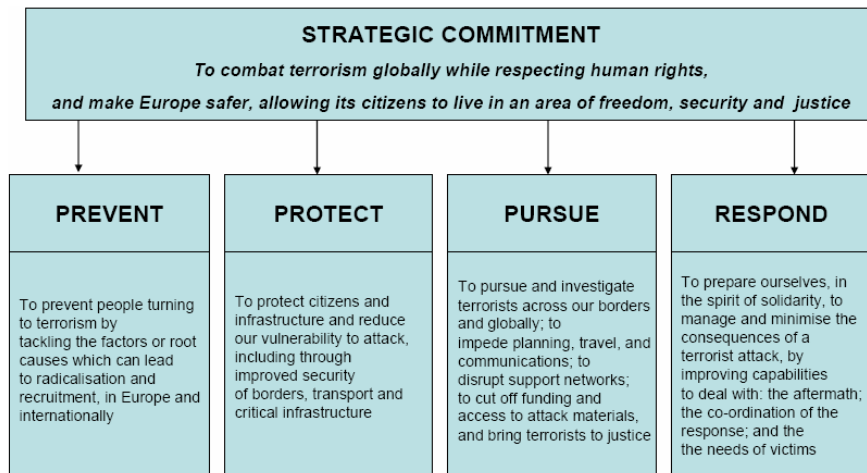
- Agree EU Crisis Co-ordination Arrangements and the supporting operational procedures for them;
- Revise the legislation on the Community Mechanism for civil protection;
- Develop risk assessment as a tool to inform the building of capabilities to respond to an attack;
- Improve co-ordination with international organizations on managing the response to terrorist attacks and other disasters;
- Share best practice and develop approaches for the provision of assistance to victims of terrorism and their families.

Council of the European Union, "European Counter Terrorism Strategy," para.13, 21, 31, 38.

⁵⁴ Council of the European Union, "EU Action Plan on Combating Terrorism," 2006, <<http://register.consilium.europa.eu/pdf/en/06/st05/st05771-re01.en06.pdf>>.

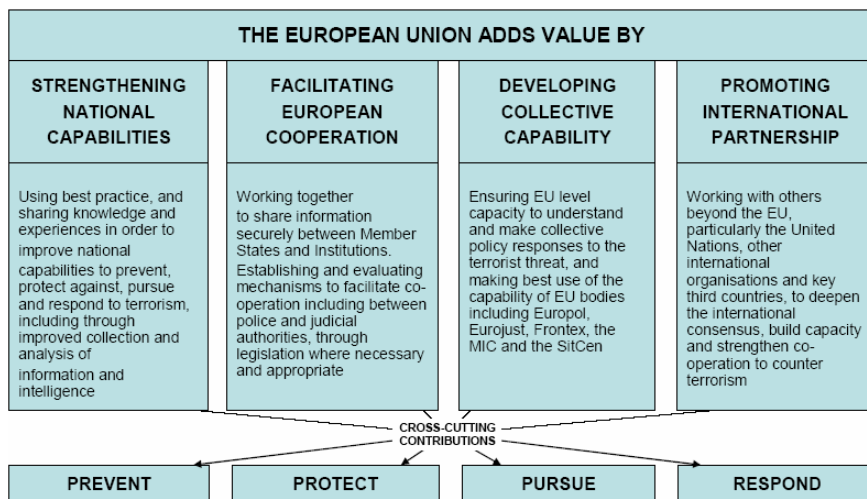
policy will have increased by almost twelve times when compared to funding in 2006.⁵⁵ This clearly demonstrates the political importance that the European Commission attaches to EU action in the field of prevention of, and the fight against, crime and terrorism.

Figure 1: Four strands of the EU Counter-Terrorism Strategy



Source: *European Counter Terrorism Strategy*, 2005.

Figure 2: EU “Value Added” in the Fight Against Terrorism



Source: *European Counter Terrorism Strategy*, 2005.

⁵⁵ European Commission, “The Hague Programme – Ten Priorities for the Next Five Years.”

Concluding remarks

Both the available scholarly and internal EU analyses reveal that while the unprecedented post-9/11 ability of the Council to rapidly reach political agreement on a number of highly sensitive issues may perhaps represent “a precedent for future developments in the field of JHA, as Third Pillar decision-making has proven not to be inherently slow and cumbersome,”⁵⁶ serious doubts remain about the extent to which these agreements have been translated into effect thus far. Often, decisions adopted at the EU level have not been fully implemented by the Member States and there have been cases of different interpretations of the agreed measures. The EU enforcement capabilities remain quite weak and there is a lack of effective coordination between EU institutions and EU Member States in a number of important areas. The national intelligence and law-enforcement agencies do not always cooperate with Europol as they should and, similarly to the governments of several Member States, occasionally prefer to act bilaterally rather than collectively. Cooperation of national judiciaries with Eurojust is also far from ideal due to ongoing national sovereignty concerns and various domestic preoccupations. Taken together, these shortcomings represent an important reminder that the EU is ultimately its Member States, without whose wholehearted support even the most elaborate and innovative counterterrorism structures and mechanisms remain useless.

On a more positive note, the findings of this analysis show that the EU’s efforts to bolster the meager counter-terrorism capabilities of the candidate countries have produced some impressive results. Along with the millions of Euros and extensive technical assistance, the refining of the EU’s accession process into an identifiable and replicable series of six specific steps helped the ten former candidate countries to bring their administrative, legal, economic, social, and policy frameworks closer to the much higher EU standards. As such, the EU’s accession process offers a number of valuable lessons regarding the provision of counter-terrorism assistance to those developing countries that are willing to change – but not necessarily independently capable of changing – their administrative, legal, economic, social and policy frameworks to combat international terrorism more effectively. These lessons could be emulated by other regional organizations and by the UN Counter-Terrorism Committee.

The most recent developments suggests that both the EU institutions and the EU member states responded to the 11 March 2004 and the 7 July 2005 terrorist attacks with a much needed critique of the measures they have taken to combat terrorism thus far. The EU Council adopted a Revised Plan of Action, the Commission launched a five year Action Plan for Freedom, Justice

⁵⁶ Dubois, “The Attacks of 11 September: EU-US Cooperation Against Terrorism in the Field of Justice and Home Affairs,” 327.

and Security, and a new EU Security Coordinator post was created to remedy the current shortcomings in intelligence sharing and coordination. These are all laudable developments that correspond to changed citizens' expectations as what should be priority issues at the European Union level. According to a recent Eurobarometer survey, 91% of EU citizens expect the EU to take action to fight terrorism and to maintain peace and security.⁵⁷

The past experience, however, suggests that translating recent EU political agreements into effective counter-terrorism tools will not be easy. Most observers acknowledge that a multitude of political, legal, and cultural challenges lie ahead, and some have also criticized the EU's failure to adequately address the root causes of terrorism, which in turn suggests that the EU counter-terrorism policy needs to be adjusted both at the tactical and strategic levels. Almost two years after the London terrorist attacks, the political commitment of EU leaders to make these adjustments appears to be stronger than ever before. Whether it will be strong enough to make the EU's counter-terrorism policy less of a paper tiger and more of an effective counter-terrorism device remains to be seen.

⁵⁷ Franco Frattini, "Internal and External Dimension of Fighting Terrorism. Speech by Vice-President Franco FRATTINI, European Commissioner Responsible for Justice, Freedom and Security at the 4th Congress on European Defense, Berlin, 28 November 2005," <<http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/05/735&format=HTML&aged=0&language=EN&guiLanguage=en>>.

Table 1: Status of the FCCs Acceptance of International Terrorism Treaties as of May 1, 2004
Separated by Acceptance before their Europe Agreement, after the EA but before SCR 1373, and after SCR 1373

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Note: Cyprus signed its Europe Agreement in Dec 1972 and Malta signed its Europe Agreement in Dec 1970, while many of the terrorism treaties were created afterwards.

For all treaty statuses, except those listed below: <http://untreaty.un.org/English/terrorism.asp>

Convention on the Physical Protection of Nuclear Material: http://www.iaea.org/Publications/Documents/Conventions/Conventions/cppn_status.pdf

Yes-No status of all maritime treaties, including SUA: http://www.imo.org/includes/biasDataOnly.asp?data_id=9106&status.xls

Dated status of Maritime SUA & Protocol, see pp. 329 & 337: http://www.imo.org/includes/biasDataOnly.asp?data_id=3D8140/8387.pdf

Information about current (additional) Nuclear Protocols: http://www.iaea.org/OurWork/SV/Safeguards/sg_protocol.html [Websites last accessed May 2004]

Table 2: Implementation of the legislative Instruments listed in the Declaration on terrorism on terrorism of the European Council of 25 March 2004*

Framework Decision of 13 June 2002 on the European Arrest Warrant				
New MS	10 (100%)	Old MS	14 (93%)	EU 25 24 (96%)
Framework Decision of 13 June 2002 on Joint Investigation Teams				
New MS	9 (90%)	Old MS	12 (80%)	EU 25 21 (84%)
Framework Decision of 13 June 2002 on Combating Terrorism				
New MS	5 (50%)	Old MS	15 (100%)	EU 25 20 (80%)
Framework Decision of 26 June 2001 on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime				
New MS	6 (60%)	Old MS	12 (80%)	EU 25 18 (72%)
Decision of 28 February 2002 establishing Eurojust				
New MS	8 (80%)	Old MS	13 (87%)	EU 25 21 (84%)
Decision of 19 December 2002 on the implementation of specific measures for police and judicial cooperation to combat terrorism				
New MS	10 (100%)	Old MS	15 (100%)	EU 25 25 (100%)
Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union				
New MS	5 (50%)	Old MS	10 (67%)	EU 25 15 (60%)
Protocol of 16 October 2001 to the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union				
New MS	4 (40%)	Old MS	9 (60%)	EU 25 13 (52%)
Protocol of 30 November 2000 amending the Europol Convention				
New MS	10 (100%)	Old MS	12 (80%)	EU 25 22 (88%)
Protocol of 28 November 2002 amending the Europol Convention and the Protocol on the privileges and immunities of Europol				
New MS	10 (100%)	Old MS	10 (67%)	EU 25 20 (80%)
Protocol of 27 November 2003 amending the Europol Convention				
New MS	10 (100%)	Old MS	8 (53%)	EU 25 18 (72%)
Framework Decision of 22 July 2003 on the execution of orders freezing property or evidence				
New MS	2 (20%)	Old MS	5 (33%)	EU 25 7 (28%)
Average implementation score of the aforementioned legislative instruments				
New MS	89 (74%)	Old MS	135 (75%)	EU 25 224 (75%)

Source: Council of the European Union, „Implementation of the Action Plan to Combat“, 01/12 2005, European Union, 23/01/2007

<http://ue.eu.int/uedocs/cms_Data/docs/pressdata/en/jha/87255.pdf>.

Notes: * As of Nov. 2005

1. Figures rounded to the nearest whole number.

2. MS = EU Member States