

## Foreign fighters – Member State responses and EU action

### SUMMARY

As the hostilities in Syria and Iraq continue, and terrorist activities worldwide appear to be on the rise, EU Member States are increasingly confronted with the problem of aspiring and returning 'foreign fighters'. Whereas the phenomenon is not new, its scale certainly is, explaining the wide perception that these individuals are a serious threat to the security of both individual Member States and the EU as a whole.

International fora, including the United Nations, have addressed the problem, with the UN adopting a binding resolution in 2014 specifically addressing the issue of foreign fighters. The EU is actively engaged in international initiatives to counter the threat.

Within the EU, security in general, and counter-terrorism in particular, have traditionally remained within the Member States' remit. The EU has, however, coordinated Member State activities regarding the prevention of radicalisation, the detection of travel for suspicious purposes, the criminal justice response, and cooperation with third countries. The EU is seeking to strengthen its role, given the public feeling of insecurity in the wake of recent terrorist attacks. The EU's role as a forum to discuss security issues has consequently grown during 2015.

Individual Member States have stepped up their efforts to address the problem, using various tools including criminal law, administrative measures and 'soft tools', such as counter-radicalisation campaigns. The Member States most affected have also cooperated with each other outside the EU framework.

The United States has a particularly developed counter-terrorism framework, now used to deal with foreign fighters. Since 9/11, the EU and the USA cooperate on counter-terrorism, despite differing philosophies on issues such as data protection.

*This briefing substantially updates an [earlier one](#), from February 2015.*



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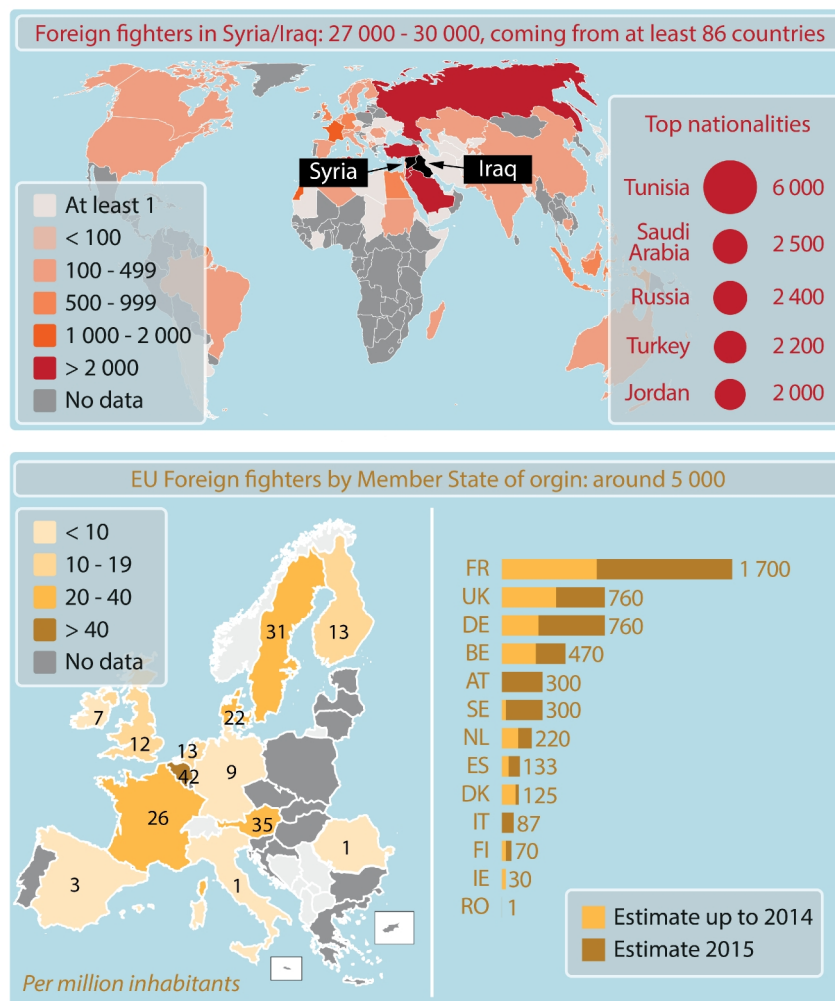
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### A new dimension to an old threat

The phenomenon of foreign fighters – i.e. individuals who join insurgencies abroad and whose primary motivation is ideological or religious rather than financial<sup>1</sup> – is anything but new. It is estimated that from 1980 to mid-2010 between 10 000 and 30 000 such fighters took part in armed conflicts in the Muslim world.<sup>2</sup> It seems, however, that since the Arab Spring protests turned into a fully fledged civil war in Syria, the phenomenon has acquired an entirely new dimension. Whereas until recently it appeared that terrorist activity was declining, the trend has changed markedly. This is illustrated by the rise of the terrorist group calling itself 'Islamic state' (also known as ISIL/Da'esh), that has captured large parts of Iraqi and Syrian territory and announced the re-establishment of 'the Caliphate'.

Although this new surge of jihadism is not restricted to Syria and Iraq (the activities of Boko Haram in Nigeria being one striking example elsewhere), the Syrian conflict has attracted more foreign fighters than any other recent or current conflict. Their exact number cannot be established and the available estimates vary. According to the [Soufan Group](#) (a New York-based security intelligence consultancy), in 2015 the overall number of foreign combatants in Syria and Iraq was between 27 000 and 30 000. An estimated 5 000 fighters originated in the EU (see Figure 1). The number of foreign fighters from western Europe has more than doubled since June 2014. Most of them (almost 3 700) come from just four countries (France, the UK, Germany and Belgium).<sup>3</sup>

**Figure 1 – Estimated number of foreign fighters in Syria and Iraq, by country of origin in 2015**



Source: The Soufan Group, [2014](#) and [2015](#).

The majority of European foreign fighters leave to join jihadist groups, including ISIL/Da'esh and Jabhat al-Nusra, whose ideology is hostile towards Western democracies. These individuals are perceived as a serious security threat to EU Member States because they may have become further radicalised and acquired combat experience, and therefore be capable of carrying out deadly terrorist attacks once they return to Europe. These concerns are exacerbated by the fact that some jihadist groups have urged Muslims in the West to undertake such attacks, examples of which have already happened: the individuals behind the 2015 attack on the French magazine *Charlie Hebdo* had reportedly received terrorist training in Yemen, whilst at least some of the perpetrators of the November 2015 Paris attacks were EU citizens returned from Syria.

The actual threat represented by foreign fighters can only be assessed on a case-by-case basis. While some of them die in fighting or are captured abroad, others may choose not to return or may come back disillusioned and unwilling to engage further in extremist activities. From a sample group of fighters presented in one study, one in nine of those who had gone to fight returned to perpetrate attacks in the West. The author concluded that while foreign fighters cannot in general be seen as domestic 'fighters-in-the-making', this kind of experience is still one of the strongest predictors of individual involvement in domestic terrorist attacks. Moreover, attacks perpetrated by foreign fighters with battlefield experience have been generally more lethal.<sup>4</sup>

Debate at EU level on how best to address the foreign fighters issue has evolved into parallel debates at Member State and international level, amidst growing concerns over the new worldwide surge in terrorism. This debate was greatly marked by the 2015 terrorist attacks in France and the ensuing widely shared feeling of insecurity.

### The international response

The international community has addressed the foreign fighter issue within existing counter-terrorism fora, including the United Nations (UN). In September 2014, the UN Security Council (UNSC) specifically addressed the problem by adopting binding [Resolution 2178 \(2014\)](#), which calls on UN members to make it a criminal offence to travel or attempt to travel abroad for terrorist purposes, or in order to provide or receive terrorist training. The UN is a close partner of the [Global Counter-Terrorism Forum](#) (GCTF). The Forum adopted the first international [good practices on foreign fighters](#), which inspired UNSC Resolution 2178. A GCTF Working Group – co-chaired by Morocco and The Netherlands – follows up on the implementation of those good practices, as well as coordinating initiatives addressing the foreign fighters phenomenon.

Following the Paris attacks of November 2015, the UN Security Council adopted [Resolution 2249\(2015\)](#) urging 'Member States to intensify their efforts to stem the flow of foreign terrorist fighters to Iraq and Syria and to prevent and suppress the financing of terrorism'. It also called for a further update of the 1267 Committee sanctions list, in order to counter the threat posed by ISIL/Da'esh. The list was first introduced in [1999](#), initially focusing on Taliban-controlled Afghanistan, and then including a broader range of individuals and entities connected to [Al-Qaida](#). UN Security Council [Resolution 2253 \(2015\)](#) renamed the list 'ISIL (Da'esh) and Al-Qaida Sanctions List', in order to add individuals and entities supporting ISIL/Da'esh.

The Council of Europe and the [Financial Action Task Force](#) (FATF) have also [addressed](#) the problem of foreign fighters. In May 2015, the [Additional Protocol on Foreign Terrorist Fighters](#) to the 2005 [Council of Europe Convention on the Prevention of](#)

[Terrorism](#) was adopted. The Protocol provides for the criminalisation of a series of acts such as receiving training for terrorism, travelling abroad for the purpose of terrorism and funding such travel. The FATF revised the [Interpretive Note to Recommendation 5](#) on terrorist financing to incorporate the relevant part of UNSC Resolution 2178.<sup>5</sup>

### Action at EU level

#### Timeline of relevant policy instruments

Whereas the primary responsibility for addressing terrorism-related issues lies with the Member States, the EU has played a supportive and coordinating role, which it intends to strengthen. According to Gilles de Kerchove, [the EU Counter-terrorism Coordinator](#), foreign fighters has been the EU's top counter-terrorism priority since mid-2013.<sup>6</sup>

In 2013, the Counter-Terrorism Coordinator proposed 22 measures to address the problem in six priority areas: better understanding of the phenomenon, prevention of radicalisation, detection of travel for suspicious purposes, investigation and prosecution, returnees, and cooperation with third countries. These measures were endorsed by the [Justice and Home Affairs \(JHA\) Council](#) of June 2013, and in August 2014 the European Council [called for](#) their accelerated implementation. In June 2014, the European Council defined [strategic guidelines](#) for legislative and operational planning for the coming years within the area of freedom, security and justice (post-Stockholm programme). The guidelines stressed the need to mobilise all available instruments for judicial and police cooperation, with a reinforced coordination role for Europol and Eurojust, including action on foreign fighters.

The recognition of ISIL/Da'esh as a major threat to European security led to the adoption of a specific EU strategy (14479/14 EU RESTRICTED). The [outline](#) of the counter-terrorism strategy for Syria and Iraq, with particular focus on foreign fighters, was made accessible to the general public. This strategy later served as a basis for the [EU Regional strategy on Syria and Iraq, as well as the ISIL/Da'esh threat](#) of March 2015.

In October 2014, the JHA Council [adopted](#) additional measures on foreign fighters, and decided that checks at external borders should be improved under the existing legal framework. At the JHA Council in December 2014 the problem was further discussed, the two areas of focus being:

- judicial response (including the need to update the [Council Framework Decision](#) of 13 June 2002 on combating terrorism in the light of the recent adoption of UNSC Resolution 2178 (2014),
- improving information exchange (with the enhanced role of Europol and Eurojust).

Following the *Charlie Hebdo* attack, JHA Ministers [committed](#) to strengthen cooperation at EU level, whilst Foreign Affairs Ministers adopted [conclusions on counter-terrorism](#). Both served as an input for discussions at the informal meeting of EU leaders in February 2015, which led to the European Council [statement](#) calling for specific measures in three areas: ensuring the security of citizens, preventing radicalisation and safeguarding values, and cooperation with international partners. The statement pressed for systematic and coordinated checks at external EU borders on individuals enjoying the right of free movement, against EU databases, based on common risk indicators. Moreover, it called for consideration of a targeted amendment to the Schengen Borders Code to provide for permanent checks. Following this statement, the EU Counter-terrorism Coordinator has regularly presented reports to the Council on the state of play of implementation.

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Furthermore, the renewed EU Internal Security Strategy for 2015-2020 was developed, based on the Commission's [Communication](#) of April and the subsequent Council [Conclusions](#) of June 2015. The Agenda prioritised terrorism – alongside organised crime and cybercrime – as one of the three interlinked areas of concern.

In the aftermath of the November 2015 terrorist attacks in Paris, JHA Ministers adopted a [set of conclusions](#) focusing on issues such as:

- finalising the EU Passenger Name Record (PNR) Directive by the end of the year,
- fighting firearms trafficking,
- reinforcing controls at external EU borders (e.g. immediate implementation of systematic checks including on individuals enjoying the right of free movement),
- targeting terrorist financing, and
- improving information-sharing and judicial cooperation.

On the same day, Council [conclusions](#) on enhancing the criminal justice response to radicalisation were adopted.

### **Main areas of EU action**

#### *Prevention of radicalisation*

In the aftermath of the attack at the Jewish museum in Brussels, the 2005 [EU Strategy for Combatting Radicalisation and Terrorism](#)<sup>7</sup> was [revised](#) in June 2014. The European Commission [Radicalisation Awareness Network](#) (RAN) collects data on existing initiatives addressing foreign fighters (such as the [Cities Conference on Foreign Fighters](#)). In this connection, RAN issued the [Declaration of Good Practices for Engagement with Foreign Fighters for Prevention, Outreach, Rehabilitation and Reintegration](#). RAN has recently been transformed into a Centre of Excellence and granted €25 million in funding.

Radicalisation is also being addressed through initiatives concerning the internet. These include developing counter-narratives to extremist propaganda, internet-safety education in schools and high-level dialogue with internet companies. In July 2015, the [Internet Referral Unit](#) (IRU) was set up at Europol, aimed at reducing the impact of online terrorist and violent extremist propaganda. By early November 2015, it had contributed to the removal of 511 items of terrorist content with a success rate of over 90%.<sup>8</sup> In December 2015, the [EU Internet Forum](#) was established to explore paths for improved monitoring and removal of online content and to create counter-narratives. The Forum is a public-private partnership gathering together ministers of the interior, major internet companies, Europol, the EU CTC and the European Parliament.<sup>9</sup>

#### *Detection of travel for suspicious purposes*

In December 2015, the Council and Parliament reached a compromise on a [proposal](#) for the EU Passenger Name Record (PNR) Directive. The proposed directive, as amended, provides for the collection, use and retention of PNR data on airline passengers on 'extra-EU' (EU-third country) flights, while also allowing Member States to apply the Directive to 'intra-EU' flights'. It is expected to be voted in plenary in early 2016. Meanwhile, Member States have been setting up their own [systems](#), some of them using funds made available by the Commission.

The Commission has updated the '[Practical Handbook for Border Guards](#)' (Schengen Handbook) and drafted common risk indicators to better identify returning foreign fighters. Checks on EU external borders are thus carried out systematically on individuals enjoying the right of free movement who, for example, come from geographical areas close to conflict zones. Yet, whilst there has been an increase in the

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number of alerts in the Schengen Information System (SIS II) over the past three years, its use remains inadequate and varies heavily between Member States.<sup>10</sup>

Europol has been running an analytical tool aimed at collecting, analysing and sharing information on the recruitment and travel facilitation of suspected individuals, known as Focal Point Travellers. Whereas all 28 EU Member States participate in the focal point, its use across the EU seems to vary: by 30 November 2015 around half of all contributions originated from only five Member States and one associated third country. By that point, details of 2 081 confirmed foreign terrorist fighters had been recorded.<sup>11</sup> Interpol is a significant contributor to the focal point, with over 3 000 individuals reported by September 2015.

### *Criminal justice response*

In the EU, criminal legislation on terrorist offences has been approximated to some extent by Framework Decision 2002/475/JHA on combating terrorism, as amended by [Council Framework Decision 2008/919/JHA](#) (FD 2008). FD 2008 requires that Member States criminalise public incitement to commit a terrorist offence, recruitment for terrorism, and providing training for terrorism. Receiving such training and travelling outside the EU with terrorist intentions are, however, not covered.

In order to implement the relevant UNSC Resolutions, the related [Additional Protocol on Foreign Terrorist Fighters](#) to the [Council of Europe Convention](#) of 2005 (both signed by the EU in October 2015) and the FATF Recommendation, the Commission presented [a proposal](#) for a directive on combating terrorism in December 2015.

### *Cooperation with third countries*

The issue of foreign fighters has been addressed in political dialogues on counter-terrorism with third countries including Tunisia, Turkey, the USA, Saudi Arabia, Russia, Canada, and with the UN. Following the attack in the Bardo Museum in Tunisia, the first ever reinforced political dialogue on counter-terrorism matters was set up between the EU and Tunisia. Discussion is also taking place in the framework of Frontex, Eurojust and Europol and within established international fora (for instance, the EU is a [GCTF](#) member), as well as through other channels.<sup>12</sup>

### **Leaving fundamental rights aside?**

In its 2011 [resolution](#) on EU counter-terrorism policy, the European Parliament stressed that the Charter of Fundamental Rights should always be the compass for EU policies in this field, and for Member States implementing these policies. In this spirit, in January 2015, the Director of the EU Fundamental Rights Agency and the European Data Protection Supervisor were invited by the European Parliament's Civil Liberties, Justice and Home Affairs (LIBE) Committee to a [joint debate](#) on foreign fighters. However, with current EU and national discourse heavily influenced by a feeling of urgency, data protection and fundamental rights aspects appear to be marginalised in the initiatives presented by various actors.

## **EU Member States' individual responses**

The Member States most affected have made considerable efforts to address the phenomenon. Ad hoc coordination structures have been set up, and attempts made to monitor both individuals intending to take part in jihad outside EU borders, and returnees. In [France](#), 2 680 additional jobs related to counter-terrorism will be created and €270 million earmarked for this purpose by 2017. National authorities are assessing the efficiency of existing legal frameworks, and some countries have recently passed new laws, as illustrated by French [surveillance](#) and [intelligence services](#) acts.

Most Member States have addressed the problem at both departure and return stage through a mix of repressive and preventive measures, their approach being either predominantly 'hard' or 'liberal'.<sup>13</sup> The measures being used and debated can broadly be divided into three categories:

- criminal provisions,
- administrative tools of preventive or punitive nature, and
- 'soft' counter or de-radicalisation measures.

### **Criminal law measures**

By October 2014, six cases had been opened, with nine persons convicted, and further cases had come to trial in the EU.<sup>14</sup> While successful prosecution of foreign fighters is possible, such cases encounter various legal limitations and practical difficulties.

#### *Limits to jurisdiction*

With all EU Member States having ratified the Rome Statute of the International Criminal Court (ICC), foreign fighters could be made accountable for 'international crimes' (war crimes, crimes against humanity, and genocide) committed outside EU borders (within the limits of [ICC jurisdiction](#), which is not universal). However, in May 2014, Russia and China [vetoed](#) UN Security Council referral of the Syrian situation to the ICC.<sup>15</sup>

As to 'ordinary' and terrorism-related offences (defined in criminal codes or specific counter-terrorism legislation), these may be prosecuted by individual Member States on condition that the offence has been committed on their territory (principle of territoriality), by their nationals (active nationality principle) or against their nationals (passive nationality principle). This means that non-nationals who commit crimes outside the EU are likely to escape prosecution since – in contrast with the USA where extraterritorial jurisdiction is explicitly provided for in law – in the EU such jurisdiction is very controversial and could be applied, if at all, only exceptionally for 'international crimes'. Therefore some Member States have considered changing legislation to allow for extraterritoriality with respect to other categories of offences.<sup>16</sup>

#### *Questions on the adequacy of legislation on terrorism-related offences*

In line with [Council Framework Decision 2008/919/JHA](#) (FD 2008), national criminal laws cover a series of terrorism-related offences. These include participation in a terrorist group, public incitement to commit a terrorist crime, recruiting terrorists and providing training to them. Some countries – such as **Belgium** and **Germany** – have gone a step further and criminalised undergoing such training, as required by UNSC Resolution 2178 (2014). The use of these provisions to prosecute individual foreign fighters seems problematic however. Thus far, travelling to a conflict area has not been considered by the majority of Member States as a crime per se. Therefore, an attempt to commit a specific offence has to be proven (interestingly, the first successful prosecution of foreign fighters intending to travel to Syria was based on provisions of **Dutch** criminal law regarding murder and arson, and not terrorism-related legislation).

Member States have tried to address these limitations by reinterpreting existing rules or creating new ones. Attempts are being made to extend the scope of legal provisions to cover various preparatory acts, and to criminalise travel to conflict zones. In **Belgium** the idea of criminalisation was first abandoned, as it was argued inter alia that it would have limited deterrent effect and would discourage families from reporting on their relatives.<sup>17</sup> However, following the January 2015 anti-terrorist raid in Verviers, travel to conflict zones was included in a new [counter-terrorism law](#). The **German** government has also [criminalised](#) such travel.

### *Evidence collection*

Whatever the qualification of the incriminating behaviour, to successfully prosecute a foreign fighter, a criminal act must have been committed. Demonstrating this is not a straightforward task due to difficulties in collecting evidence abroad, especially in times of war. However, the increasingly widespread use of photos and video footage by terrorist groups, and individual combatants posting self-incriminating material on social media (e.g. Facebook) provides additional paths for gathering evidence.

### **Administrative measures**

Some Member States, including **Denmark**, [France](#), Germany, the **Netherlands** and the **UK** provide for confiscation of travel documents (e.g. passports) belonging to individuals suspected of an interest in jihadist activity. This is limited to the Member State's nationals, whereas foreigners may have their residence permits revoked or receive an order not to leave the country or be prohibited from entry. In the **UK**, the 2015 [Counter-Terrorism and Security Act](#) strengthened powers to seize passports and temporarily exclude British nationals from the UK. **Germany** has also used 'travel disruption plans' comprising various measures preventing departures. German security services not only undertake what is known as 'hazard talks' (*Gefährde-ansprachen*) with aspiring combatants to raise awareness of the implications of their actions, but also liaise with police and administrative authorities to be able to prevent travel at various levels. In **Belgium**, some local councils have removed individuals known to have travelled to Syria from the residence register, thus stripping them of access to social welfare.<sup>18</sup>

The **UK**, the **Netherlands** and **France** have gone even further, making it possible to revoke nationality. [In the UK](#), the Home Secretary can thus deprive individuals, who obtained their citizenship status through naturalisation, of their British citizenship, if this is 'conducive to the public good', because they have engaged in conduct 'seriously prejudicial' to the UK's vital interests. This is legally possible in the UK, even if it would render the person stateless.<sup>19</sup> Such decisions can be challenged in court, although only within one month. In the **Netherlands** and in France the revocation of nationality is not possible if it would render the person stateless. In France the possibility has so far been limited to naturalised French nationals holding dual nationality. However, following the November 2015 attacks, the extension to French-born individuals with dual nationality has been debated. In February 2016, the lower chamber of the French Parliament supported an amendment to the Constitution in this respect.

Additional administrative measures are available in dealing with minors. In the **Netherlands**, the Child Protection Agency may impose custody in childcare institutions, curfews, and removal of identity documents of aspiring teenage combatants and children whose parents intend to travel to a conflict zone. In **Denmark**, authorities may confiscate minors' passports and refuse to issue new ones unless the parents agree.<sup>20</sup>

It is important to note that the concurrent use of judicial and administrative measures may have undesired consequences, for example when the revocation of a document alerts the individual to their surveillance, thus hindering an ongoing investigation.

### **Soft measures**

Whereas some countries have favoured a repressive approach (e.g. **France** and **Spain**), others have opted for an 'inclusive' model (**Denmark**), relying on soft measures. The use of such measures is explained by the limitations to a repressive approach, arguably leading to further exclusion of already marginalised groups and thus polarising societies.



It is also based on a premise that individuals may pose various levels of threat to societies, some of them being able – with support – to return to normal life.

Soft tools aim either to prevent radicalisation or reintegrate individuals already affected (e.g. prisoners). At an individual level, mentoring schemes, vocational training and psychological support to address post-traumatic stress are offered. These are coupled with awareness-raising campaigns and efforts to strengthen relationships with ethnic communities and at-risk families. Various actors are involved including police, religious leaders, social workers and NGOs.

**Denmark** has a long-established counter-radicalisation strategy and applies the [Aarhus model](#). Foreign fighters wishing to return are repatriated, offered employment and treatment for injuries. Steffen Nielsen, a Danish crime-prevention advisor, comparing Danish practice to the UK practice of preventive arrests, stated: 'We are actually embracing them when they come home. Unlike in England, where maybe you're interned for a week while they figure out who you are, we say, "Do you need any help?"'.<sup>21</sup>

In January 2015, **France** launched an online [campaign](#) addressing radicalisation through presenting counter-narratives to extremist propaganda. In **Germany**, numerous counter-radicalisation initiatives have been taken at *Land* level, as in the case of Hessen, where authorities visit schools to discuss relevant issues; and hotlines and consultation centres have been made available to parents. At federal level, the [Federal Office for Migration and Refugees \(BAMF\)](#) has supported similar initiatives, trying to involve families of radicalised individuals.<sup>22</sup> The *HAYAT* project has existed since 2012, to make an individual assessment of returning foreign fighters and, when possible, provide them with employment, education and housing.<sup>23</sup>

### Cooperation between the most affected Member States

The group affected by the problem has grown, to include Belgium, Denmark, France, Germany, the Netherlands, Sweden, the UK and – to a lesser extent – Austria and Spain. Since 2013, their interior ministers have met regularly within the 'EU6 Group', subsequently the 'EU9 Group', led by Belgium and later joined by Ireland. In July 2014, they approved a set of measures, promoted at EU level, pertaining inter alia to better use of SIS II, targeted border controls, and information-sharing between national authorities and with Europol. Moreover, several Member States, led by the Netherlands, have started to develop informal joint policies on social media and the legal framework to address internet-related issues in connection with counter-terrorism.<sup>24</sup>

### Case study: the United States

#### Counter-terrorism laws and policies

The number of US foreign fighters is uncertain but was considered to be around 100 in September 2014.<sup>25</sup> US actions against foreign fighters are part of the broader [national counter-terrorism strategy](#), which relies on a wide range of tools developed in the aftermath of September 2001. The main policy lines followed by the USA include a 'Whole of Government' approach, and [repressive and preventive actions](#), carried out abroad and domestically, as well as efforts to construct a global partnership on counter-terrorism. In this vein, the USA has led an international coalition against ISIL/Da'esh since September 2014. The main bulk of [US activities](#), domestically as well as abroad, have been focused on increasing monitoring and prosecution of terrorists and foreign fighters. An entire structure was created to disseminate information on suspected terrorists and process new information for monitoring.

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One of the programmes contributing to upstream information-gathering is the controversial National Security Agency (NSA) Domestic Surveillance Program, which is used for obtaining telephony and internet metadata. This information is used to 'map' the profiles of suspected individuals and groups (through data mining and social network analysis).<sup>26</sup> The NSA's Domestic Surveillance Program came under attack after one of its former contractors, [Edward Snowden](#), made public revelations in 2013, provoking a debate on the programme's legal and constitutional implications. Following the debate surrounding the NSA, a [legislative initiative](#), still [under debate](#) in the [Senate](#) and the [House](#), proposes to subject access to such information to a warrant.<sup>27</sup> While programmes like the NSA Program can be used to identify suspects, other databases keep information on identified or suspected terrorists. The [Terrorist Screening Database](#) (TSD) is maintained for this purpose by the Terrorist Screening Center of the Federal Bureau of Investigation (FBI) to disseminate information useful to various other agencies and department databases. A subset of nominees from the TSD is placed on a number of different security lists: each department involved checks at least one such list of suspects. For example, using the [Automated Targeted System for Passengers \(ATSP\)](#), the Customs and Border Protection Agency verifies and compares PNR and Advanced Passenger Information System (APIS) data against the information contained in various law enforcement databases, inter alia from immigration system databases and US Treasury Department databases. Another such example is the [Terrorist Finance Tracking Program \(TFTP\)](#), initiated by the US Treasury Department in order to identify, track, and pursue terrorists and their networks.

When sufficient evidence is gathered, prosecution against 'material support to terrorist organisations' is carried out through a [series of laws](#) enacted in 1994 and modified in the aftermath of 9/11 (by the 'Patriot Act'). United States measures against foreign fighters concern both direct participation in terrorist acts, as well as any kind of other material support (such as financial or weapons supply); and intangible aid, such as training, service and expert advice or assistance. Some measures may also be applied to non-US citizens through extra-territorial jurisdiction.<sup>28</sup> The provisions providing for extra-territoriality are fairly broad in application<sup>29</sup> and easily cover most cases concerning foreign fighters. The USA is exploring the introduction of further actions to prevent foreign fighters from travelling to the USA. For US citizens, the option of denationalisation is under consideration in Congress, where a legislative initiative, the [Expatriate Terrorist Act](#), was introduced. Currently [denationalisation](#) is not feasible under US law, where US citizens can lose their citizenship only in very [limited cases](#). Meanwhile, the US authorities keep a [controversial 'no fly list'](#) to refuse return to individuals suspected of being terrorists. Most names within the Terrorist Screening Database are non-US citizens.<sup>30</sup> Not surprisingly, one of the main fields of action of the Obama administration has been to seek the collaboration of other countries to gather evidence and apprehend foreign fighters.<sup>31</sup> Moreover, Congress recently passed [an amendment](#) to the [Visa Waiver Program \(VWP\)](#), requiring a visa for citizens of a VWP country holding dual nationality of, or having travelled to: Iraq, Iran, Syria or Sudan, on or after 1 March 2011. This change will also affect EU countries participating in the VWP.

### Cooperation with the EU

In the aftermath of 9/11, EU-US cooperation in data sharing and border-security activities was sealed with several agreements.<sup>32</sup> These information-exchange agreements complement existing US surveillance programmes and are used inter alia for the monitoring of foreign fighters; for example, data from PNR agreements,

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including the [EU-US PNR agreement](#) of 2012, are used by the US Customs and Border Protection Authority (CBP) and the Transportation Security Administration as part of their respective surveillance programmes of flights, passengers and cargos. Similarly, the ['SWIFT' agreement](#), allowing US and EU authorities to access financial data held by the Belgium-based consortium of banks known as SWIFT, is an integral part of the US Treasury Department's Terrorist Finance Tracking Program. The US also has agreements with [Europol](#) and [Eurojust](#), on cooperation in investigations and exchange of information on suspected terrorists; moreover some EU Member States collaborate alongside the USA within the [Interpol Foreign Terrorist Fighter Programme](#). The USA has concluded two agreements with the EU, in force since 2010, on [mutual legal assistance](#) and [on extradition](#). It is important to point out that, under Article 13 of the Agreement on Extradition, the death penalty cannot be applied or carried out following extradition under the agreement. While the value of such agreements for enhancing security and fighting terrorism is recognised, tensions remain with respect to their implications for data protection, and have increased since the NSA's surveillance programme was revealed. In response to the NSA scandal, the European Parliament passed a [resolution](#), on the basis of the [Morales report](#), containing a number of recommendations for future EU-US relations, in March 2014. In order to find more common ground on the protection of data privacy, the EU and the USA concluded negotiations on an [umbrella agreement](#) on data privacy and protection (DPPA). The USA Congress passed the [Judicial Redress Act of 2015](#), extending the citizens' remedies rights under the Privacy Act to citizens from a 'covered country'; this framework could be used to enhance EU citizens' redress rights to protect their data privacy.

### Main references

[Response to foreign terrorist fighters and recent terrorist attacks in Europe](#): EU Counter-Terrorism Coordinator's discussion papers and reports 2014-2015.

[Returning Foreign Fighters: Criminalization or Reintegration?](#), Ch. Lister, Brookings, 2015.

[Foreign Fighters: An Overview of Responses in Eleven Countries](#) , L. Vidino, L. Pighi and A. Snetkov, CSS, 2014.

[Addressing the Foreign Terrorist Fighters Phenomenon from a European Union Perspective](#) , ICCT, December 2014.

### Endnotes

<sup>1</sup> One of numerous existing definitions, proposed by Thomas Hegghamer. See [Foreign Fighters under International Law](#), Geneva Academy of International Humanitarian Law and Human Rights, 2014, pp 5–6.

<sup>2</sup> [The Rise of Muslim Foreign Fighters: Islam and the Globalization of Jihad](#), T. Hegghammer, International Security, vol. 35, no. 3, p. 53, Winter 2010/2011.

<sup>3</sup> [TSG Foreign Fighters Update](#), Soufangroup, 2015, pp 12–13. See also [ICSR Insight – German Jihadists in Syria and Iraq: An Update](#), ICSR, 2016 linking to a recently published [report](#) in German.

<sup>4</sup> [Should I Stay or Should I Go? Explaining Variation in Western Jihadists' Choice between Domestic and Foreign Fighting](#), T. Hegghammer, American Political Science Review vol. 107, no. 1, 2013, pp 6 and 10. See however also [Homeward Bound? Don't Hype the Threat of Returning Jihadists](#), D. L. Byman and J. Shapiro, 2014, where the authors warn against a possible overreaction by Western governments. In the same vein, see also [Europe considers surveillance expansion after deadly attacks](#), P. Hockenos, The Intercept website, 20 January 2015.

<sup>5</sup> [Financing of the terrorist organisation ISIL](#), FATF-GAFI, pp 33.

<sup>6</sup> [Report on the implementation of the EU Counter-Terrorism Strategy](#), EU Counter-Terrorism Coordinator, 2014.

<sup>7</sup> Gilles de Kerchove has regularly presented reports to the Council on the implementation of counter-terrorism tools at EU level. These papers, available on the Counter-Terrorism Coordinator's [website](#), provide deep insight into paths currently explored by the EU and have therefore been extensively used as sources for this section.

<sup>8</sup> [EU-Council-CT-CTC terrorism statement implementation 14734-15](#), Statewatch.org, 2016, p. 13.

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- <sup>9</sup> The initiative has met with some criticism from civil society – see [Launch of the EU Internet Forum – behind closed doors and without civil society](#) and [European Internet Forum – untransparent and dangerous](#), EDRI, 2015.
- <sup>10</sup> Latest report on FF.
- <sup>11</sup> [EU-Council-CT-CTC terrorism statement implementation 14734-15](#), Statewatch.org, 2016, p. 5.
- <sup>12</sup> Gilles de Kerchove has regularly presented reports to the Council on the implementation of counter-terrorism tools at EU level. These papers, available at the Counter-Terrorism Coordinator's [website](#), provide deep insight into paths currently explored by the EU and have therefore been extensively used as sources for this section.
- <sup>13</sup> [Returning Foreign Fighters: Criminalization or Reintegration?](#), Ch. Lister, 2015 p. 4.
- <sup>14</sup> [Effective criminal justice response to the phenomenon of foreign fighters](#), EU CTC, 2014, p. 3.
- <sup>15</sup> [New Paths to Accountability for Crimes in Syria and Iraq \(Including ICC Jurisdiction Over Foreign Fighters\)](#), J. Trahan, 2014.
- <sup>16</sup> [Effective criminal justice response to the phenomenon of foreign fighters](#), EU CTC, 2014, p. 4.
- <sup>17</sup> See [Dealing with European Foreign Fighters in Syria: Governance Challenges & Legal Implications](#), E. Bakker, Ch. Paulussen and E. Entenmann, ICCT Research Paper, December 2013, p. 13, for a description of this discussion.
- <sup>18</sup> [Foreign Fighters: An Overview of Responses in Eleven Countries](#) / L. Vidino, L. Pigoni and A. Snetkov, CSS, 2014. p. 8.
- <sup>19</sup> For criticism of this measure see [UK Measures Rendering Terror Suspects Stateless: A Punishment More Primitive Than Torture](#), ICCT Commentary by Ch. Paulussen and L. Van Waas, 2014.
- <sup>20</sup> L. Vidino et al. [op. cit.](#) pp 9 and 13.
- <sup>21</sup> [Denmark introduces rehab for Syrian fighters](#), S. Hooper, Al Jazeera, 2014.
- <sup>22</sup> L. Vidino et al. [op. cit.](#) p. 11.
- <sup>23</sup> [Returning Foreign Fighters: Criminalization or Reintegration?](#), Ch. Lister, 2015 pp 9–10. See also pp 10–12 for the assessment of benefits and risks of the predominantly 'liberal' approach.
- <sup>24</sup> EU Counter-Terrorism Coordinator, [op. cit.](#) p. 13.
- <sup>25</sup> Address before the [Senate Committee on Homeland Security and Governmental Affairs by Deputy Director of the National Counter-terrorism Center](#).
- <sup>26</sup> [The System of Domestic Counter-terrorism Law Enforcement](#), *Stanford Law and Policy Review*, Steven Morrison, 2014, vol. 25.
- <sup>27</sup> See, inter alia: *The System of Domestic Counterterrorism Law Enforcement*, *Stanford Law and Policy Review*, Steven Morrison, 2014, vol. 25; *Bulk Metadata Collection: Statutory and Constitutional Considerations*, *Harvard Journal of Law and Public Policy*, L. K. Donohue, 2014, vol. 37 n.3; *The Legality of the National Security Agency's Bulk Data Surveillance Programs*, *Harvard Journal of Law and Public Policy*, J. Joo, 2014, vol. 37 no. 3.
- <sup>28</sup> See: *United States vs. Mohammed Ibrahim Ahmed*, 22 March 2012, F. Supp. 2nd, 2012 WL 983545.
- <sup>29</sup> Beyond the explicit provisions within the statute, extraterritoriality jurisdiction has been applied following principles of customary international law and in particular the 'protective principle' which allows jurisdiction when action is taken against the US interest. This protective principle was used in the case mentioned above against Mohammed Ibrahim Ahmed. See also: *United States v. Yousef*, 327 F.3d 56, 90-1 (2nd Cir. 2003).
- <sup>30</sup> *Terrorist Watchlist Checks and Air Passenger Prescreening*, *CRS Report* W. J. Krouse and B. Elias, 30 December 2009.
- <sup>31</sup> Examples of US foreign policy measures include: counter-terrorism capacity building programmes with African countries; sending prosecutors and FBI agents to assist officials investigating and prosecuting foreign fighters in Balkan, Middle East and Northern African countries; actions taken within the UN (Security Council resolutions).
- <sup>32</sup> Overview of US-EU relations: 'US-EU Cooperation Against Terrorism', CRS Report, K. Archick, 1 December 2014.

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