

The Action Plan on Combating Terrorism: A Flawed Instrument of EU Security Governance

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Abstract

After clarifying the ideal-typical characteristics of action plans, this contribution shows how the Action Plan on Combating Terrorism emerged out of a hectic process of policy-entrepreneurship by the European Commission and other integration-minded actors. This overloaded the EU's policy-making capacity and fostered policy conflict, while the strategic dimension was neglected.

Introduction

Within five years of 9/11, the EU's seemingly impressive and unprecedented cross-pillar response to international terrorism (den Boer and Monar, 2002) was being denounced as a 'paper tiger' (e.g. Bures, 2006; Zimmermann, 2006). Yet although there are now numerous historical and legal accounts of the main developments in EU counter-terrorism policy (e.g. Den Boer, 2003a; Gilmore, 2003; Wouters and Naert, 2004; Wilkinson, 2005; Dittrich, 2005; Knelangen, 2006), comparatively little attention has been paid to the implementation and governance process in this policy area. To be precise, some authors have highlighted the difficulties of coordinating the wide range of actors and institutions that form the EU's counter-terrorism 'network' (e.g. Bendiek, 2006; Lugna, 2006). However, such actor-centred approaches need to be complemented by analyses of the

political instruments¹ the EU has used to manage and implement its ambitious counter-terrorism agenda.

It is beyond the scope of this article to discuss all these instruments, especially as some are dealt with elsewhere in this issue of JCMS. The focus here is the most central instrument of the EU's counter-terrorism policies, the 'European Union Action Plan to Combat Terrorism'² which has been extended, updated and revised countless times since it first emerged in late September 2001. So far, the Action Plan has mostly been treated as a useful, if perhaps somewhat unwieldy, summary. Yet a closer and more systematic analysis of the Action Plan sheds additional light on a number of problems in EU counter-terrorism policy. In a nutshell, this contribution argues that the Action Plan on Combating Terrorism implied an administrative style of governance, which was at odds with the controversial and ambiguous nature of counter-terrorism policy. Serious implementation problems were therefore to be expected. This mismatch was aggravated by the fact that hectic policy-making in the aftermath of major terrorist attacks led to very substantial agenda overload and to the neglect of a strategic definition of the EU's counter-terrorism effort.³

The structure of this article is as follows: in a first brief part, the general concept of action plans is discussed, as it seems ill-understood in the context of EU policy-making. In a second theoretical part, the ambiguity-conflict model, that parsimoniously synthesizes some central insights from the literature on policy implementation, is reviewed. The model is then matched to a more recent typology of governance styles and linked up more closely with analytical approaches from EU studies. The resulting merged typology of implementation and governance styles provides the foundation for a critique of the EU Action Plan on Combating Terrorism as a flawed or misguided implementation and agenda-management instrument. The third part of the article develops this argument by tracing the emergence of the first EU Action Plan on Combating Terrorism as well as of the intimately connected anti-terrorism road-map in late 2001. This historical account finishes with a discussion of the subsequent evolution of the Action Plan after the attacks in Madrid to the present day. The conclusion suggests that the EU Action Plan on Combating Terrorism may offer some wider insights into general problems of EU security governance.

¹ In contrast to security technologies, such as the use of biometrics, which already have attracted considerable attention, see Lodge (2005).

² As will be discussed later, the precise name and form of the EU Action Plan on combating terrorism has varied over time. For the sake of simplicity, it will mostly be referred to as the Action Plan *tout court*.

³ The European Counter-terrorism Strategy of 2005 only superficially addresses this latter deficit, as is briefly argued towards the end of this contribution.

I. The Concept of Action Plans

In contrast to white or green papers, or legally defined instruments such as Common Strategies under the CSFP, there is no clear definition of the form or function of action plans in EU policy-making. However, by looking at action plans in other political and business settings, it is, nevertheless, possible to distil some ideal-typical characteristics. The first of these is that an action plan should be focused on a single objective, no matter how broad. This contrasts with 'to do lists' or work programmes that may contain a large number of disparate objectives. Secondly, action plans should specify concrete measures and responsible actors, as well as deadlines for achieving the various steps needed to reach the desired objective. Thirdly, an action plan should be responsive to change and should be updated regularly. In short, an action plan specifies and manages a prolonged implementation process of a single objective.

Over the course of the last decade, the EU has made much more liberal use of action plans. The so-called 'Vienna Action Plan' (Council, 1998), for instance, had the declared objective of implementing the Area of Freedom, Security and Justice (AFSJ). However, the plan reads more like a broad programmatic strategic statement of the ambitions of the ASFJ; the detailed policies and timeframes for implementation were only specified under the subsequent Tampere scoreboard. Other loosely defined EU action plans, such as various European Neighbourhood Policy Action Plans, suggest, too, that the use of the term 'action plan' often appears to be motivated more by political than technical factors, insofar as they promise concrete 'actions' that could buttress the output legitimacy of the EU.

Yet for action plans to achieve this goal, at least two conditions usually need to be met. Firstly, an action plan should be drawn up after the plan's objective has been clarified in the context of a wider strategic analysis that can balance and prioritize among competing goals and ambitions (Parsons, 1995, pp. 474–5). Secondly, even if action plans are periodically updated, timeframes and targets should be set realistically. This generally requires sufficient capacity and a relatively controllable environment for implementation. If these conditions are not met, the propagation of action plans in EU policy-making may create misleading expectations, as has been the case with the EU's counter-terrorism policy. Yet before discussing the EU Action Plan on Combating Terrorism in more detail, the ambiguity-conflict model from policy implementation studies is reviewed and linked up to recent typology of governance styles in order to develop a more extensive critique.

The central point of this theoretical discussion is that both policy conflict and policy ambiguity are critical factors when striving for effective

governance and implementation processes. Both dimensions need to be explored theoretically to make the subsequent empirical argument that the Action Plan on Combating Terrorism could only fulfil its promise under conditions of low policy conflict and low ambiguity, which did not match the requirements and realities of EU security policy-making in the aftermath of 9/11.

II. The Ambiguity-Conflict Model of Policy Implementation

The ‘ambiguity-conflict’ model (Matland, 1995) that synthesizes many central insights in the literature on policy implementation retains both relevance and attractiveness. More recent and EU-focused contributions to the study policy implementation have largely revolved around the concepts of compliance (Börzel, 2001), transposition (Kaeding, 2006) or ‘goodness-of-fit’ with EU requirements (Börzel and Risse, 2000). However, the ambiguity-conflict model of implementation is particularly useful for the purposes of this article as it is parsimonious⁴ and framed in general terms that make it possible to link it to a recent typology of governance (Treib *et al.*, 2005), which has already been fruitfully applied in analyses of EU JHA policy (Monar, 2006). On top of reflecting the ‘governance turn’ in EU studies (Kohler-Koch and Rittberger, 2006), this link is particularly important as the Action Plan aimed to structure both the agenda-setting and implementation process of a large number of policies. This means that analytical distinctions between different phases of the policy-making process cannot be usefully upheld⁵ and a wider governance perspective needs to be applied. After reviewing the ambiguity-conflict model of implementation, it will therefore be shown how its central tenets can be applied more widely to different styles of governance.

The ambiguity-conflict model postulates that there are two key factors that structure the policy implementation process: the level of ambiguity in the formulation of policy means and ends and the degree of conflict the policy provokes. Policy conflict generally impedes implementation. However, the impact of policy ambiguity is more contested (Matland, 1995, pp. 157–9; Parsons, 1995, pp. 464–9). Traditional views of governing from the ‘top-down’ stress the need to minimize ambiguity to ensure hierarchical control and fidelity of execution. By contrast, ‘bottom-up’ approaches to implementation highlight ambiguity as a positive resource for ‘street-level’ bureaucrats

⁴ Treib and Pülzl (2006, p. 100) point out that this is a quality of Matland’s framework that should be given more emphasis, since current policy implementation studies seem burdened by over-complex theoretical models and a proliferation of variables and non-comparable case studies.

⁵ Splitting the policy process into clearly distinct phases that require separate theoretical approaches has long come under fire in public policy analysis (Sabatier, 2007, p. 7).

(Wetherley and Lipsky, 1977), enabling them to adapt policies to local conditions. Moreover, policy ambiguity also facilitates the formation of a winning coalition among decision-makers. The ambiguity-conflict model synthesizes both bottom-up and top-down approaches by specifying that greater policy ambiguity tends to reduce policy conflict – at least over policy means if not over higher ends, as will be elaborated below – while it increases implementation diversity at lower levels.

Combining these two dimensions of policy conflict and ambiguity generates four different implementation ‘paradigms’ (Matland, 1995, pp. 159–70):

1. ‘Administrative implementation’ is possible when both conflict and ambiguity are low, so that implementation becomes primarily a managerial or depoliticized process and therefore, comparatively efficient and effective. The most important factor ensuring ‘success’ under the administrative implementation paradigm is not to overtax but support the resources and capacities of the implementing actors.
2. ‘Experimental implementation’ occurs when conflict is low, but when means and goals of policies are ambiguous. In such situations, circumstantial factors, such as the availability of existing policy solutions and the presence of certain actors at a particular time and place, heavily influence the implementation process. This approximates the experimental implementation paradigm to the ‘garbage-can’ model of policy-making (Matland, 1995, p. 166), whereby pre-existing policy proposals are matched to new problems under conditions of bounded rationality (Cohen *et al.*, 1972; Olsen, 2001).
3. The paradigm of ‘symbolic implementation’, which arises in cases of both high policy conflict and high ambiguity, requires a little more elaboration. Symbolic implementation is not to be equated with symbolic politics (Edelman, 1985), which would imply the absence of any concrete implementation measures. Rather, it denotes the idea that – in contrast to the general assumption of an inverse relationship between policy ambiguity and policy conflict – even ambiguously formulated policies may provoke intense debate if they relate to highly symbolic issues. That is, actors are in conflict over how to define and implement the symbolic, yet elusive, policy issue. However, these battles over the appropriate way to implement ambiguous top-level policies are mostly fought over and decided upon at lower levels, so that outcomes tend to vary greatly across different administrative or political venues.
4. The last paradigm of ‘political implementation’ that applies in cases of high conflict and low ambiguity encapsulates the traditional understanding of governing. If an authoritative decision on clearly defined

policy is reached, policy-makers may try to coerce subordinate actors to implement it, even in the face of serious conflict. Given regular fluctuations in political power, this approach may not always succeed, but it remains an important feature in political systems with comparatively few veto-points.

Merging the Ambiguity-Conflict Model with a Typology of Governance

Treib *et al.* (2005) have reviewed the extensive and complex literature on governance and usefully reduced various available typologies to a two-by-two matrix, distinguishing between non-binding and binding forms of decision-making and implementation. It is possible to match the ambiguity-conflict model with this simple, yet comprehensive governance matrix and to extend the insights of the model to the entire governance process: the dimension of policy conflict corresponds to decision-making and policy ambiguity to implementation. This is because higher degrees of policy ambiguity are linked to more diverse and less 'binding' forms of implementation, whereas higher levels of policy conflict require more binding and politicized forms of decision-making, even if less binding decisions are often a way to sidestep or fudge irresolvable conflicts.⁶ Based on these assumptions, Table 1 can be drawn up, with governance types by Treib *et al.* (2005) written in normal type, Matland's (1995) implementation paradigms in bold and the central factor for the implementation success or process in italic.

The targeting/administrative implementation field is the only one that can be briefly discussed here, as it is central to the subsequent argument. Administrative implementation is mostly associated with traditional bureaucratic implementation. The governance mode of target-setting could be seen to differ from bureaucratic implementation, as, under the former, agents tend to have a greater amount of leeway in choosing how to achieve the required targets. Yet this does not render the governance mode of target-setting and administrative implementation incompatible. As long as actors in the implementation process know the targets and how to meet them (ambiguity low), as well as support them (conflict low), target-setting may be even more efficient than detailed bureaucratic regulation, which is reflected in the spread of 'managerial' rather than hierarchical EU governance approaches over the last decade (Tallberg, 2003). In short, there may be some differences of style

⁶ This emphasis on requirements differs from the original purely descriptive governance typology by Treib *et al.* (2005). There is a widespread use of soft modes of governance in controversial areas of EU policy-making, but as critical discussions of the OMC indicate (e.g. Timo and Daniel, 2006), this may not be a particularly effective way of dealing with policy conflict. Therefore, the assumption is that if more binding decision-making was institutionally possible, then EU policy-makers would prefer this route to settle contentious issues.

Table 1: The Ambiguity-Conflict Model

		<i>Level of conflict & need for binding decision-making</i>	
		<i>Low/non-binding</i>	<i>High/binding</i>
Level of Ambiguity & instruments of implementation	High/flexible	Voluntarism <i>Contextual conditions, such available instruments and contingently involved actors</i> Experimental implementation	Framework regulation ⁷ <i>Domestic politics, or coalition strength of implementing actors at lower-level sites</i> Symbolic implementation
	Low/rigid	Targeting <i>Capacities of implementing actors</i> Administrative implementation	Coercion <i>Power of top-level decision-makers/ coalition</i> Political implementation

Source: Author's own data adapted from Treib *et al.* (2005).

between administrative implementation based on bureaucratic regulation and more managerial governance approaches, but both can clearly be grouped together under the headings of low conflict and under low ambiguity.

The Problems of the EU Action Plan on Combating Terrorism

If, ideally, an Action Plan is designed to be an instrument that lowers policy ambiguity by specifying measures, responsible actors and deadlines, then the EU Action Plan on Combating Terrorism clearly intends to bring the EU's counter-terrorism policy under the administrative implementation/target-setting paradigm. It is unlikely that EU policy-makers naively expected that *all* goals in the Action Plan on Combating Terrorism could be met and that they would merely be faced with technical challenges during the implementation process. However, there were serious problems with even attempting to manage EU counter-terrorism policy on the basis of the administrative and target-setting governance paradigm. In fact, the development of an Action Plan in response to the events of 9/11 was not carefully determined or reflected upon, but, rather, emerged out of a relatively chaotic process of hectic agenda-setting and policy entrepreneurship.

⁷ Here the term 'framework regulation' does not denote the specific EU legal instrument of framework decisions, but captures a wider set of governance practices whereby implementation details are left open.

The following empirical analysis is that EU counter-terrorism policy followed the experimental as well as the symbolic governance paradigm at different points in time, as ambiguity about the EU's counter-terrorism contribution remained high and policy conflict resurfaced quickly after each terrorist attack. Meanwhile, due to its institutional limitations the EU could not move to the top-down coercive mode of governance to overcome policy conflict. So although the terrorist attacks in New York, Madrid and London offered temporary opportunities for policy-making, they did not provide an adequate basis for developing administrative governance instruments such as the Action Plan.

III. The Emergence of the Action Plan on Combating Terrorism and Anti-Terrorist Roadmap

Immediately after 9/11, the European Commission seized the opportunity to promote an EU security policy. As early as 17 September 2001 it was decided at a meeting of the *Chefs de Cabinet* that the European Arrest Warrant and the framework decision on terrorism, both of which had been in preparation since 1999 (Nilsson, 2002, p. 4), would be accelerated and put forward as the central EU counter-terrorism measures (Commission, 2001a). This clearly fits the well-established point that these two measures 'sailed through the window of opportunity' after the attacks (den Boer, 2003b). However, what has not been remarked on is that, the very next day, Commissioners Vittorino and Patten also presented an internal strategy paper to integrate these two proposals with several others so as to maximize the Commission's input to the development of the EU's counter-terrorism policy. This document, entitled 'Increasing the Capacity of the EU to Fight International Terrorism' (Commission, 2001b), was timed just ahead of the crucial extraordinary justice and home affairs meeting on 20 September as well as the European Council on 21 September that lay the ground for the subsequent Action Plan.

At this early point, there was a high sense of ambiguity over the means and ends of the EU's counter-terrorism contribution; but no-one questioned the underlying ambition, which was underlined by the unprecedented 'joint declaration' of the Heads of State, the European Parliament, the Commission and the High Representative on 14 September (European Union, 2001). Consequently, several Councils of Ministers – such as the General Affairs, Transport and, of course, JHA Council – turned their attention to counter-terrorism. At the same time, various Member States (Reckmann, 2004, pp. 24–32) and EU agencies such as Europol (Occhipinti, 2003, p. 149) were pushing in an unco-ordinated manner for more EU action. In this situation, the Commission

paper aimed to formulate a more coherent as well as wide-ranging EU counter-terrorism policy, so as to maximize the potential role of the EU *vis-à-vis* the Member States and to serve as a 'partner' of the US (Commission, 2001b).

Yet even if the Commission also stressed the need for realism and the limits to EU counterterrorist action, the document listed no less than 18 proposals, ranging from enhancing the role of Europol and Eurojust to broad issues such as improving the instruments against money laundering or for non-proliferation. At least 14 of the 18 proposals went clearly beyond, or had rather tenuous links to, counter-terrorism, such as the review of EU visa or sanctions policy (point q and r). As has been touched upon under the experimental implementation paradigm, this is in line with the theoretical expectation of the garbage-can policy-making dynamics when policy entrepreneurs seize the moment to advance older policy proposals by loosely matching them to the new salient problem (Kingdon, 1995). Correspondingly, the Commission strategy ended by emphasizing the need to make use of the temporary political opportunities: 'We should use the special European Council of this Friday 21 September to ensure that the momentum generated by recent events is not lost and that both the Commission and the Member States are committed to making real and rapid progress' (Commission, 2001b, para. 9).

This 'momentum' was certainly made much use of, not least due to the fact that it was in the interest of most Member States to make a symbolic statement and demonstrate their commitment to fight international terrorism. Thus, the European Council of 21 September reiterated its strong support for the EU's counter-terrorism effort by passing the first 'plan of action' on the 'European Policy to combat terrorism' (European Council, 2001). Due to its short and general nature, this initial Action Plan did little more than give a green light to various initiatives that had already been put on the agenda in the immediate aftermath of 9/11. However, it is also interesting to note that this fledgling action plan not only listed seven broad measures in response to the attacks, but also grouped them under five objectives, namely 'enhancing police and judicial co-operation', 'developing international legal instruments', 'putting an end to the funding of terrorism', 'strengthening air security' and 'co-ordinating the European Union's global action' (European Council, 2001). This represented a first step in reducing some of the ambiguity that surrounded the overall shape and ends of the EU's renewed counter-terrorism effort. Yet this strategic dimension sketched out by the European Council was not developed further in the following months.

By contrast, the focus of more specialized policy-making actors in late 2001 was all on agenda-expansion of EU counter-terrorism policy. The crucial step in this process was the extraordinary JHA Council on 20

September (Council, 2001b) that made significant progress on the Arrest Warrant and the framework decision on terrorism. On top of these two high-profile measures,⁸ the extraordinary JHA Council also dealt with a very wide range of other proposals and issues – such as increasing the anti-terrorist competences of Europol and pro-Eurojust, boosting police and intelligence co-operation and data-sharing, setting up of joint-investigation teams and ensuring the national ratification of a number of legal conventions, to name only a few.⁹ A day later, the JHA Council was also instructed by the extraordinary European Council to accelerate the implementation of the entire Tampere agenda that was scheduled to be reviewed at the end of 2001.¹⁰

In response to this heavy agenda load, by 26 September the so-called ‘Anti-terrorism Roadmap’ (SN 4019/01) had been drawn up by the Council Secretariat to structure the work of the JHA Council.¹¹ Again, out of the total of 11 legislative measures on this roadmap only the investigation of immigration and asylum policy with regard to terrorist threats represented a new item that had not been on the agenda in one form or another before 9/11 (Hayes, 2001). This underlines the garbage-can policy-making dynamics at the time, matching pre-existing policy proposals to new problems and the importance of temporal co-occurrence. From this angle, it is also interesting to note that the anti-terrorism roadmap was closely following the so-called Tampere scoreboard, which had come to be regarded as an important tool of EU JHA policy. The Tampere programme had become contingently connected to the new EU counter-terrorism agenda because of the scheduled mid-term review at the December 2001 European Council in Laeken. The template of the Tampere scoreboard is as follows (Commission, 2000):

Objective	Action needed	Responsibility	Timetable for adoption	State of play
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The first ‘Anti-terrorist road map’ (SN 4019/01) used a different ordering and, nominally, different headings, but follows the same basic template for policies:

Measure	Deadline	Body responsible	Action
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⁸ These have been extensively discussed in the growing literature on EU counter-terrorism policy (e.g. Mégie, 2004; Dumitriu, 2004).

⁹ For a critical analysis of all these proposals, see Statewatch (2001).

¹⁰ See para. 7, SN140/01.

¹¹ Even though the initial roadmap does not have the classic header of EU policy documents that usually clarify authorship, this can be read off the coding and footer of the document, which is specified as SN and DG H. The central importance of the Council Secretariat and particularly of a few leading officials within it was also underlined in interviews conducted in DG Justice in June 2007. However, the initial proposal for this roadmap apparently came from the UK (Occhipinti, 2003, p. 153).

Moreover, as subsequent versions of the anti-terrorism roadmap soon came to include the column 'progress so far', the equivalent of 'state of play' under the Tampere scoreboard, it is clear that the Tampere scoreboard mechanism was being reproduced under a different name. It has to be said, though, that neither the term 'scoreboard' nor 'roadmap' may be the most accurate term for such a table. The Tampere 'scoreboard' allegedly drew on the positive experiences of the Commission when using a similar concept in pursuing the completion of the Single Market (Vittorino, 2001). However, while the Single Market scoreboard retrospectively surveyed the implementation record across all Member States rather than proposing new measures and tracking their deadlines, the policy document that introduced it also included an 'Action Plan' (Commission, 1997) that much more closely resembles the structure of the Tampere 'scoreboard'. In short, both the Tampere 'scoreboard' as well as the anti-terrorism 'roadmap' actually represent an ideal-typical action plan as outlined in the first section, listing targets, actors, deadlines as well as achievements in relation to a specific, if broad, objective. Thus, it is not surprising that the anti-terrorism 'roadmap' very soon came to merge with, or even replace, the original 'Action Plan' by the European Council.

The importance of the initial JHA anti-terrorism roadmap/action plan was boosted by the fact that, even in its first version (SN 4019/01), it already stretched beyond the narrow remit of the JHA Council by incorporating many wider aspects of the EU counter-terrorist effort, such as the international co-operation on counter-terrorism with the US or the signing of the UN convention on the suppression of the financing of terrorism. So, rather than the General Affairs Council taking the lead in the co-ordination of the EU's counter-terrorism effort, as it had been instructed by the European Council (SN140/01, para. 7), it was the JHA Council that took over this role.¹² The General Affairs Council's agenda was already structurally overloaded (Peterson and Gomez, 2001), so that it was unable to exert effective oversight. Moreover, given the complexity of the multi-layered and cross-pillar institutional structure of EU Justice and Home Affairs, the co-ordination of complex policy networks was not a new challenge to the JHA Council and its working groups, topped by the Article 36 Committee or CATS. These institutional factors only added to the fact that – in contrast to the US – European states had long regarded counter-terrorism primarily as a law-enforcement and internal security issue (Hoffmann, 1999; Rees and Aldrich, 2005).

¹² This was formally recognized in 2004 when the European Council concluded that 'the JHA Ministers within the Council should have the leading role in the fight against terrorism, taking into account the task of the General Affairs and External Relations Council' (14292/04, p. 30).

It was not therefore too surprising that the Belgian Presidency soon followed the lead established by the JHA Anti-Terrorism Roadmap and extended it to include the work of the Transport, ECOFIN and General Affairs Council. One should note that the roadmap was meant to contain only 'actions and measures endorsed in principle by the European Council or the Council. Some Member States have suggested other initiatives which could be incorporated in the "road map" depending on how they are received' (Council, 2001a, p. 9). This privileged the role of EU institutions such as the Council Secretariat and the Commission that had stepped in with concrete policy proposals during the first two weeks after 9/11, allowing them to obtain such early endorsement 'in principle'. This gave a particular slant to the Presidency's declaration that the roadmap should serve as 'an exhaustive list – covering all the sectors concerned – of measures and instruments to be gradually introduced over the coming months in order to achieve the various political objectives indicated in the European Council's conclusions' (Council, 2001a).

Yet, despite the fact that it drew extensively on the work of the JHA Council Secretariat, the Presidency's roadmap was unprecedented. It stretched much more explicitly across all pillars of the EU. It also set extremely tight deadlines for almost all proposals and measures: no fewer than 26 of the 63 measures on the Belgian road-map have 'immediate' and another 22 'urgent' deadlines, while the remaining items were to be concluded in 2002. This clearly would not qualify as a 'gradual' process of introduction. Although already highly ambitious, even the original JHA anti-terrorism roadmap did 'not stipulate' a deadline for 15 measures out of a smaller set of 46 proposals. So the Belgian Presidency's 'comprehensive' roadmap, that sought to summarize and co-ordinate almost all proposals that had been pushed on the agenda by various policy entrepreneurs when the attacks were still on everyone's mind, paradoxically created a huge agenda overload and a new expectations/capabilities gap. This gap predictably became even wider once the exclusive focus on counter-terrorism could not be sustained any more.

The succeeding Spanish Presidency, which sought to keep counter-terrorism at the top of the agenda due to its own domestic situation, had also to deal with other pressing issues, such as the euro (Sierra, 2002). Moreover, even within the more narrow confines of JHA policy, Spain wanted to boost EU policy on illegal migration and human trafficking (Sierra, 2002, pp. 42–5), which further diffused attention. In short, the Belgian Anti-terrorism roadmap – that in practice had come to replace the initial Action Plan (SN140/01) as it was more detailed and more closely resembled an ideal-typical Action Plan – predictably turned out to be wildly unrealistic. This was evident

in the first formal update in July 2002 (Council, 17 July 2002): while no measures had been taken off the roadmap, there are no more 'immediate' and only six 'urgent' deadlines, whereas for 14 there is simply 'none'. For the remaining measures, the field 'deadline' is either left blank or lists blanket terms such as 'as soon as possible' or 'ongoing'. The effort to control, implement and rationalize the overall EU counter-terrorism effort by means of fixed targets set by the Anti-terrorism roadmap had almost collapsed within only nine months.

This overestimation of the policy-making, implementation and co-ordination capacities of the EU is understandable in the first chaotic phase after the 'shock' of 9/11, but, as the internal Commission strategy illustrates, it had also been driven by the political motive to stress the importance and 'added value' of the EU *vis-à-vis* the Member States and the US. This motive is understandable in light of the EU's limited role in internal security policy as well as its previous failures in counter-terrorism co-operation over the 1990s (den Boer, 2000). However, this history of failures made it all the more problematic that the Action Plan had been developed very rapidly without undergoing the necessary consultation process with all ratifying or implementing actors at lower political levels.

Thus, policy conflict predictably arose later and undermined trust in the EU's counter-terrorism effort. For instance, several national parliaments placed scrutiny reserves on the European Arrest Warrant after it had been agreed at the EU level within less than three months, whereas the 'usual' consultation and negotiation process for such a sensitive topic might have taken two years (Mégie, 2004). Policies that had proven highly controversial before 11 September were unlikely to pass without intensive discussion, even shortly after the attacks. When it emerged, for example, that proposals on data retention were being revived on the basis of the need to improve counter-terrorist intelligence, there were protests not only from internet providers and civil rights activists, but also from the European Parliament and various parties in the Member States. Consequently, the issue had to wait until the Madrid bombings to make significant headway, while the final agreement was only possible after the bombings in London and after heavy pressure from the British presidency.¹³

Lastly, even if quick agreement on less controversial measures – for instance, on the freezing of terrorist funds or on aviation security – was

¹³ The EU enacted the Directive on Mandatory Retention of Communications Traffic Data in March 2006 and the national transposition deadline is September 2007, while a delay till 2009 is possible, which the majority of member states will make use of. So even today problems with this highly controversial measure persist.

facilitated by pressures from external actors such as the UN and the US,¹⁴ the wider *European* contribution to the fight against international terrorism remained a symbolically highly contested issue which the EU failed to define authoritatively. To begin with, the Belgian Presidency's Anti-terrorism roadmap lost sight of the five objectives of the original European Council's Action Plan and listed the various EU counter-terrorism proposals according to the responsible Council of Ministers rather than thematically. This obscured any sketchy definition as to the overarching ends of EU counter-terrorism policy that there may have been. More importantly, as deeper institutional changes, such as the creation of an EU equivalent of the US Department of Homeland Security, were neither possible nor deemed desirable (Fortescue, 2004), the Member States and their various security and intelligence agencies continued to have plenty of opportunities and channels to pursue their own counter-terrorism policy outside the EU's 'comprehensive' anti-terrorism roadmap. It is not too surprising, therefore, that several Member States and different professional networks did not feel too strictly bound by the EU counter-terrorism framework, but cultivated their own bilateral relationships or made use of other informal groups – for instance, the 'new' Counter-Terror Group or the 'old' Police Working Group on Terrorism – even if this only aggravated long-standing co-ordination, competence and accountability problems in this 'crowded policy space' (Den Boer, 2000, 2003b).

The Continued Evolution of the Instruments of EU Counter-terrorism Policy after Madrid

The subsequent evolution of the EU's 'Plan of Action to combat terrorism' can only be briefly discussed, but, for the most part, it perpetuated the patterns, trends and problems set out above. Firstly, after the attack on Madrid, the European Council's original Action Plan was officially superseded by the Anti-terrorism roadmap in all but name (Council, 2004a, p. 7), as had already occurred in practice in late 2001. Secondly, the EU unsurprisingly further extended its revised anti-terrorism Action Plan in the aftermath of the 11 March attacks.¹⁵ Again, the Commission sprang quickly into action, producing an extensive 'action paper in response to the terrorist attacks on Madrid' within one week (Commission, 2004a), while some of the larger Member States and the Council Secretariat also pushed for a series of new

¹⁴ Yet even these two issue areas were still not exempt from problems of implementation (Mariani, 2005) or legal challenges (Vlcek, 2006).

¹⁵ Statewatch (2004) provided a subversive commentary of this renewed agenda expansion, creating a 'scoreboard' of its own to underline the point that most of the 57 new proposals that were to be put on the revised Action Plan had a much wider remit than counter-terrorism or bore very little relation at all.

measures.¹⁶ Thirdly, however, there was also a new emphasis on improving and speeding-up the implementation of many outstanding issues from the original anti-terrorism roadmap so as to improve the credibility of the EU's efforts.

As the administrative, low-politicized target-setting approach to counter-terrorism policy had not worked as hoped, EU policy-makers after Madrid aimed to provide a clearer strategic vision and stronger high-level political commitment, thus moving closer to the political implementation/coercive paradigm. One element of this move was the so-called 'solidarity declaration' (European Council, 2004) on terrorism that was intended to enhance the political legitimacy and cohesiveness of the EU's counter-terrorism effort by closely involving the European Council.¹⁷ The other element was the reorganization of the 'EU Action of Plan to Combat Terrorism' (Council, 2004b) around seven 'strategic objectives' that had been defined by the European Council in the second part of its solidarity declaration. This emphasis on a wider vision that would lessen ambiguity on policy ends had already begun with the European Security Strategy in 2003 (Council, 8 December 2003). This had situated the EU's fight against terrorism in a wider perspective and was picked up immediately after Madrid by the Commission (Commission, March 2004b). The European Counter-Terrorism Strategy (Council, 30 November 2005) that emerged in the aftermath of the London bombings may be regarded as the logical culmination of this evolution. The Strategy identified four broad objectives of the EU counter-terrorism: prevent, protect, pursue and respond. However, these four objectives maintained a high degree of 'constructive ambiguity' that apparently served the more EU-sceptic position of its main proponent, i.e. of the UK (Coxon, 2007). In effect, the Counter-Terrorism Strategy did little more than to repackage and better publicly present the still incoherent and ill co-ordinated set of EU counter-terrorism policies. So although the Strategy made some progress in communicating the EU's counter-terrorism effort, it did not live up to a stricter definition of strategy, which would present a clear set of priorities and make corresponding resource commitments.¹⁸

¹⁶ Personal communication with a member of the Council Secretariat in March 2006.

¹⁷ Formally entitled 'Declaration on Combating Terrorism' (7906/04), this solidarity declaration also served other political purposes, such as underlining the degree of EU unity after the acrimonious debates over the US war on terror and the war in Iraq, in 2003. What is most important here, however, is that subsequently the European Council took a closer interest in the implementation of EU counter-terrorist policies (e.g. Council, 2004b), particularly by requesting six-monthly reports on this matter (Council, 2004c). It may be interesting to note that this solidarity declaration was yet again drafted by the European Commission in a skilfully timed act of political entrepreneurship.

¹⁸ This criticism of the Counter-terrorism Strategy is shared by some Commission officials in personal communications and has also been applied to the first European Security Strategy (Heisbourg, 2005), which rather should be read as an 'inspirational sketch' (Duke, 2004, p. 460).

In any case, the EU counter-terrorism policy continued to fall below expectations. After Madrid, the problems of agenda-overload, arguably, grew worse, as the revised Action Plan had again grown in size, whereas neither the EU's nor the Member States' implementation capacities had been significantly strengthened by creation of the Counter-terrorism Co-ordinator who had no personal staff or other resources at his disposal. Various proposals to restructure the co-ordination mechanisms of EU counter-terrorism policy (Council, 2004d) were not taken further in practice. Yet even if more implementation, co-ordination and governance capacities had been created and if these had been matched by a political commitment after Madrid to keep counter-terrorism at the top of the agenda, the absence of stronger political decision-making capabilities – such as a revision of voting rules in matters of internal security policy – and a greater political legitimacy of the EU to define and co-ordinate *European* counter-terrorism as a whole, the Plan of Action on Combating Terrorism was bound to perpetuate the expectations/capabilities gap it had opened up after 9/11.

Conclusion

Over the long term, EU Action Plan on Combating Terrorism has not strengthened the credibility of the EU's counter-terrorism effort, even though the EU has agreed on an impressive or – depending on one's perspective – worrying array of new measures since 9/11. Initially, the Action Plan seemed a useful response to the terrorist attacks. However, a closer analysis of the presuppositions and origins of the Action Plan have shown that it could not serve as an effective instrument of EU security governance.

Not only the Arrest Warrant and the framework decision on terrorism, but the entire Action Plan and anti-terrorism roadmap that formed its substance emerged out of a hectic garbage-can process of agenda-setting and policy-making. The European Commission and other policy entrepreneurs, such as the Council Secretariat and some Member States, tried to maximize use of the available window of opportunity and pushed for large agenda-change. Yet the resulting tight deadlines and high agenda-load simply overtaxed the decision-making and implementation capacity of the EU, as could be seen in the first review of the Action Plan in 2002. Therefore, the patchy and fairly unpredictable policy outcomes of the first three months after 9/11 followed the experimental/voluntary governance paradigm, whereas the central requirement of the administrative/target-setting governance paradigm that the Action Plan aimed for in the longer run, appropriate resources for implementation, could not be fulfilled.

Furthermore, the Action Plan fostered rather than contained policy conflict. It seemed to do the latter by listing policy measures in such a way as if there had been agreement 'in principle' and it was mostly a technical matter to put them into practice. In practice, however, the Action Plan heightened doubts as to the legitimacy and appropriateness of the EU's efforts, as it simultaneously tabled several highly controversial proposals and set very tight deadlines for agreeing on them. So the experimental governance process, that boosted the speed and scope of policy-making in the aftermath of the terrorist attack in New York, Madrid and London, soon closed down as policy conflict rose again quickly. The Arrest Warrant was only one out of many issues that since then have fuelled the debate on whether the EU has struck the right balance between liberty and security.

In addition, the Action Plan did not eliminate ambiguity over the EU's overall counter-terrorism effort. The detailed list of measures and targets on the Anti-Terrorism Roadmap that came to replace the initial and more strategically formulated Action Plan of the European Council did not add up to a clear 'vision' of the elusive objective of counter-terrorism. As this became increasingly evident after the bombings in Madrid and London, the EU restructured the Action Plan around seven strategic objectives and eventually drew up the so-called Counter-terrorism Strategy. Yet this merely improved the communicability of the EU's existing counter-terrorism policy, whereas a genuine strategy would have required more clearly sustained priorities as well as a matching commitment of resources.

The repeated high-level commitments by the European Council for more counter-terrorism co-operation did not make a tangible difference either. At least so far, the solidarity declaration that was passed after the Madrid bombings has been largely irrelevant. Correspondingly, the EU has not been able to push consistently for the ratification and implementation of controversial counter-terrorism proposals from the top-down. Thus, the current dynamics of European counter-terrorism policy, which mostly match the symbolic governance paradigm, are probably quite durable: a high degree of diversity of national and sector-specific efforts persists beneath a fairly weak but politically symbolic EU framework.

This lower-level diversity and the lack of a more robust EU counter-terrorism policy can also be viewed positively, as large numbers of new security measures should not be rushed through on the back of crisis-driven action plans. The fundamental problem seems to be that proponents of further integration may see few alternatives to pushing for extensive action plans whenever the opportunity arises, so as to temporarily overcome the EU's structural limitations in security policy-making. This contrasts with the Member States which, for better or worse, can face political conflict more

openly and do not have to rely so heavily on fixing ambitious agendas during short windows of opportunity. This dilemma may fade somewhat with the ratification of the Reform Treaty that will change the institutional set-up of EU internal security policy. Meanwhile, the emphasis that some actors have put on the 'added value' of a 'comprehensive' EU counter-terrorism policy, as encapsulated in the Action Plan, is either misplaced, as large expectation gaps persist, or positively harmful, since it fuels criticisms of the EU as illiberal and undemocratic. Over the long term, a more limited and gradualist approach may not only be more appealing, but simply be more realistic and efficient.

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