



Civil Society Perspective on the Impact, Legitimacy and Effectiveness of European Counter Terrorism Measures

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SECILE: Securing Europe through Counter-Terrorism – Impact, Legitimacy & Effectiveness
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1 Introduction

The analyses and results in this document are based on a focus group carried out in order to gauge the attitudes of civil society towards the impact, legitimacy and effectiveness of European counter terrorism measures, and in particular the European Arrest Warrant, border control and the disruption of the financing of terrorism. This research was undertaken as part of the SECILE project – “Securing Europe Through Counter Terrorism Measures: Impact, Legitimacy and Effectiveness”– which was co-financed by the European Union under the Seventh Framework program.

2 Background

The overall research aim of WP4 is to gather empirical information on the operation of a range of European security measures and to develop an empirically informed understanding of the perceived impact, legitimacy and effectiveness of EU counter-terrorism measures across a diverse range of stakeholders. This was done with a view to assessing the impact of European counter-terrorism legislation, as well as to the adequacy (or inadequacy) of the current analysis and understanding of impact, legitimacy, and effectiveness as developed in the SECILE project.¹

To this end, a focus group with civil society stakeholders was conducted with the following objectives:

- To gather data on how civil society understands the concepts of ‘impact’, ‘legitimacy’ and ‘effectiveness’.
- To gather data on civil society’s perception of the impact, legitimacy and effectiveness of three specific counter terrorism measures, namely: the European Arrest Warrant, the disruption of terrorist financing and border controls.
- To analyze the data with a view to inform the three specific case studies on the EAW, CFT and border control and more generally inform WP05 where the empirical findings will be used to generate practicable, original and innovative insights on the concept and assessment of the impact, legitimacy and effectiveness of EU counter-terrorist law.²

¹ SECILE DoW Section B 1.3

² SECILE DoW objective 5.1. p. 14

3 Methodology

To gather data on civil society's perception on the impact, legitimacy and effectiveness of European counter-terrorism measures, a focus group was convened. A focus group seemed to be an appropriate tool for data collection, because "i) the civil society representatives will be willing to speak freely in the presence of each other and will not have to worry about partisan their thoughts so as to avoid alienation of other participants; ii) it is possible to identify civil society representatives with sufficient cross-case study knowledge to generate meaningful discussion."³ The focus group was conducted on 11 December 2013 in a hotel in London.

3.1 Recruitment

It was thought that the composition of a focus group to a large extent determines the outcome and usability of the data. Due to limited financial and time resources, only a limited number of civil society stakeholders were invited to participate in the focus group. There are, however, numerous civil society stakeholders including for e.g. NGOs, lobby groups, academics, cultural communities, charities and interest organisations etc.

Considering the particular objectives set for this focus group and the limited resources available, it was envisaged that the focus groups would be composed of eight participants. Of these eight, there would be six with expertise relating to at least one of the counter-terrorism measures (i.e. two experts per measure), the other two could have more 'generic' expertise on EU counter terrorism measures.

Seeing that a certain level of familiarity with the counter terrorism measures was considered necessary, random selection would not have been useful; nomination seemed a better recruitment method. Moreover, considering that a focus group has the unique ability to create a rich data set because it fosters discussion and the exchange of *personal* perspectives, the selection of participants was focused on optimizing this 'added value' of the focus groups setting.

With this in mind, the following selection criteria were applied (in order of importance):

1. The person/ organisation must have familiarity with at least one of the three specific counter-terrorism measures. (i.e. EAW, CFT, Border Surveillance)
2. This expertise may be due to 'personal experience' (i.e. having been subject to the specific measure) or through representing the interests of those with 'personal experience'.
3. In case there are several potential participants that fit these criteria, preference should be given to those whose views are not already well publicized.

³ KCL Final Draft Memorandum on research design p.4

Incentives for participation included the reimbursement for travel and lodging expenses and a networking opportunity provided by the social event following the focus group.

3.2 Focus Group Proceedings

A team consisting of a moderator and an assistant moderator conducted the focus group. One other team member was present in order to assist with logistics and other tasks.

All participants were required to read and sign a consent form prior to their participation in this study. The participants were informed that everything that was recorded during the session would be kept confidential and that their identity would remain anonymous in the transcripts. The moderator also informed the participants that they each would be assigned a number and that only this number would be used in the report. In the report, the participants are denoted as CSP followed by their assigned number (CSP stands for Civil Society Participant).

The focus group session was audio-recorded in order to be transcribed, which was done by the assistant moderator in the week following the focus group. After the transcription was completed, the audio file was deleted. After the focus group, those participants who were interested in the research were given more information about the SECILE project during a social gathering.

3.3 Analysis

The focus group ran for 1 hour and 40 minutes and resulted in 25 pages of transcript.

Despite tremendous efforts to recruit the target number of participants, only seven people participated in the actual focus group. Of these, five were academics and two were related to NGOs/ interest groups / journalism. The participants primarily worked in the UK, Belgium, and Spain. While in general it can be said there was a lively discussion, there was one participant who only spoke five times during the entire focus group.

The assistant moderator conducted the analysis and familiarised herself with the data, first adding the non-verbal communications that had occurred, then checking the transcription against the recording. She then listened again to the recording and read the transcription through several times. The data was coded according to the framework provided by the discussion guide, which is included as Annex 1 to this report. Areas that did not fit the framework were noted separately.

The results and discussion are based on the analysis of the data gathered in one focus group. With only seven representatives of European civil society, this report neither suggest to be representative nor comprehensive in discussing European civil society's views on this topic. Due to the low number of participants compared to the large number of people that can be considered 'European civil society' this study never foresaw to reach data saturation. However, the results demonstrate and illustrate some of the arguments and perceptions that might inform a better

understanding of the relevant elements in the concept of impact, legitimacy and effectiveness.

Where relevant, footnotes reference other reports that have aimed to capture civil society's perspective on this topic. The three most relevant being:

- a report by the National Council for Voluntary Organisations and Economic and Social Research Council, based on a seminar 'Counter-Terrorism and Civil Society', which addressed the question: what are the effects of the 'War on Terror' and counter-terrorism measures on civil society? The report presents the view of four academics and a representative of the charity sector.⁴
- A report by the OSCE Office for Democratic Institutions and Human Rights in cooperation with Centro de Investigaciones de Relaciones Internacionales y Desarrollo based on an Informal Working Level Meeting on 'The Role of Civil Society in Preventing Terrorism', held in March 2007 in Barcelona at which 30 participants from civil society and NGO's, as well as ODIHR participated.⁵
- A report by JUSTICE 'European Arrest Warrants: Ensuring an Effective Defence' based on a two-year project involving interviews and self-reporting by lawyers on the effectiveness of the European Arrest Warrant.⁶

However, because of the different methodological approaches in the above-mentioned studies, the references to these studies should not be considered as a thorough comparison of the different views within civil society. These reports are rather used to confirm (or disconfirm) trends in the data gathered through this focus group in order to place some of the statements in context.

3.4 Discussion Guide

The questions to be discussed during the focus group were tailored to the specific research aims in Work Package 4. A discussion guide (Annex 1) was developed with the aim of gauging civil society's understanding of the impact, legitimacy and effectiveness of European counter-terrorism measures.

The focus group served two main objectives.

1. To understand how civil society determines and defines impact, legitimacy and effectiveness.

⁴ *Counter-Terrorism and Civil Society* London School of Economics, National Council for Voluntary Organisations Seminar Report, NCVO/ESRC NGPA seminar 6 March 2009, available at <http://www.lse.ac.uk/internationaldevelopment/research/ngpa/publications/counter-terrorism%20and%20civil%20society%20final%20version.pdf> last accessed 30 May 2014.

⁵ Informal Working Level Meeting on the Role of Civil Society in Preventing Terrorism, organised by the OSCE Office for Democratic Institutions and Human Rights and the Centro de Investigaciones de Relaciones Internacionales y Desarrollo. ODIHR.GAL/34/07, 16 May 2007

⁶ *European Arrests Warrants, Ensuring an Effective Defence*, JUSTICE report, 2012, ISBN 9780907247548.

2. To see how civil society applies these concepts to specific CT measures, in order to develop multi-stakeholder perspectives on the different case studies studied in SECLIE.

These objectives, coupled with the idea of focus groups being inductive (and the need to have non-leading questions) gave reason to carefully consider not only what questions to ask, but also how emerging data would be analysed.

With these objectives in mind, it was decided to divide the focus group into different segments.

There were three main discussion topics, corresponding to the three main concepts. Each concept started with questions that invited a discussion on the key characteristics of that concept. Here the questions were phrased in a way to illicit views on what the participants perceived to be key elements in a definition of 'impact', 'legitimacy' and 'effectiveness'. In order to not simply ask the participants to come up with a definition, a scenario was used to guide the participants into thinking of the relevant elements, for example by asking them to imagine writing a report on the impact of a CT measure. The aim of this exercise was to open up the discussion on the critical elements that determine what is 'impact', what makes a measure 'legitimate', how effectiveness should be measured etc. Within each item, every concept was discussed in relation to the three specific counter-terrorism measures, namely the European Arrest Warrant, Counter-terrorism Financing and Border control.

4 Perspectives on the European Arrest Warrant

4.1 General

None of the participants had any *personal* experience with the European Arrest Warrant (i.e. had been personally subjected to or worked directly with the European Arrest Warrant (EAW)). The opinions offered therefore need to be understood as the participants' *perceptions* of the measure.

In discussing the European Arrest Warrant the participants expressed a rather negative sentiment towards it. The first reaction to the word European Arrest Warrant was: "A problem that needs to be solved" (CSP2), at which all of the other participants chuckled.

The negativity towards the EAW primarily revolved around issues of uncertainty. The participants felt that this uncertainty became apparent both at procedural and at an individual level. This was phrased as issues related to "accountability" (CSP7), and "a general lack of protection for whoever is affected by the European Arrest Warrant" (CSP3).⁷

The lack of clarity was also seen in relation to communication, one participant gave a very practical example: "Communication problems in a sense of language problems, not finding a good interpreter" (CSP1).

This problem was then further discussed in relation to the perceived difficulties arising out of the multiple languages combined with multiple laws, which, according to some participants adds to uncertainty. One participant related this to the issue of information exchange between different national authorities, and used this as an example in the discussion on the EAW: "I'd think you'd have to add to the lots of languages, lots of laws. Because one of the problems...in this field...is how the hell is the data protection officer- who obviously is in one member state- to know all of the laws there are in the other 27. What's permissible?" (CSP2). This issue of perceived uncertainty was pervasive among some of the participants. One participant added: "But also the uncertainty of whom to appeal to, how to go about the warrant. And concluded: "Things like traditional guarantees are subverted and done for" (CSP3).⁸

Besides uncertainty about procedural aspects, participants also discussed uncertainty about the material aspects related to the EAW.

⁷ The initial reaction of the participants reflect the observations in the short overview of the civil society discourse on the EAW in *European Arrest Warrants, Ensuring an Effective Defence*, JUSTICE report, 2012, ISBN 9780907247548, p.8 with further references in footnote 9.

⁸ This sentiment seems to reflect some of the observations of the participants of the Informal Working Level Meeting on the Role of Civil Society in Preventing Terrorism, organised by the OSCE Office for Democratic Institutions and Human Rights and the Centro de Investigaciones de Relaciones Internacionales y Desarrollo. ODIHR.GAL/34/07, 16 May 2007 p.8

“I would add perhaps, how to express it, the knowledge of the arrestee. I mean, how much people know what might happen to them under the EAW and what’s illegal where they are at some point in Europe [3 nods]” (CSP4).

This participant further explained:

“Yes, and how the, well, because laws are different in different countries in the EU, but we travel very frequently in between them, so we become the more people assume that what’s illegal in their own country would be illegal in another and vice versa. But also they may not understand how the European Arrest Warrant works” (CSP4)

While the participants acknowledged that there could be use for the European Arrest Warrant in principle, the negative outlook on the measure hinged primarily on the perceived lack of clarity in terms of its operation and procedure, which in turn made the participants feel that the measure created legal uncertainty.⁹

4.2 Impact of the EAW

In terms of measuring the impact of the European Arrest Warrant, there were several participants who expressed a desire to get more quantitative data on the exact application in order to determine the impact of the measure. One participant commented on the statistics provided on the use of the EAW per county: “(...) it’s not complete, and there are lots of footnotes, it differs per country” (CSP2) who then went on to note that what this participant considered to be the most important information, namely whether a person arrested under the EAW was actually convicted, is missing from the published data.¹⁰

Yet, one participant warned that being focused too much on quantitative data to assess impact could in itself have a negative impact on the implementation of the measure and leave out important elements that may factor in the impact of the measure: “We can learn a lot from criminology, there’s been many police forces in the world that have tried to use hard numbers as a way to measure impact. And that’s caused serious problems in the way the police are organized. We have the problem in the US with COMSTAT and just forcing cops to deliver certain types of criminals. Every week, month, or year, and then being assessed on the basis of those numbers. So when you reduce the analysis of the impact on the quantitative and not the qualitative [...] you don’t take into account the ethical and social perspective. Then you have a problem. Because numbers can just lead to major problems inside of course and for the externalities of what you’re trying to do” (CSP3).¹¹

⁹ Similar observations were made in *European Arrests Warrants, Ensuring an Effective Defence*, JUSTICE report, 2012, ISBN 9780907247548, in the discussion about the application of the EAW in Greece and the UK, p 74 and p142 respectively.

¹⁰ See for example statistical information on the EAW *European Arrests Warrants, Ensuring an Effective Defence*, JUSTICE report, 2012, ISBN 9780907247548, Annex 2 p.166. This report does not mention the amount of convictions resulting from the use of the EAW.

¹¹ Similar critical observations on COMPSTAT and its effects can be found in Eterno, John A., and Eli B. Silverman. "The NYPD's Compstat: compare statistics or compose statistics?" *International Journal of*

It was only after the moderator specifically asked about potential positive impacts that the participants explored this idea. There seemed to be a general agreement that indeed the EAW might have positive impacts and one participant used the example where the EAW had enabled the arrest of an international child abductor. "I mean, one isn't saying that the whole thing is wrong" (CSP2) and another participant added: "So it's hot pursuit, I mean when a country continues to try to get somebody that committed a crime across state borders. You know, you can't argue with that. If there has been a crime committed in your jurisdiction ends at the state then you want to have the power to carry on and try to arrest them." (CSP7). While this remark might suggest that the participant allowed 'hot pursuit' by a state into another, this is not the case under the EAW and it seems likely that the participant referred – in non-legal terminology – to the ability, through the EAW, to ensure that a suspect can be arrested in spite of having left the jurisdiction and entered another EU Member State.

But immediately after recognizing these possible positive impacts, the participants qualified their reasoning by mentioning "the trouble is that there has been a number of cases where it was patently wrong. And the system has broken down" (CSP2).¹²

4.3 Legitimacy of the EAW

In terms of assessing the EAW's legitimacy, three main issues came to the fore: timing, procedure and motivation.

Several participants felt that the timing of the introduction of the measure was a factor. "You'd have to look at the time, at the timing partially and the motivation partially. As I said earlier that it was one of the first...measures post 11 September 2001. And therefore it means, in my view that you'd have to look at it even more closely." (CSP2)

A second issue was the procedure by which the participants considered the measure was introduced. This, according to one participant, played a role in terms of the legitimacy of the measure: "(...) you're trying to get to a solution too quickly or without taking all these steps you should have taken" (CSP3). This participant further explained: "one of the things that goes against legitimacy is exceptionalism. So anything that was decided after 9/11 did not follow a known procedure that was in place before. Then therefore it seizes to be legitimate. Because it just becomes the consequence of this logic of exceptionalism. Because there are exceptional circumstances you should be allowed to break the rules or to follow different rules. But then the legitimacy suffers because of that" (CSP3).

Police Science & Management 12, no. 3 (2010): 426-449. Cf. Henry, Vincent E. "Managing crime and quality of life using CompStat: Specific issues in implementation and practice." *RESOURCE MATERIAL SERIES No. 68* (2006): 117.

¹² See for an extensive review *European Arrests Warrants, Ensuring an Effective Defence*, JUSTICE report, 2012, ISBN 9780907247548. In the review of Portugal, the Defence Lawyer's perspective also spoke of 'wrong' where it concerned the use of the EAW for minor offences.

Besides the procedures followed in establishing the measure, there is a need to understand the driving forces behind the measure. “We need to fully understand who is driving the policy and why. And to backtrack it with the specific case of the Arrest Warrants, I think we need to look at whether it is internal to Europe or whether there are external drivers. (...) So I think there’s issues there about the parameters and limits of where this is coming from. Is it home-grown or is it policy laundered? (...) If it is policy laundered we need to look at the politics as part of the assessment” (CSP7).

In discussing the timing and procedure of the instigation of the measure, the participants seemed to be under the impression that the EAW was a direct result of the terrorist attacks on 9/11 in 2001 albeit that much groundwork had been underway since the 1999 Tampere Presidency Conclusions. None of the participants mentioned the 1999 Tampere Presidency Conclusions that laid the groundwork for the EAW, or indicated that the EAW has a pre-9/11 progeny.¹³ The participants’ perceptions in terms of timing and procedure might therefore suggest that *perceived* timing plays a role in determining legitimacy.

The same participant who earlier mentioned the need for more detailed information about the use of the EAW to assess its impact explained this need for more information also in relation to ‘justifying’ the EAW: “*One justification is, you know, I mean, that you actually got them convicted in that system. But you don’t know that. That figure is missing*” (CSP2). So, as with measuring impact, the actual use of the EAW and transparency about its use might influence the participants’ perception of the legitimacy of the measure.

4.4 Effectiveness of the EAW

The issue of effectiveness as applied to the case of the EAW was only briefly discussed. One participant expressed skepticism to the measure actually working because of lack of a perceived need for harmonisation, resulting from the perceived hastened implementation of the measure:

“[...] You’re trying to get to a solution too quickly or without taking all these steps you should have taken. So we have this idea that of course we want a police that’s able to follow people through borders if they committed a crime, but that means you need to harmonise the legislation throughout Europe. You need to harmonise police training, you just need to create a space, create a right space, framework enable to do that. You can’t just create the European Arrest Warrant without doing the homework and in a way that’s one the problems that I see” (CSP3).

The participants thus put the effectiveness of the measure into question based on the idea that the required harmonisation of rules and legislation might not have happened to the degree necessary. However, while it is true that the European

¹³ Tampere European Council, 15 and 16 October 1999 Presidency Conclusions, para 35.

Arrest Warrants seeks to harmonise extradition rules across the EU, the measure does not in fact aim for harmonisation of criminal legislation of all Member States.

Another participant felt that it would be necessary to engage with stakeholders to get a clearer view of the measure's effectiveness. In particular judges. "I have talked to several judges in Belgium who were all complaining about the European Arrest Warrant. So I think in way of, at least measuring effectiveness, I would be talking to the people who have experience with this on a daily basis, so judges and police officers" (CSP1).

Two participants felt that effectiveness also included a sort of cost benefit analysis: "I think crudely, it would be cost/benefit. What is the risk of a single person in the US or in the UK dying from a terrorist event, probability wise?" (CSP7).

"And value for money. (...) If we manage to get the numbers and calculate how much we're spending on that and just compare that to what [CSP7] did right now(...)" (CSP3).

All in all it appeared that the participants were somewhat hesitant to give clear indicators of what they might have considered a measure of effectiveness, impact and legitimacy in the specific case of the EAW. Rather, they discussed these concepts in relation to the EAW in terms of the EAW being one of many European counter-terrorism measures.

5 Perceptions of Border Control

5.1 General

Despite the instruction by the moderator to focus on the use of EU databases, the discussion on border control was marred by confusion over the exact meaning and purpose of border control/surveillance measures in general. Some thought it particularly referred to databases that are “gathering the data [on] who is moving where and when” (CSP2). In that context issues such as profiling and data protection were mentioned (CSP1 and 3). Others brought up issues related to Search and Rescue operations for migrants at sea (CSP2), and its relation to EUROSUR and FRONTEX and their respective responsibilities.

Others delved into a discussion on the elasticity of borders (CSP7) and the idea of the border being ‘everywhere’, because of the ubiquitous use of ID schemes “So instead of just having it at the edge of the state, it actually becomes ubiquitous within the state as well”.¹⁴ On this point CSP3 disagreed and stated: “the border is a fixed thing” (CSP3) and explained that due to the protection of critical infrastructures, there might, however, be interior borders as well.

The discussion thus covered a wide range of issues that were not necessarily all relevant for the specific kind of border control measures studied in the case study. Nonetheless, the discussions illustrate the wide range of associations and concerns that civil society participants related to border control measures.

5.2 Impact of Border Control

When asked to reflect on the impact of border controls and how to measure this, the first reaction was “If it turns the Mediterranean into a cemetery, it’s not good. That is my indicator” (CSP3). This comment was not related to a specific database used for border control, and started a discussion on what to focus on, simply the exchange of data, or how this data might be used in the context of dealing with, for example, the issue of migrants at sea:

“If you want to measure the impact, you need to know what’re talking about. You need to focus and if it is what you’re interested in is databases, databases have specific characteristics, have specific consequences, and so while other border surveillance technologies have kind of different consequences. So I don’t think you can talk about the impact, in general, of border surveillance technologies. (...) If you want to measure impact, you need to focus” (CSP1)

¹⁴ Echoing sentiments offered by Dr. Alex Hall at the NCVO/ESRC NGPA seminar 6 March 2009 as reported in *Counter-Terrorism and Civil Society* London School of Economics, National Council for Voluntary Organisations Seminar Report p.7.

In relation to the use of databases specifically, one participant thought that particularly there would be an impact on privacy, especially where the data bases might be used to base decisions on: “one impact that’s potentially worrying is that the more unified the system is, the more vulnerable it is to privacy... also error and just blunders. (...) Somebody who is flagged up as false positive, by one sloppy bodyguard somewhere, is now everybody’s suspect. And on a range of privacy, discrimination, data protection concerns come up in this respect with harmonization and centralization of data” (CSP4).

While CSP1 advocated for a strong focus on a specific measure and its impact, other participants felt that the impact of border surveillance should be seen in a broader perspective, especially by comparing the relative importance of the different aims of border surveillance i.e. protecting the border and protecting the lives of migrants at sea. “One of the many boats with 70 people that died last year had gone in and out of borders and people were aware! But they didn’t share the information. So the countries were not taking advantage of technologies, or utilizing data sharing technologies that they could utilize in a way that would save life” (CSP4). Here CSP2 and CSP7 indicated they were sceptical as they immediately recognized a potential negative impact: “But the problem is it could be, they who would use it for that they would use to intercept those boats and not let them land in harbours. We know what the politics of this is” (CSP2). CSP7 agreed with CSP2, but differed in opinion as to how well-known this asserted double agenda is to the general public. “I don’t think it is clear in terms of double politics. It is clear to a group that have the eyes to see” (CSP7), indicating that it is mainly academia and NGOs that are aware of this so-called double agenda.

In relation to the earlier discussed example of the drowning of migrants at sea, CSP4 said: “So the countries were not taking advantage of the technologies, or utilizing data sharing technologies that they could utilize in a way that would save life. (...) So I just think it is worth mentioning a potential benefit of these, of data sharing that isn’t being used to that extent.”¹⁵

Here CSP7 contrasted that extra border control capacities might also be used for less honourable aims: “[...] So it starts reorienting to other capacities. [...] What kind of capacities does this give? What does it yield in terms of joining up parts of the security equations” (CSP7). When asked by CSP3 whether he meant the issue of function creep, CSP7 further elaborated: “Function creep and then moving beyond the limits of the law.[...] It’s very gradual, it’s cumulative. [...] And it ends up in a place that no one would want it to go to.” Also here, the concerns expressed seemed to relate to border control measures in general, rather than to one specific measure.

The mentioning of function creep steered the discussion back to what other elements need to be taken into account when determining the impact of a measure. One participant was adamant about the need to focus (CSP1), another disagreed and viewed the element of ‘politics’ and political agendas as essential part of the impact

¹⁵ This comment was made in relation to general data sharing, not specifically in relation to a specific database such as SIS.

assessment (CSP3). Yet another made it clear that the only reasonable standard by which impact should be measured are fundamental rights (CSP2). CPS7 seemed to offer some sort of compromise and indicated that while it is important to measure specific outputs, at the same time impact assessment need to take into account 'other things' that might undermine treaty obligations.

Thus, in terms of impact, participants discussed the use of the border surveillance databases beyond the aims for which it was originally intended: the issue of function creep. However, there were differences of opinion in whether such function creep could potentially have a positive outcome, e.g. the ability to increase search and rescue at sea, or should primarily be seen as something negative and a potential 'slippery slope'.

5.3 Legitimacy of Border Surveillance

The discussion on the legitimacy of Border surveillance revolved around three main issues: the procedure by which (the change in) the measure is instigated; the timing and arguments used in that procedure; and the relative importance of the aims of border surveillance.

In discussing the procedural issues, one participant noted:

"I think with border surveillance, it really is technical amendments that are deciding or directing the fundamental changes they're making to the Schengen treaty, for instance. So they are not legitimate because we're not discussing the political issues at stake, but we're keep discussing on the technical amendments which are not technical at all, they are political amendments. (...) So it's not legitimate because they are not following the procedure." (CSP3)

But, according to the participants, the procedures are not only circumvented by technical amendments: rather participants felt that terrorism is somehow presented as an exception that allows for the 'changing of procedure'. "And I like that idea of exceptionalism being something we should be very wary of because you can...it has happened historically that you can manufacture crisis circumstances so you can justify exceptionalist measures." (CSP7)

The issue of legitimacy also came up in relation to the relative importance of the aim of the measure while taking into account its costs. In drawing a link between the different issues related to border surveillance, one participant explained that the use of databases and data sharing also was relevant to the issue of search and rescue of migrants at sea. This participant problematised the apparent prioritization in aims of border surveillance measures: "There's a prioritization of the control of borders over things like search and rescues. And in the data sharing arena in particular this means that there is a great deal of very useable technology enabling EU member states to control their border s and fight crime, but there hasn't been an effective effort to develop the same kind of useable technology to search and rescue for example" (CSP4).

On this issue participants discussed related concerns, such as the involvement of private actors (CSP3), and the business related aspects “Essentially what it is you want to make money out of this problem. And therefore the agenda-making could exaggerate the problem regarding the technical approach rather than a human-based approach” (CSP7) which this participant coined as the “the separate agenda of the military security police university media entertainment complex.”

CSP4 noted how “Many of the other kinds of technologies used at borders: facial recognition electronic borders, things that try to understand people’s intentions: whether they have bad intentions when crossing a border, are just a humongous waste of money”. This participant also reflected: “Unfortunately the money though that is being invested successfully is being invested disproportionately in the maintenance of borders which from an ethical perspective is not a particularly important goal compared to saving people’s lives” (CSP4).

5.4 Effectiveness of Border Surveillance

In responding to the moderator’s question about the effectiveness of border surveillance, one participant responded: “incredibly effective in terms of their stated objective”(CSP7).

However, there was some disagreement: “If the aim is to prevent people who do not have legitimate right to be in Europe coming to Europe, well it failed because the numbers go up and up every year. And it will always fail. So it’s never going to reach that aim” (CSP4).

Irrespective of whether the measure is in fact effective, there were several participants who felt that the effectiveness of border surveillance is actually of little relevance. “It doesn’t matter whether it works or not” (CSP7). CSP1 echoed this sentiment and also CSP4 stated: “I think that for many people effectiveness would just be an irrelevant consideration when it comes to border control because they think states have a right to try and protect their borders, however ineffectively. In fact they have duty to do so because the public doesn’t want anybody else coming in and helping themselves, supposedly, to welfare benefits. So for some of these policies effectiveness might not even be particularly relevant” (CSP4).

The effectiveness of border surveillance also depended on the definition of the original aim, and whether this aim might have been political: “When we say that these policies are not effective, we’re defining the problem in very simple terms in a way. ‘Have these border control systems stopped people from coming in?’ Was that the intention at the beginning? (...)If you can get re-elected because you have passed laws and new technologies that have curtailed people’s rights, then it’s been effective, because you’ve managed to win the next election. (...)And I think that we keep on analysing policy from a very simple point of view and not taking into account that effectiveness can mean different things. And it depends on how you define the problem” (CSP3).

Yet, to the extent that effectiveness was something that matters, it was also seen as something as a cost/benefit analysis in financial terms:

“This kind of database sharing is highly effective compared to the kind of technologies used to detect boats through infrared, use satellites” (CSP4).

Effectiveness thus seemed to be a measure of the degree to which the measure is able to reach its stated aims. However, it is difficult to establish effectiveness in general as the stated aims might differ depending on one’s perspective. In the particular context of border surveillance, effectiveness was felt to be of little relevance as the goal of protecting borders is, in principle, a worthy cause and therefore the effectiveness of the measure seemed to be less relevant, particularly in relation to the discussion of the social acceptability of the measure.

6 Perspectives on Counter Terrorism Financing

6.1 General

Of the three counter-terrorism measures discussed during the focus group, CTF measures generated the least disagreement among the participants.

While the SECILE project focuses on *EU* counter-terrorism financing (CTF) measures, the discussion on CTF involved, at times, also comments related to international measures such as the FATF. In particular in relation to the issue of impact, this distinction between the different types of CTF measure was not always clear.¹⁶ However, the observations are nonetheless relevant as they demonstrate what indicators are important in determining impact in general.

6.2 Impact of CTF

When asked directly how the impact of CTF measures can be defined, one participant started explaining why it was difficult to measure the *effectiveness* of the measure because the measure is aimed at preventing something (CSP6). It is interesting to note that in this case, the participant immediately discussed effectiveness as an indicator of a (positive) impact.

Other participants however, focused on the negative impact these kinds of measures have particularly on NGOs, and the possible adverse effects CTF measure might actually have on countering terrorism.

One of the participants speaking from the perspective of NGOs revealed clear frustration with the impact of CTF measures on NGOs' ability to do their work. This was caused by three reasons: 1) additional reporting and accounting requirements take up resources that need to be taken away from the resources actually doing the core work; 2) Increased financial transparency and regulation leads to donor aversion, leaving NGOs and aid organization with fewer financial means and 3) stricter counter terrorism measures are, by some governments, used as an excuse to clamp down on NGO's that are not to the government's liking. This participant explained:

“In terms of complying with all the different kind of demands on reporting and transparency and accountability that come on top of existing regulations or on top of good practice around risk management and accountability within the sector. (...) This is a big challenge. What has happened also with the counter terrorism measures is that that is leading to donor aversion. Of going to complex contexts: conflict situation, post-conflict situations, countries in transitions. So that has actually gone all the way to the development

¹⁶ One participant at the SECILE workshop in Durham in May 2014 observed that while indeed there may be several negative impacts related to the FATF measures, the impacts might be less severe for the specific EU CTF measures.

agencies, for example, or private donors, or kind of private/public partnerships being much more hesitant and much more cautious about how they deliver aid, how they deliver relief to refugees and so on and so on. And then the final impact is that counter terrorism debates and measure, let's say within Europe, within the United States, the role of FATF eventually is having effect further down the road in contexts and states where the government is not very civil society enabling or friendly. So, counter terrorism agenda is now being used to clamp down on organisations that work on human rights or that work on other types of social justice issues, by both making it impossible for these organisations to be created or continue to exist, as well as impacting on the flow of foreign financing. So it's whole chain of reactions that significantly reduces the ability of civil society organisations to – mission based organisations, actually- to do their work.” (CSP5)¹⁷

From a more academic perspective, the discussion around the impact of CTF measures revolved around the issue of profiling and the use of algorithms to support decisions. Some were sceptical of such methods based on concerns of discrimination: “there will be values build into that, so if the system identifies people named ‘Mohammed’ because they’re terrorists more often than people named ‘Smith’ then the various system is not neutral in its false-positive calibration” (CSP7).¹⁸

However, this concern was not shared by everybody: “But of course it's important to say that, again from an ethical perspective, because that's the perspective that I can speak from, blocking of finances of terrorist groups is a fantastic way to fight terrorism. It doesn't invade privacy very much, it doesn't involve arresting people perhaps by mistake, it doesn't involve violence. If it can be effective, and to the extent that it is effective, it's a very good thing and it should be pursued and of course there should be powers to try to disrupt terrorist groups through blocking their finances” (CSP4). This was then qualified by CSP1 who required that the basis for decisions in applying CTF measures should be based on ‘hard intelligence’, rather than on predetermined profiles. This seemed to be something many participants agreed upon.

The concerns expressed in relation to the impact of the measure thus related primarily to the risk of discrimination through profiling and the targeting of NGOs, which were both considered negative impacts.

¹⁷ These sentiments are also reported in the observations of the participants of the Informal Working Level Meeting on the Role of Civil Society in Preventing Terrorism, organised by the OSCE Office for Democratic Institutions and Human Rights and the Centro de Investigaciones de Relaciones Internacionales y Desarrollo. ODIHR.GAL/34/07, 16 May 2007 pp. 8-9.

¹⁸ This concern over discrimination with reference to particularly Muslims was also a key point in the observations made by Prof. Jude Howell and Dr. Jeremy Lind in NCVO/ESRC NGPA seminar 6 March 2009 as reported in *Counter-Terrorism and Civil Society* London School of Economics, National Council for Voluntary Organisations Seminar Report p.4.

6.3 Legitimacy of CTF

In discussing CTF measures, one participant rather familiar with this type of measure through research introduced the notion of proportionality: “Maybe proportionality? Something about the balance between the intrusiveness of the system and the fundamental rights of people who in the end do transactions on this basis” (CSP6).

On this point, the participant speaking from the NGO perspective noted “it’s probably a lack of proportionality” (CSP5). This participant felt that policy makers offered little evidence to suggest that the financing of terrorism through charities is in fact a great risk.¹⁹

At a later stage, the participant that introduced proportionality elaborated and added ‘democratic control’ as an indicator for legitimacy. “I think that legitimacy, for me, also depends on the extent to which you can exercise democratic control or oversight over measures and for counter terrorist financing this is, control is almost impossible. Because it all takes place within private institutions that carry out all kinds of monitoring systems. You have no idea on how good the quality of those systems is. You have no idea what they find. So democratic control is very difficult in such cases, and for me that also relates to legitimacy” (CSP6).

Another participant thought that the source or motive behind the policies plays a role in the legitimacy of a measure: “Just a quick thought on the initiator of some of these proposals around policy. For example in the context of FATF -the Financial Action Task Force- the special recommendation, really on counter terrorism, they were not part of the original mandate of FATF, they were produced post 9/11. So thinking about the whole diplomacy that happens about the initiator and how something which may or may not have been legitimate kind of authority or process initially, and to being legitimized. I think it’s something to think about” (CSP5).²⁰ While these comments particularly discussed the non-EU measures of the FATF, similar concerns about the origin or motives behind counter-terrorism measures have also been raised in the discussion of the other two case studies. The motivation behind a measure thus seems to be an important aspect in determining the legitimacy of a counter-terrorism measure.

6.4 Effectiveness of CTF

In discussing the effectiveness of CTF measures, some participants expressed concern. The main issues discussed focused on whether CTF measures are in fact able to do what they aim to do. “I think the word that comes to mind is ‘scepticism’. (...) I just don’t think, I just can’t see how a continent that has been unable to tackle fraud will tackle this” (CSP3).

One participant offered an explanation as to why such measures might be ineffective and noted that the financing of terrorism comes in many non-monetary forms such

¹⁹ Similar observations were made by David Walker of the Charity Commission in NCVO/ESRC NGPA seminar 6 March 2009 as reported in *Counter-Terrorism and Civil Society* London School of Economics, National Council for Voluntary Organisations Seminar Report p.9

as drugs, weapons etc (CSP7), which seemed to imply that the tracking of banking transactions might not be enough to counter the wide range of methods available to those who want to counter the financing of terrorism.

CSP6 offered another reason why CFT measures might have little effect: “that’s the difficulty when you look at anti-money laundering: large amounts of money will pop-up as alert, but when you look at terrorist financing that’s often small amounts of money from small institutions or from people transferred to other accounts. So it’s very difficult for financial institutions to trace these kinds of amount because it is not out of the ordinary, they can be about ten Euros that are transferred on a weekly basis. So it’s much more difficult to apply algorithms or systems to these kinds of finance traces” CSP6.

The inability to make the measures work was also partly attributed to a perceived lack of willingness on the part of state authorities and banks. In this respect bank secrecy (CSP7 and CSP3) was mentioned, but also the inequality between financial agencies and their willingness to cooperate. One other participant thought that CTF measures were not in the banks’ interest as this would cause them extra work and potentially cost customers. “And it’s also that the banks don’t like it because they got to do a simple tests, if the database tells them this person is a terrorist, they can’t let him have a bank account” (CSP2).²¹

Another participant compared the measures’ effectiveness to the effectiveness of the other measures discussed and concluded that in the case of CTF measures effectiveness was probably even harder to establish. “And probably in this case more than the others the issue of effectiveness comes up. More than in the EU Arrest Warrant and more than in border surveillance. This seems harder to actually make it work than the rest” (CSP3).

While most participants seemed to share a concern that CTF measures are likely not very effective in countering terrorism, the measures were nonetheless considered to have a large (negative) impact in terms of the risk of discrimination through profiling and in making it harder for NGOs to do their work.²² In discussing the case of CTF measures, the participants did not clearly discuss a potential relation between the impact, legitimacy and effectiveness, but rather dealt with these concepts separately.

²¹ This point was also raised in Hayes, Ben. "How international rules on countering the financing of terrorism impact civil society." *CIVICUS (2013), State of civil society (2013)*: 117-126. (this report primarily dealt with the impact of the FATF.

²² The focus on the negative effects of CTF measures for NGO’s seems to be in line with both the NCVO report and the OSCE report on discussions with civil society, which also both focus particularly on the challenges these measures bring to the NGO and charity sector.

7. Discussion

The perspectives presented in the sections above show the participants' views of the impact, legitimacy and effectiveness of the specific counter terrorism measures. During the focus group also a more general discussion emerged on the meaning of the concepts of impact, legitimacy and effectiveness. Based on the application of the concepts on specific case studies, it might be possible to extrapolate some more general understandings of how the participants view the concepts of impact, legitimacy and effectiveness in relation to counter terrorism measures.

6.4.1 Impact

In terms of defining impact, the participants offered different views on what elements seem to be important. This was adequately summarized by CSP7: "The question of impact is a gestalt. It's like a magic eye picture: what you see is what you have as your assumptions and you have different lenses" (CSP7).

Yet before delving into which elements were relevant to determine the impact of a measure, there was some concern expressed that in order to discuss the impact of a measure there is a need to have enough information available in order to assess an impact. This information should explain how the measure works in practice, what consequences it has, which then needs to be compared with what the measure set out to do in the first place.

"There is a fundamental flaw in terms of official information which the Commission is primarily responsible for. There are a whole lot of measures that do not have a review period in them. You've got impact assessments which are banal to say the least" (CSP2).

This participant then also referred to a draft policy document in which the Commission allegedly admitted that they do not review counter terrorism measures properly: "an admission by the Commission that it couldn't really evaluate it properly. They didn't have the means to do it, because there was no political will to make that a priority" (CSP2).²³

Based on the assertion made by CSP2 that ex-ante impact assessments are generally lacking or of poor quality, the discussion proceeded. In terms of measuring impact an adequate problem definition seemed to be the most important factor:

"It depends on how you define the problem. It is basic public policy. In order to be able to evaluate something, you need a good diagnosis; you need a good plan, a good problem definition and then a solution. And then you build in indicators in that process" (CSP3)

²³ A brief review of publicly available documentation on the Draft Stockholm Program does not immediately reveal this asserted 'admission'. However, it might be that the participant had access to non-public documents.

This participant then qualified this by saying that one single problem might be defined in different ways: “Terrorism can be a problem of security, but it can also be a political problem or whoever is in power when there is a terrorist attack.”

This sentiment was later echoed by CSP5 who said: “Even before the problem analysis, just documenting what is the state of play today or what has been the state of play in the last ten years, and understanding that. So impact cannot be discussed unless we have actually looked at where we are” (CSP5).

Identifying the original problem that the measure set out to deal with was also seen as problematic by CSP3, who reckoned that the difficulties in determining impact are caused by the disconnect between the problem and the introduced solution.

“I just remembered the case of body scanners(..). The guy who was flying from Amsterdam to Detroit. The problem was the database. The guy was identified, reported by his dad. He was in a database; no one had done any further investigations. So he stayed in a broad database, that didn’t include the no-fly. So he could fly. And the solution to that problem, which is basically an intelligence problem, a database problem, was body scanners. So again the relationship between the problem that’s been defined and the solution that you come up with is completely lost. In security policy it’s very difficult to trace back, based on the solution, what the problem was because they bear no relationship to one another”(CSP3).

During the discussion on impact assessments, it was at times difficult to discern to what extent the remarks by participants were a reflection of their perception of actual practice or whether their utterances should be construed as the participants’ view of how impact assessments ideally should be done.

CSP7 felt that, *what* you measure is essential. In addition, the participant thought that impact assessments need to take into account unintended effects of a measure. “So the measure [...] might be the number of terrorists that you actually caught. But that’s too simpleminded!” This participant explained that this was particularly important with measures aimed at improving security: “And with security we’re getting an unanticipated knock-on effect, whole chains of events” (CSP7).

The idea of a chain of events was also mentioned by another participant, particularly in relation to the impact of CTF measures: “So it’s whole chain of reactions that significantly reduces the ability of civil society organizations to – mission based organizations, actually- to do their work” (CSP5).

But also more generally, this participant felt that there is a general overall negative impact of counter terrorism measures on NGOs:

“Counter-terrorism measures tend to make it difficult for organizations who work in exactly addressing the root causes of terrorism, so they probably lack

of understanding of the overall context. So if you cannot work, let's say in Somalia or whatever, around development issues addressing these things basically that the system is sustaining the root causes of terrorism" CSP5.

Based on the opinions offered by the focus group participants, it can be said that there was agreement on several elements that determine the impact of a measure. Firstly, there is the issue of adequately diagnosing a problem. This then needs to be compared to the actual application of the measure, while taking into account the possible side effects and knock-on effects, even those in the remote future. The prerequisite to defining impact, however, remains the availability of information about how the measure works in practice, which, according to the participants seems difficult to obtain.

6.4.2 Legitimacy

In discussing legitimacy, at several occasions the issue of procedure was mentioned. "For me, legitimacy indicates that they have been instituted by means of a process that is itself legitimate. And in Europe this means democratic"(CSP4). This was then echoed by CSP3 who said: "I think something that's been approved by, or through known recognizable transparent and accountable processes by a legitimate authority."

However, someone then problematised the lack of legitimacy in the EU in general, because a lack of accountability, which in turn requires a functioning democratic representation: "my first thought was you cannot have legitimacy without democratic accountability. And you can't have democratic accountability if you don't have a demos. And we don't have a demos in the European Union" (CSP2). This was then confirmed by CSP3, who concluded: "You need the legitimate authority but also the process that is open and accountable."

According to several participants, accountability depends on and requires access to information and transparency. At several instances during the focus group, a lack of information was thus seen as problematic, particularly in relation to the issue of legitimacy.²⁴

At one point, the participants were asked whether the outcome of a certain measure would have an influence on the legitimacy. The moderator asked: "If the output of a measure works, does that make it legitimate?" (CSM1). This question was answered by laughter of the whole group and "No." CSP4 explained: "Legitimate is not the same as justified in the circumstances" (CSP4).

²⁴ The democratic deficit of the EU is a known debate in civil society, and covers more than just counter-terrorism measures. In relation to counter-terrorism, Jorg Monar has specifically pointed to the limited parliamentary and judicial control as causes of this legitimacy deficit. Monar, J. 'The EU's approach post-September 11: global terrorism as a multidimensional law enforcement challenge' in *Cambridge Review of International Affairs*, Vol 20, number 2, June 2007.

The reasons why the effectiveness of a measure should not count towards the measure being legitimate was explained by CSP7, who warned of the situation where a measure might be implemented 'beyond the limits of the law', but which might retrospectively be justified, just because the results were so good:

“And you start eroding the measures and standards and treaty obligations that, you know, we spend a long time getting. I think you got to resist that, because it's part of a process that will take you here, not by a big leap, but by the erosion of a thousand compromises where any one of which... it is seduction. I think it's seductive in a way that's really quite nasty” (CSP7).

According to the participants, legitimacy thus has little relation to the effectiveness of the measure. However, impact did seem to have a connection with legitimacy. Both in determining the impact and in determining the legitimacy of counter terrorism measures, the issue of transparency and information seemed key. This knowledge about a measure's intentions as well as its practical consequences seemed to be a key pre-requisite in measuring a measure's impact, as well as establishing its legitimacy.

6.4.3 Effectiveness

In the most general sense, effectiveness was seen as a measure of the degree to which a measure reaches its set aims, combined with some sort of measure about its relative (financial) costs: “It's a wonderful phrase 'effectiveness', I mean, it's about value for money, it does what it says on the tin, maximum output for minimum cost” (CSP7). And another participant questioned the amount of money spend on counter-terrorism measures and wondered: “So, is this effective then? To invest all these resources into the technology into the staff and the systems and processes and so on? [several P's express agreement]” (CSP5).

Another participant offered the idea that to measure effectiveness, a comparison or a measure of 'value added' could be useful: “From a sociological point of view when you talk about effectiveness, one of the things that is useful to take into account is, do the minimal alternative. Which is not to do anything. What would happen if you didn't do anything? Or just maximize the potential of what was already available without buying new technology without passing new legislation. That is one way of measuring effectiveness” (CSP3).

The participants then also indicated that, particularly with counter terrorism, which aims to *prevent* something from happening, there is a difficulty in measuring effectiveness, after all “No result is a good result” (CSP7).

In addition, on several occasions, the need to 'measure' effectiveness was actually considered to have an impact itself. “The danger is where you got measures that need product, that need outcomes like so many people have to have been caught, or so many things have to have happened and you've got quotas and managerial approaches to it which are contrived, that are constructs, then we are in difficulty.

And I think it's... not everything is effective for everyone at the same time. So it might be effective from a state perspective, but really challenging from a human security perspective [P3 nods]" (CSP7). This sentiment was also earlier expressed in relation to the impact of the EAW.

Participants also considered that whether something is effective might also depend on whom you ask. A measure might be effective in terms of PR, by using a measure just to show that policy makers are 'doing something'. "In PR terms it was incredibly effective, they were doing something. It was part of security theatre. [Several P's nod] (CSP7). This was then further discussed particularly in relation to airport security measures of which CSP1 concluded "effectiveness is not important. [P3 looks sceptical] It's about to show. [several Ps express agreement] (...)It's not about these technologies working, it's about them being there, showing that they are doing something that's that the politicians can say 'look, we tried to protect you'. I don't think effectiveness ... it's not an issue for policy makers" (CSP1).

This irrelevance of effectiveness was also explained by CSP2 who discussed effectiveness in relation to the issue of what the participant described as 'bad law', in particular counter terrorism measures adopted post 2001: "It is being bad law, not because it wasn't voted through democratically- allegedly democratic- institutions, but because it was fundamentally ignoring some basic principle. [...] So you have a bad law, can it be effective?" (CSP2)

The lack of importance of the actual effectiveness of a measure was also discussed in terms of consequences of ineffectiveness. Several participants believed that even if a measure is proved to be ineffective, this does not seem to have severe consequences. "Once you introduce them, you can't get rid of them. So even if the evidence said it is crock, it is a pile of rubbish, once it is deployed everyone thinks it's really valuable" (CSP7). A similar sentiment was expressed by CSP3 and CSP2.

However, on several occasions participants wondered how much the effectiveness of a measure actually is a relevant question to ask:

"The trouble is you would normally do that by saying 'did it achieve what it set out to do?' But then I have to ask the question, going back to legitimacy, what do I think of the measure in the first place?" (CSP2)

8. Conclusions

Considering the limitations of this study as discussed in the introduction, the data gathered in this focus group cannot be used to draw any definite conclusions on civil society's perspective on the concepts of impact, legitimacy and effectiveness. Nonetheless, the data gives some insights into the key elements of the concepts and illustrates possible interplay between these concepts.

The participants seemed particularly keen to discuss impact and in discussing impact often referred to (potential) *negative consequences* of counter terrorism measures. Foreseeing these consequences and making available information about the (potential) consequences also seemed key in assessing a measure's legitimacy. In addition to transparency, legitimacy also included an assessment of *the process* by which the measure was instigated. The participants focused in this regard heavily on the *motives* behind the measure, which also seemed to relate to the *timing* of the measure.

The main issue relating to effectiveness is that participants felt that the measurement of effectiveness heavily depends on political agendas and aims. There does not seem to be one clear measure of effectiveness as it depends on ones own perspective and aims. In addition, it was felt that measuring effectiveness in the case of counter terrorism was particularly difficult, as it would measure something that was prevented. In addition, effectiveness was often mentioned in terms of financial cost/benefit.

Based on the discussion by participants, there seemed to be little correlation between the effectiveness of a measure and its impact or legitimacy. This lack of correlation was particularly apparent in the discussion of CTF where participants perceived the measure to be ineffective in countering terrorism, while in fact having a large negative impact on the ability of NGOs to do their work.

The disconnect between effectiveness and legitimacy seemed even stronger. According to the participants, the effectiveness of a measure *should* have little influence on the legitimacy. This was primarily related to the fear that the effectiveness of a measure might be used to (retroactively) justify an otherwise illegitimate measure.

Annex 1 Discussion Guide

Introduction	Briefing
<p>Welcome of participants</p> <ul style="list-style-type: none"> - Greeting participants - Provision of name tags - Signing of consent forms 	<p><i>Welcome the participants as soon as they come in. Assign them a seat and provide them with a name tag.</i></p> <p><i>Distribute the consent form to the participants and ask them to read and sign the form before the start of the focus group. This is important in order to ensure that the participants understand what they have agreed to do.</i></p>
<p>Introduction [about 10 min]</p> <ul style="list-style-type: none"> - Thank you - Introduction of facilitating team - Purpose - Confidentiality - Duration - Ground rules for the group - Brief introduction of participants 	<p>Welcome to this focus group and thank you for agreeing to participate in this session. We appreciate that you took this time out of your busy schedule to participate in this project and your involvement is highly valued.</p> <p>My name is Dr. Jo Doody and I will be facilitating the group discussion. I will be assisted by Dr. Rose van der Hilst my co-moderator, who will be taking notes and recording our discussion.</p> <p><i>Introduce any other colleagues who might also be present</i></p> <p>Our session will take approximately an hour and a half and since we will be tape recording the discussion, I would kindly ask you to speak in a clear voice; your opinions and thoughts are very important for this research, and we do not want to miss any of your comments.</p> <p>As previously mentioned when you were originally contacted to participate in this discussion, this focus group is on the topic of the Impact, Legitimacy and Effectiveness of European Counter Terrorism measures and it is being conducted as part of the SECILE Project, which is co-funded by the European Commission. For those of you who wish to know more about the SECILE Project, kindly let us know and we will proceed to give you more information at the conclusion of the focus group.</p> <p>As we already informed you when you read and signed the consent form, everything that will be recorded during this session will be kept confidential and your identity will remain anonymous. This means that your comments will be shared only by those involved in this study and used in scientific publications related to this study, and they will be anonymised before being reported. Hence, the information which will be included in the report will not in any way identify you as a participant. In order to do this, each of you will be assigned a number, and it is this number that will be used in the report.</p> <p>I also want to make sure that everyone in the group is comfortable enough to share their opinions. To make this possible, I would like to ask everyone present to follow these ground rules:</p> <ul style="list-style-type: none"> ▪ We would like to hear from everyone in the group - we are interested in everyone's opinion ▪ There are no right or wrong answers so let us agree to respect each other's opinions ▪ Please make sure that your mobile phones are on silent so that the discussion will not get interrupted ▪ It is important that comments are made one at a time, since each participant's

opinion is important. So let us agree to not speak at the same time, otherwise it will be difficult for us to capture everything that is said during the discussion

- Let's agree as a group to respect each other's confidentiality so that everyone feels more comfortable in speaking openly.

If there is anyone who would like to suggest any other ground rules feel free to put your suggestions forward to the group.

Does anyone have any questions before we start?

Ok so let me start off by asking you to briefly introduce yourselves to the group without revealing private information. Let's do a round where you tell us your name and maybe something about you. I will start the round myself... *(carry out a brief personal introduction)*

Running Total: 10 min

Objectives	Clarifying Concepts and applying concepts to specific CT measures
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Word association exercise
[About 5mins]

- *Word-association game serving as an ice-breaker*
- *Establish top of mind associations with the main topics*
- *Start off the group discussion*

Item 1

First up, we will carry out a short game: I will read out a word and I would like you to say the first couple of things that come to mind when you hear the word. Preferably, try to think about single words or short phrases, avoiding lengthy descriptions.

Just know, at this point we are only interested in first reactions. We will deal with these topics in more detail later in the discussion.

Read Out (one at a time):

1. **European Arrest Warrant**
2. **Countering the finance of Terrorism**
3. **Border Surveillance**

The co-moderator may take notes on a flip-over/powerpoint

Running Total: 15min

Discussion on Impact
[22 min]

- *To explore participants' perceptions of Impact in general*
- *To explore participants' perception key indicators for impact in relation to the three case-studies*

Item 2 Impact

Thank you for your input. Let's talk about why we are here. In this research we are interested in two main things. First we are interested in how to *define* the concept of 'impact', 'legitimacy' and 'effectiveness' in the context of counter terrorism measures. And second, we want to know how these concepts apply to three specific CT measures, namely the European Arrest Warrant, CFT and the exchange of information for border surveillance.

Because you may not all of you may be familiar with each of the counter terrorism measures we'll be discussing today, we'll just provide you with a brief explanation so everyone understand what we are referring to.

The European Arrest Warrant is an arrest warrant valid through all the member states of the European Union. Once it is issued in one state, it requires another state to arrest and transfer a criminal suspect or sentenced person to the issuing state so that the person can be put on trial or complete a detention period.

Goals of item 2,3 and 4

- *To explore participants' views on the impact,*

Measures that aim to disrupt the financing of terrorism include measures like SWIFT which means processing and data mining financial data. It also encompasses the cooperation between national Financial Intelligence Units with the aim to identify

legitimacy and effectiveness of specific CT measures

- To explore participants' feelings, beliefs and attitudes vis-à-vis certain counter terrorism measures

- To explore participant's personal experiences with certain counter terrorism measures

terrorist networks and freeze their assets.

When discussing border surveillance, you could think of measures like the information sharing system and European police cooperation within FRONTEX.

At this point, the co-moderator can make notes on a flip over, noting per concept the key elements that are mentioned in the group discussion.

First, ask the general questions pertaining to all the concepts. Then move to the more concrete application of the term in addressing the different CT measures.

Imagine you are asked to write a report on the 'Impact' on counter terrorism measures. What would you include in that report? In other words, which *elements* would be relevant for your *assessment* of the 'impact' of CT measures?

1. How would you 'measure' impact?

For example, how would you measure the impact of the measure on the different actors involved (the target subjects, the population as a whole, or those who implement the measure), or would you measure the impact on societal norms, or on (democratic) systems.

Also, would you use empirical methods? What would 'count'? Whose views would be important to take into account?

2. In assessing the impact, how (if at all) would you deal with (un)intended positive and negative impacts of a measure?

Is there a balance? What kind of impacts are more important for the assessment, the intended positive impacts or the unintended negative?

3. Now thinking of impact, how would you assess the impact of:

A) The European Arrest Warrant

- Who has this measure had an impact on?
- Has it had a negative impact in any way?
- Has it had a positive impact?
- How can we measure the impact of the European Arrest Warrant?

B) Measures aimed at the disruption of Terrorist Financing

- Who has this measure had an impact on?
- Has it had a negative impact in any way?
- Has it had a positive impact?
- How can we measure the impact of measures aimed at the disruption of Terrorist Financing?

C) Border Surveillance

- Who has this measure had an impact on?
- Has it had a negative impact in any way?
- Has it had a positive impact?
- How can we measure the impact of Border Surveillance?

Running Total: 37min

Discussion on Legitimacy [22 mins]

- To explore participants' perceptions of Legitimacy in general

- If Q2 does not generate any discussion, then the scenario in 2.a. may be used to get the discussion started.

- To explore participants' perception key indicators for Legitimacy in relation to the three case-studies

Item 3 Legitimacy

Imagine you are asked by the EU to write a report on the 'Legitimacy' of a specific counter terrorism measure. What would you include in that report? In other words, which elements would be relevant for your assessment of the 'legitimacy' of a specific CT measure?

1. How would you assess the 'legitimacy' of a CT measure?
2. What makes a CT measure legitimate?

In this discussion it can be expected that some of the participants will mention that the outcome of the measure may influence the legitimacy (output-legitimacy). If this happens, then Q2.a may be asked to get more clarification.

2.a) In your assessment of the legitimacy, how does the end result matter?

- For example, imagine the ticking-time bomb scenario. How, if at all, would your judgement of the legitimacy of the CT change if the CT measure would be able to stop an imminent terrorist attack from happening?
- Imagine the same scenario, only now you imagine that CT measure was instigated by a dictator in a totalitarian regime. Would this change your perception of the legitimacy of the measure?

In this discussion it can also be expected that some of the participants will mention the decision-making process. If this happens, then Q2.b may be asked to get more clarification.

2.b) In so far as the legitimacy relates to the process, to what extent are the following elements of importance:

- How the decision to use this measure was made
- Who made the decision
- Why the measure was introduced

3. Thinking of Legitimacy, how would you assess the legitimacy of:

A) In your view, is it legitimate to use the European Arrest Warrant to counter terrorism in Europe?

- Why?
- What would be your main argument in favour or against? Why?
- Could you give an example that may help illustrate that point?

B) In your view, is it legitimate to use CFT to counter terrorism in Europe?

- Why?
- What would be your main argument in favour or against? Why?
- Could you give an example that may help illustrate that point?

C) In your view, is it legitimate to share information in border surveillance to counter terrorism in Europe?

- Why?
- What would be your main argument in favour or against? Why?
- Could you give an example that may help illustrate that point?

Running total: 59 min

Discussion on effectiveness [22 mins]

- To explore participants' perceptions of effectiveness in general
- To explore participants' perception key indicators for effectiveness in relation to the three case-studies

Item 4 Effectiveness

Imagine you are asked by the EU to write a report on the 'Effectiveness' of a specific counter terrorism measure. What would you include in that report? In other words, which elements would be relevant for your assessment of the 'Effectiveness' of a specific CT measure?

1. **How would you measure the Effectiveness of a measure?**
 - a. **What would you (take into account)?**

In case there is silence, give examples:

 - To what extent does it matter what the objective of a specific measure is?
 - To what extent is the outcome of a measure of importance in determining the effectiveness?
 - How would you take account of unintended consequences of a measure?
 - How would describe the relation between the effectiveness of a measure and the legitimacy of a measure?
2. **In your opinion, have the following CT measures been effective and could you explain why?**
 - A) **the European Arrest Warrant**

To what extent do you think the measure has been effective in countering terrorism?

 - How do you perceive effectiveness in terms of this measure?
 - Under what circumstances would you deem this measure effective?
 - B) **Measures aimed at disrupting the financing of terrorism**

To what extent do you think the measure has been effective in countering terrorism?

 - How do you perceive effectiveness in terms of this measure?
 - Under what circumstances would you deem this measure effective?
 - C) **Border surveillance**

To what extent do you think the measure has been effective in countering terrorism?

 - How do you perceive effectiveness in terms of this measure?
 - Under what circumstances would you deem this measure effective?

Running Total: 81 Min

Objectives

Brief summary of discussion [5mins]

- Confirm the main points raised
- Provide a further chance to elaborate on what was said

Summing-up session

Item 5

At the end of the focus group, it is helpful to provide a summary of the emerging points. Here you should aim at giving a brief summing up of the themes and issues raised during the discussion.

Thank you for your input today. Rose will now give a brief summary on the main points raised during our discussion.

Rose gives summary (2 minutes)

- "How well does that capture what was said here today?"
- "Is there anything we have missed?"

- “Did we cover everything?”

This brief session will give participants an additional opportunity to express their views and can also be used to elaborate on topics raised but not pursued at the time.

Running Total: 86 min

Objectives	Closure
<p>Conclusion of focus group [4mins]</p> <ul style="list-style-type: none"> ▪ <i>Thank the participants</i> ▪ <i>Give information on SECILE</i> 	<p>With this last exercise our discussion has come to an end. May we take this opportunity to once again thank you for joining us and for sharing your opinions, experiences and thoughts.</p> <p><i>Total: 90 min</i></p>