

SECILE

Securing Europe through
Counter-Terrorism: Impact,
Legitimacy and Effectiveness

Report on the transposition of EU counter-terrorism measures

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

SECILE is an EU-funded research project examining the legitimacy and effectiveness of European Union counter-terrorism measures (CTMs). This report examines the transposition of CTMs adopted by the EU since 11 September 2011 and forms the basis for further research and analysis regarding their legitimacy and effectiveness by the SECILE consortium. The report has been produced by the civil liberties organisation *Statewatch* which is conducting a 'stocktake' of EU CTMs and collecting and analysing data about their implementation (SECILE work package 2). Readers of this report should also refer to deliverables D2.1 (a catalogue of CTMs adopted by the EU since 9/11), D2.3 (an analysis of the ways in which the EU institutions have assessed the impact, legitimacy and effectiveness of the measures described in this report) and D2.4 (a case study on the implementation and review of the EU "Data Retention" Directive).

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1. Introduction

In its Catalogue of EU counter-terrorist measures (CTMs) adopted since 11 September 2001 (see SECILE deliverable D2.1) *Statewatch* has attempted to compile all relevant EU counter-terrorism measures adopted since 11 September 2001. This suggests that at least 239 specific EU laws and policies have been adopted in the name of “counter-terrorism” since 11 September 2001. This report considers the implementation of those measures – a process known as transposition (or sometimes “transposal”).

This report is concerned with those EU “counter-terrorism” laws that actually require the member states to enact dedicated implementing measures to transpose them into law or policy. The following section sets out the methodology and scope of the report. Section 3 explains the legal effect of the different instruments that make up the body of EU counter-terrorism law considered herein.

The underlying rationale for examining the transposition process is to see how it relates to the questions of legitimacy and effectiveness that are central to the SECILE project. While it might be assumed that difficulties or failures on the part of member states in transposing EU measures could self-evidently be linked to issues of legitimacy, the transposition process is in fact far more complex and there are no simple correlations that can reasonably be drawn. Section 4 of this report considers some of the factors that have been identified in the discourse on the legitimacy of the transposition process in respect to EU measures. By means of example, the report also provides an overview of the transposition process in the United Kingdom together with some examples of how different kinds of EU CTMs have been transposed in that jurisdiction.

It is important to state the limitations of this report from the outset. To examine how each of the 50 EU counter-terrorism measures in question have actually been transposed by each of the 28 EU member states with reference to specific laws and legislative procedures would require 1400 separate investigations and is beyond the capacity of the SECILE project. Section 5 of the report instead provides an overview of the available data regarding the transposition of EU CTMs. While this information may be helpful in identifying those measures which were the most problematic in terms of implementation by the member states, it does not explain the underlying factors that may have caused those problems, such as human rights concerns, parliamentary objections, incompatibility with constitutional principles, complex points of law, and so on. It is for others to assess these processes in more detail.

An in-depth case study based on a detailed examination of the development and implementation of the EU Data Retention Directive is the subject of a separate *Statewatch* report (see SECILE deliverable D2.4). A further report by *Statewatch* examines the way in which the EU institutions have assessed the legitimacy and effectiveness of EU CTMs (see SECILE deliverable D2.3).

2. Methodology and scope

Statewatch has been monitoring the development of EU Justice and Home Affairs policy since the organisation was founded in 1990. In 1997 *Statewatch* launched the European Monitoring and Documentation Centre on EU Justice and Home Affairs Policy (SEMDOC). The SEMDOC website documents every single EU measure that has been adopted in the area of Justice and Home Affairs (JHA) since the entry into force of the Maastricht Treaty on European Union in 1993. The SEMDOC archives include more than 10,000 documents concerning JHA and security policy dating back to the mid 1970's, when European Economic Community (EEC) states commenced *ad hoc* cooperation on Terrorism, Radicalism and Violence (the 'TREVI' framework). After the terrorist attacks of 11 September 2001 *Statewatch* began tracking the development of the EU counter-terrorism agenda, reporting on new proposals and providing full-text documentation and analysis of key measures.

This report provides information about the transposition of EU counter-terrorism measures by the member states. For the purposes of this study an EU legal act or policy document is considered to be an EU counter-terrorism measure if (i) it has at some point in time been part of the EU's counter-terrorism agenda; (ii) it has been adopted or approved by an EU institution or body or otherwise represents the official policy of the European Union.¹

EU laws are usually categorised according to their legal effect as "binding" (or "hard" law) or "non-binding" ("soft" law).² The current EU ('Lisbon') treaty framework provides for three different types of legally binding legislative act: Regulations, Directives and Decisions (under Article 288 TFEU). In addition, the previous EU ('Amsterdam') treaty provided for additional types of legislative act in the field of Justice and Home Affairs policy (under Title VI TEU): Conventions, Framework Decisions, Decisions and Common Positions. As of 1 January 2014 these intergovernmental, "Third Pillar" measures will be transferred to the full competence of the EU with the result that the European Commission may review their implementation and propose replacement legislation (Regulations, Directives and Decisions; the "old" legislation will remain in force in the meantime).³ Those states which do not wish to transfer new powers to the EU in this area may also opt-out of these measures at this time, an opportunity that so far seems to have excited only the UK government, which has announced its intention to opt-out of all JHA measures and then re-adopt those deemed useful.⁴ Still more measures – common strategies, Common Positions and Joint Actions – are used to implement the EU Common Foreign and Security Policy. There are also various types of legally binding EU agreements with third states or bodies. Non-binding EU measures include Recommendations, Resolutions, Conclusions, Opinions and Action Plans. The legal effect of these measures is explained in the following section.

Of the 239 EU counter-terrorism measures identified in our catalogue of EU counter-terrorism legislation,⁵ 88 – or 36 per cent – can be said to be legally binding. For the purposes of this report we then distinguish between EU legislation which does require member states to enact dedicated

¹ See SECILE Deliverable 2.1, 'Catalogue of EU counter-terrorist measures adopted since 11 September 2001', p.18

² For a more detailed explanation see Eurofound, 'Soft law',

<http://www.eurofound.europa.eu/areas/industrialrelations/dictionary/definitions/softlaw.htm>

³ HM Government, 'Decision pursuant to Article 10 of Protocol 36 to The Treaty on the Functioning of the European Union', July 2013, p.2, <http://www.official-documents.gov.uk/document/cm86/8671/8671.pdf>

⁴ 'Commons backs EU justice opt-outs', *BBC News*, 15 July 2013, <http://www.bbc.co.uk/news/uk-politics-23322841>

⁵ See SECILE Deliverable 2.1, 'Catalogue of EU counter-terrorist measures adopted since 11 September 2001'

implementing measures to transpose the law and that which does not, and subsequently focus upon those legally binding EU measures that explicitly require national laws or policies to implement them. To take three examples: EU Regulations have direct legal effect and so do not require transposition into national law (although significant practical steps may still be required to enforce or apply whatever rules it is that the Regulation seeks to achieve). Similarly, all EU Decisions are legally binding but some are addressed to the EU institutions rather than the member states; in these cases the member states need not do anything in terms of implementation. International agreements with third states may also not require national laws to implement them: only three of the eight EU agreements with third states on counter-terrorism-related measures require some form of transposition in the member states (the others affect private data controllers and EU institutions).

Therefore of the 88 legally binding measures identified in our catalogue of EU counter-terrorism legislation, 50 can be said to explicitly require transposition in the member states. Section 4 lists these measures and examines some of the factors that have been identified in the discourse on the legitimacy of the transposition process. It also provides some examples in respect to the way in which the UK has implemented or transposed selected legal measures; the UK was the obvious choice due to the ability of the researchers to more readily comprehend the language and assess the measures in question.

Sections 5 and 6 of this report examine the data on the transposition of EU counter-terrorism measures produced by the European Commission. This research was based on documentation retrieved from the SEMDOC archives and official sources of EU documentation (the Official Journal, institutional websites, public registers of Council and Commission documents etc.). It also utilised the database of the national provisions transposing EU Directives available on the EUR-Lex website.⁶ The report provides data on whether the transposition/implementation of each CTM was evaluated by the EU institutions, whether specific measures were transposed by member states by the deadline in the legislation, and whether the member states transposed/implemented the measures to the satisfaction of the EU institutions.

3. EU legal measures and their effect

3.1 Regulations

EU Regulations are binding in their entirety and directly applicable.⁷ National measures to incorporate EU Regulations into national law are not expressly required, although member states may still enact implementing measures as long as they preserve the intended effect of the Regulation.⁸ A distinction is made between “basic Regulations” and “implementing Regulations”: the former set out fundamental rules, the latter may contain additional technical provisions and be adopted by the Commission alone under delegated legislation.⁹ The date that Regulations enter into force (become law) is set out in the legislation and is typically on or soon after the date of publication in the EU’s Official Journal. The European Commission may initiate legal action against member states at the European Court of Justice for failing to adhere to EU Regulations (so-called “infringement proceedings”).¹⁰ In respect to EU counter-terrorism policy, Regulations have been

⁶ EUR-Lex website: http://eur-lex.europa.eu/RECH_legislation.do

⁷ Article 288, Treaty on the Functioning of the European Union, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0047:0200:en:PDF>

⁸ European Commission, ‘Regulations’, http://europa.eu/legislation_summaries/institutional_affairs/decisionmaking_process/l14522_en.htm

⁹ Ibid.

¹⁰ Article 258, Treaty on the Functioning of the European Union

used to freeze the assets of terrorist suspects;¹¹ to harmonise the features of national identity and travel documents;¹² to introduce common customs,¹³ maritime¹⁴ and aviation security rules¹⁵ (including the notorious “liquids ban”); to establish databases such as the Schengen Information System¹⁶ (SIS II) and Visa Information System¹⁷ (VIS); and for the creation of EU security agencies like Frontex¹⁸ (the EU Border Police) and ENISA¹⁹ (European Network and Information Security Agency).

3.2 Directives

EU Directives are binding on the member states (or the specific states that they address) in terms of the results to be achieved but leave to the discretion of national authorities the methods by which these results may be achieved.²⁰ The ECJ has confirmed that:

the transposition of a directive into domestic law does not necessarily require that its provisions be incorporated formally and verbatim in express, specific legislation; a general legal context may, depending on the content of the directive, be adequate for the purpose provided that it does indeed guarantee the full application of the directive in a sufficiently clear and precise manner so that, where the directive is intended to create rights for individuals, the persons concerned can ascertain the full extent of their rights and, where appropriate, rely on them before the national courts.²¹

This judgment outlines one of four “general criteria”²² based on EU case law that the European Commission uses to assess the legitimacy of member states’ implementation of Directives. The other three criteria are:

- Form and methods of implementation of the result to be achieved must be chosen in a manner which ensures that the Directive functions effectively with account being taken of its aims;²³

¹¹ Council Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism

¹² Council Regulation (EC) No 334/2002 amending Regulation (EC) No 1683/95 laying down a uniform format for visas

¹³ Commission Regulation (EC) No 1875/2006 Commission Regulation amending Regulation (EEC) No 2454/93 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code

¹⁴ Council Regulation (EC) No 871/2004 Regulation concerning the introduction of some new functions for the Schengen Information System, including in the fight against terrorism

¹⁵ Parliament and Council Regulation (EC) No 2320/2002 establishing common rules in the field of civil aviation security

¹⁶ Council Regulation (EC) No 871/2004 concerning the introduction of some new functions for the Schengen Information System, including in the fight against terrorism

¹⁷ European Parliament and Council Regulation (EC) No 767/2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation)

¹⁸ Council Regulation (EC) No 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union

¹⁹ Proposal Regulation of the European Parliament and of the Council concerning the European Union Agency for Network and Information Security (ENISA) and repealing Regulation (EC) No 460/2004

²⁰ Article 288, Treaty on the Functioning of the European Union

²¹ Judgment of 28 Feb. 1991, *Commission v Germany*, C-131/88 (Groundwater), ECR 1991, p. 825, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61988CJ0131:EN:PDF>

²² European Commission, *Report from the Commission based on Article 11 of the Council Framework Decision of 13 June 2002 on combating terrorism*, COM(2004)409 final, 8.6.2004, available at: <http://www.statewatch.org/sem/doc/assets/files/commission/COM-2004-409.pdf>

- Each Member State is obliged to implement Directives in a manner which satisfies the requirements of clarity and legal certainty and thus to transpose the provisions of the Directive into national provisions having binding force;²⁴
- Directives must be implemented within the period prescribed therein.²⁵

All Directives include a deadline for the member states to transpose the measures into national law but in some instances the laws of a member state may already comply with the EU provisions, in which case no further measures are required. The date that Directives enter into force (become law) is set out in the legislation and is typically on or soon after the date of publication in the EU's Official Journal; it is meant to be "as short as possible" and "not exceed two years".²⁶ Member states are then supposed to inform the European Commission of the implementing legislation or mechanisms they have in place before the deadline for implementation expires. A summary of the transposing legislation in the member states is then published on the EUR-Lex website.²⁷

If a member state fails to adopt the requisite national provisions within the specified timeframe, or if those provisions do not adequately comply with the requirements set out above, the European Commission may initiate legal action against the member state at the European Court of Justice (so-called "infringement proceedings").²⁸ This may also happen if a member state has "transposed" an EU Directive but failed to adhere to its provisions in practice.²⁹ Most Directives contain a provision mandating a review of its implementation by the Commission within a few years of its practical application. In respect to EU counter-terrorism policy, Directives have been used to control dangerous substances (explosives etc.);³⁰ to impose obligations on the transport,³¹ financial³² and telecommunications³³ industries to enhance security or cooperate with law enforcement and criminal investigations; and to set minimum standards regarding the rights of suspects, defendants³⁴ and victims³⁵ in legal proceedings.

²³ European Court of Justice, Case 48/75 *Royer*, 1976,

<http://curia.europa.eu/juris/showPdf.jsf?text=&docid=89046&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=432737>

²⁴ European Court of Justice, Case 239/85 *Commission v Belgium*, 1986,

<http://www.statewatch.org/semDOC/assets/files/commission/COM-2004-409.pdf>

²⁵ European Court of Justice, Case 52/75 *Commission v Italy*, 1975,

<http://curia.europa.eu/juris/showPdf.jsf?text=&docid=88978&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=433303>

²⁶ European Parliament, Council and Commission, 'Interinstitutional agreement on better law-making', OJ C 321/1, 31 December 2012, [http://eur-](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2003:321:0001:0001:EN:PDF)

[lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2003:321:0001:0001:EN:PDF](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2003:321:0001:0001:EN:PDF)

²⁷ EUR-Lex, 'Legislation: Directives', [http://eur-](http://eur-lex.europa.eu/SuiteLegislation.do?T1=V112&T2=V1&T3=V1&RechType=RECH_legislation&Submit=Search)

[lex.europa.eu/SuiteLegislation.do?T1=V112&T2=V1&T3=V1&RechType=RECH_legislation&Submit=Search](http://eur-lex.europa.eu/SuiteLegislation.do?T1=V112&T2=V1&T3=V1&RechType=RECH_legislation&Submit=Search)

²⁸ Article 258, Treaty on the Functioning of the European Union

²⁹ *Ibid.*

³⁰ Commission Directive 2008/43/EC setting up, pursuant to Council Directive 93/15/EC, a system for the identification and traceability of explosives for civil uses

³¹ Council Directive 2004/82/EC on the obligation of carrier to communicate passenger data

³² Parliament and Council Directive 2005/60/EC on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing [Third anti-money laundering Directive]

³³ Council and Parliament Directive 2006/24/EC on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC

³⁴ Proposal for a Directive on the right of access to a lawyer in criminal proceedings and on the right to communicate upon arrest

³⁵ Parliament and Council Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA

3.3 Framework Decisions

Prior to the Lisbon Treaty, EU Framework Decisions were used exclusively in the fields of police and judicial co-operation in criminal justice matters.³⁶ Although those that predate the Lisbon Treaty remain in force³⁷ the option to introduce new Framework Decisions no longer exists.³⁸ In terms of their legal effect they are very similar to Directives insofar as they require member states to achieve particular results without dictating the means of achieving that result.³⁹ The introduction of Framework Decisions under the Amsterdam Treaty effectively heralded the end of the use of intergovernmental Conventions in this area, which had taken much longer to implement (since national parliaments had to formally ratify them in their entirety) and enter into force (which usually required ratification by all signatories). Framework Decisions may be transposed by modifying national legislation or by introducing new acts. The European Court of Justice, in its judgment on Case C-105/03 ('Pupino'), further clarified that:

“[T]he principle of conforming interpretation is binding in relation to framework decisions adopted in the context of Title VI of the Treaty on European Union. When applying national law, the national court that is called upon to interpret it must do so as far as possible in the light of the wording and purpose of the framework decision in order to attain the result which it pursues... [This interpretation is] limited by general principles of law, particularly those of legal certainty and non-retroactivity.”⁴⁰

According to the European Commission the list of “general criteria” that have been developed through EU case law with regard to the implementation of Directives (listed above) should also “be applied *mutatis mutandis* to framework decisions”.⁴¹

As with Directives, the date that Framework Decisions enter into force (become law) is set out in the legislation and is typically on or soon after the date of publication in the EU's Official Journal. A second deadline stipulates how long the member states have to comply with the provisions in the Framework Decisions. However unlike Directives, Framework Decisions were only subject to the optional jurisdiction of the European Court of Justice and enforcement proceedings could not be taken by the European Commission for failure to transpose Framework Decisions into domestic law.⁴² In respect to EU counter-terrorism policy Framework Decisions have been used for harmonising national criminal law and practice by establishing common definitions and sentencing regimes for offences like terrorism⁴³ and “cybercrime”;⁴⁴ enacting novel procedural frameworks such as the European arrest⁴⁵ and evidence⁴⁶ warrants; and ensuring that member states cooperate with

³⁶ Article 34(b), Treaty on European Union, <http://www.statewatch.org/news/2003/jan/nicetreaty.pdf>

³⁷ Article 9, Protocol (No 36) on transitional provisions, Treaty on the Functioning of the European Union

³⁸ Article 288, Treaty on the Functioning of the European Union

³⁹ Article 34(b), EC Treaty

⁴⁰ ECJ, C-105/03, Pupino, para. 43-44, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62003CJ0105:EN:HTML>

⁴¹ Report from the Commission based on Article 11 of the Council Framework Decision of 13 June 2002 on combating terrorism, COM(2004)409 final, 8.6.2004 (p.4), available at:

<http://www.statewatch.org/semDOC/assets/files/commission/COM-2004-409.pdf>

⁴² Article 35, Treaty on European Union, <http://www.statewatch.org/news/2003/jan/nicetreaty.pdf>

⁴³ Council Framework Decision 2002/475/JHA on combating terrorism

⁴⁴ Council Framework Decision 2005/222/JHA on attacks against information systems

⁴⁵ Council Framework Decision 2002/584/JHA on the European arrest warrant and the surrender procedures between Member States

⁴⁶ Council Framework Decision 2008/978/JHA on the European evidence warrant for the purpose of obtaining objects, documents and data for use in proceedings in criminal matters

one another by exchanging information or freezing property or evidence⁴⁷ and confiscating the proceeds of crime.⁴⁸

3.4 Decisions

EU Decisions are legally binding acts which either have “general application” (in which case all member states must take measures to comply), or are directed to specific addressees (meaning only those individuals or companies subject to the Decision must comply).⁴⁹ A distinction is also made between “legislative” and “non-legislative” Decisions. The former are adopted by the EU Council and European Parliament under the “normal” co-decision procedure whereas the latter are adopted unilaterally by a specific EU institution.⁵⁰ Since the entry into force of the Lisbon Treaty, Decisions have become the standard instrument in the field of the Common Foreign and Security Policy (CFSP), and are used to define actions and positions to be taken by the EU at international level and how they should be implemented.⁵¹

The date that Decisions take effect (become law) is set out in the legislation itself and is typically on or soon after the date of publication in the EU’s Official Journal. EU Decisions that require member states to introduce dedicated implementing measures may contain a second deadline stipulating how long they have to undertake such actions. There is no enforcement mechanism should member states fail to comply, and, as with Framework Decisions, optional jurisdiction of the European Court of Justice for EU police and criminal law Decisions. However, the ECJ has established that certain types of Decision have direct effect, so in such cases can be challenged by affected parties in national courts and in turn referred to the EU courts, unless those states have opted out of the court’s jurisdiction. With regard to EU counter-terrorism policy, Decisions have been widely used to facilitate cooperation between national police and judicial authorities;⁵² to set-up EU law enforcement bodies like Europol⁵³ (the EU Police Office) and Eurojust⁵⁴ (the EU Judicial Cooperation Unit); to establish funding programmes in the area of security and counter-terrorism;⁵⁵ and to supplement existing EU legislative acts by setting out how they should be implemented.

3.5 Common Positions

Common Positions are legally binding agreements between the member states that are widely used under the EU’s Common Foreign and Security Policy (CFSP) to adopt a position to be taken with

⁴⁷ Framework Decision 2003/577/JHA on the execution in the European Union of orders freezing property or evidence

⁴⁸ Council Framework Decision 2005/212/JHA on confiscation of crime-related proceeds, instrumentalities and property

⁴⁹ European Commission, ‘The European Decision’, http://europa.eu/legislation_summaries/institutional_affairs/decisionmaking_process/ai0036_en.htm

⁵⁰ Ibid.

⁵¹ Ibid.

⁵² Council Decision 2003/48/JHA on the implementation of specific measures for police and judicial cooperation to combat terrorism in accordance with Article 4 of Common Position 2001/931/CFSP; Council Decision 2005/671/JHA on the exchange of information and cooperation concerning terrorist offences

⁵³ Council Decision 2009/371/JHA establishing the European Police Office (Europol)

⁵⁴ Council Decision 2002/187/JHA setting up Eurojust with a view to reinforcing the fight against serious crime

⁵⁵ Council Decision 2006/971/EC concerning the Specific Programme “Cooperation” implementing the Seventh Framework Programme of the European Community for research, technological development and demonstration activities (2007 to 2013)

regard to international matters such as strategic relations with third countries, negotiating positions on international treaties or the interpretation of international law.⁵⁶ In respect to EU counter-terrorism policy their use has been limited to two Common Positions interpreting/implementing UN Security Council Resolutions⁵⁷ and one on the exchange of data between member states and INTERPOL (the International Criminal Police Office).⁵⁸

3.6 International agreements

There are three main types of agreement between the EU and third states or international organisations: (i) “Community agreements”, which regulate matters of Community law/EC competence, (ii) “EU agreements”, which regulate matters for which the member states are responsible: CFSP and JHA, and (iii) “mixed agreements”, which contain provisions affecting both national and EU competences.⁵⁹ Our research shows that in the area of counter-terrorism, the EU has agreed eight treaties with third states covering both EC and JHA matters. In addition, from 2005 standard counter-terrorism cooperation clauses began appearing in all new and updated EU association agreements (these are “mixed agreements” that set out the framework for cooperation with third countries).⁶⁰ There are also numerous agreements between EU agencies such as Europol and Eurojust and their counterparts in third states, which include a counter-terrorism dimension.⁶¹

The eight treaties on counter-terrorism matters with third states include six with the USA, covering (i) mutual legal assistance,⁶² (ii) extradition,⁶³ (iii) cooperation on container security and related matters,⁶⁴ (iv) the transfer of “Passenger Name Record” (PNR) data to the US Department of Homeland Security,⁶⁵ (v) the security of classified information⁶⁶ and (vi) the transfer of Financial Messaging Data from the European Union to the United States for the purposes of the Terrorist

⁵⁶ Article, 25 TEU. A common position is also the name given to the “first reading” position of the Council of the EU in respect to draft EU legislation subject to the co-decision procedure.

⁵⁷ Council Common Position 2001/930/CFSP on combating terrorism; Council Common Position 2001/931/CFSP on the application of specific measures to combat terrorism

⁵⁸ Council Common Position 2005/69/JHA on exchanging certain data with Interpol

⁵⁹ Mario Mendez, *The Legal Effects of EU Agreements*. Oxford: Oxford University Press (2013), p. xvii

⁶⁰ In November 2005, at the Barcelona ‘EUROMED’ summit, a ‘Code of conduct on the Prevention of Terrorism’ was agreed by the EU and its Mediterranean ‘partners’ and counter-terrorism clauses were subsequently incorporated into all ‘European Neighbourhood Policy’ Action Plans. They have since been incorporated into all EU association agreements.

⁶¹ Europol, ‘External cooperation’, <https://www.europol.europa.eu/content/page/external-cooperation-31>; and Eurojust, ‘Agreements concluded by Eurojust’, <http://eurojust.europa.eu/doclibrary/Eurojust-framework/Pages/agreements-concluded-by-eurojust.aspx>

⁶² Agreement on mutual legal assistance between the European Union and the United States of America, OJ 2003 L 181/34, 19 July 2003

⁶³ Agreement on extradition between the European Union and the United States of America, OJ 2003 L 181/27, 19 July 2003

⁶⁴ Agreement between EC and USA on intensifying and broadening the Agreement on customs cooperation and mutual assistance in customs matters to include cooperation on container security and related matters, OJ L 2004 304/24, 30 September 2004

⁶⁵ Agreement between EC and USA on the processing and transfer of PNR data by Air Carriers to the United States Department of Homeland Security, Bureau of Customs and Border Protection, OJ L 2004 183/84, 20 May 2004

⁶⁶ Agreement between EU and USA on the security of classified information, Council document number 8085/07, 30 April 2007

Finance Tracking Program (the “SWIFT Agreement”).⁶⁷ The first three treaties govern bilateral relations between the member states and the USA in respect to mutual legal assistance, extradition and container security etc. They are binding on the member states and set parameters for cooperation and must be ratified through new or amended bilateral agreements with the USA. These “EU agreements” were negotiated by the Presidency and adopted by the Council with no parliamentary ratification, although subsequent bilateral agreements will be subject to parliamentary ratification procedures.⁶⁸ The last three agreements with the USA – on PNR, classified information and financial transactional data – together with two further agreements on the transfer of PNR data to Australia and Canada, are “Community agreements” negotiated by the European Commission on behalf of the Council of the EU, and subject to the Council’s approval.⁶⁹ These treaties are legally binding on the Community and the member states but in these particular cases are addressed to private data controllers and the EU institutions, so do not require specific implementing measures by the member states.

3.7 Other measures

EU Joint Actions are binding instruments adopted under the Common Foreign and Security Policy that provide for the deployment of financial resources to achieve a specific objective and lay down basic rules on how such projects should be implemented. In respect to EU counter-terrorism policy our research identified a single Joint Action relating to cooperation on counter-terrorism research with the African Union.⁷⁰ EU Recommendations, Resolutions and Conclusions are not legally binding on the member states but may nevertheless have a significant impact on the policy-making process and practice in the member states. Recommendations represent a political commitment on the part of EU institutions/bodies or member states toward specific conduct or outline the goals of a common policy.⁷¹ Resolutions are a political agreement to act in a given area. Conclusions are used exclusively and extensively by the EU Council to set the policy agenda by signifying political agreement among the member states as to the type, nature or content of specific measures and future activities.⁷²

⁶⁷ Agreement between EU and USA on the processing and transfer of Financial Messaging Data from the European Union to the United States for the purposes of the Terrorist Finance Tracking Program, OJ L 2010 195/5, 28 June 2010

⁶⁸ The EU-USA agreements that were adopted under Treaty provisions regulating EU agreements do not require ratification by either the European or national parliaments. The bilateral agreements between individual EU member states and the USA envisaged by the EU-USA agreements will be subject to the normal ratification procedures governing bilateral treaties in each member state.

⁶⁹ Council of the European Union, ‘Agreement between the European Union and Australia on the processing and transfer of European Union-sourced passenger name record (PNR) data by air carriers to the Australian Customs Service – Adoption of the Council Decision concerning the signing of the Agreement’, 25 June 2008, 10439/2/08 REV 2, <http://register.consilium.europa.eu/pdf/en/08/st10/st10439-re02.en08.pdf>; Council of the European Union, ‘Council Decision on the conclusion of an Agreement between the European Community and the Government of Canada on the processing of API/PNR data, 9811/05, 5 July 2005, <http://register.consilium.europa.eu/pdf/en/05/st09/st09811.en05.pdf>

⁷⁰ Council Joint Action 2007/501/CFSP of 16 July 2007 on cooperation with the African Centre for Study and Research on Terrorism in the framework of the implementation of the European Union counter-terrorism strategy, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:185:0031:0034:EN:PDF>

⁷¹ EUR-Lex, ‘The legal order of the EU’, http://eur-lex.europa.eu/en/editorial/abc_c04_r1.htm

⁷² See further SECILE deliverable D2.1.

4 Transposing EU legislation

4.1 Factors affecting transposition

There are two basic domestic decision-making processes for the transposition or implementation of EU legislation. The first is the use of standard legislative procedures based on “normal” parliamentary processes (also known as primary legislation). The second is through the use of delegated powers, with statutory instruments or regulations (also known as secondary legislation) used to bring EU law into effect. Here the parliament’s “normal” legislative role and powers are effectively reduced to scrutinising acts drawn up by government.

A study commissioned by the European Parliament and published in 2007 found that in 12 out of 24 member states surveyed, the government may transpose EU law using delegated powers: Denmark, Germany, Estonia, Spain, France, Italy, Ireland, Poland, Portugal, Romania and the United Kingdom.⁷³ The study also explains that among these states the use of delegated powers and procedures varies widely. In Denmark, the Parliament may delegate the power to adopt specific rules to the government (the competent minister) which will then implement that act by ministerial decree. In Germany the parliament has to specifically authorise the government to issue a regulation in an act of parliament defining the content, subject and scope of the delegation. In Estonia and Portugal the delegation of the transposition process to the government also requires parliamentary authorisation. In Italy an annual Community Act authorizes the government to transpose EC law by way of administrative measures or regulations, while in Spain the delegation of the transposition process to the government is very rare. In Belgium, Denmark and Sweden, EC directives in the social field may also be transposed by collective agreements between the ‘social partners’ (trade unions and management organisations).

The Czech Republic, Germany, The Netherlands, Cyprus and Slovenia allow for limited forms of “transposition by reference” (incorporating a reference to an EU Directive into an existing law) in place of dedicated implementing measures.⁷⁴ This practice has been linked to a desire to improve the transposition record on the part of some member states.⁷⁵ The same observation has been made about the use of “global transposition”, which refers to the transposition of various directives in one single legislative instrument, without any necessary link between the subjects of the transposed directives, a technique that has been used in Greece and Italy.⁷⁶

In Ireland the entire transposition process has been delegated to the executive by the European Communities Act 1972 (as amended), with government regulations given permanent statutory effect subject to scrutiny and those acts not being annulled by the parliament within one year of their adoption. The situation is similar in the United Kingdom where the majority of EC legislation is enacted by Statutory Instrument under its European Communities Act 1972. Section 2(2) of this act confers authority on ministers, government departments or Her Majesty in Council to make, with certain exceptions, subordinate legislation “for the purpose of implementing any EU obligation of the United Kingdom”.⁷⁷ According to a House of Commons research paper:

⁷³ *Comparative Study on the Transposition of EC Law in the Member States*, Directorate-General Internal Policies, Policy Department C Citizens Rights and Constitutional Affairs, June 2007, p.10-11, available at: <http://www.euo.dk/upload/application/pdf/7bf97e2b/Final062007.pdf>

⁷⁴ *Ibid.*, p.15-16

⁷⁵ *Ibid.*, p.15

⁷⁶ *Ibid.*, p.13-15

⁷⁷ Section 2(2), European Communities Act 1972, <http://www.legislation.gov.uk/ukpga/1972/68/section/2>

UK data suggest that from 1997 to 2009 6.8% of primary legislation (Statutes) and 14.1% of secondary legislation (Statutory Instruments) had a role in implementing EU obligations, although the degree of involvement varied from passing reference to explicit implementation. Estimates of the proportion of national laws based on EU laws in other EU member states vary widely, ranging from around 6% to 84%.⁷⁸

To ensure continuity and consistency of approach, the government department responsible for implementation/transposition is likely to have been involved in legislative negotiations/consultation process on the relevant draft EU measures (see Figure 1, over). This process has given rise to accusations of “policy laundering”, where governments use international fora to pursue domestic policy objectives.⁷⁹ Similarly, the notion of “gold plating” has emerged to describe the addition of “national provisions to the EC text, using more detailed or more restrictive regulations than prescribed by the directive itself”.⁸⁰ The practice was allegedly so widespread in the UK – at least in relation to internal market rules – that the government commissioned a review and this year promised an end to the practice.⁸¹

Other challenges that can arise when member states transpose EU legislation include difficulties linked to the structure of the state in federal or decentralised countries, which can be seen as a “source of delays and distortion in the application of Community law”;⁸² the obligation to consult different stakeholders, including “civil society”; the legal drafting techniques employed; the length of the transposition process; and a lack of coordination between different administrative departments.⁸³ The following section examines the way in which the UK transposes EU legislation and provides examples with regard to a range of EU counter-terrorism instruments.

4.2 Transposition of EU counter-terrorism measures in the United Kingdom

Figure 1, below, highlights the processes that UK legislators are supposed to follow when negotiating and transposing EU legislation. The complex connection between the EU legislative procedure and the domestic transposition of that legislation further complicates any attempt to assess the legitimacy of either process. Table 1, which follows, provides examples of how the UK has implemented EU counter-terrorism measures and covers each of the types of legal instrument described in Section 3. The examples highlight the complexity of the transposition process and the interrelationship between domestic and EU law as well as the range of measures at the disposal of

⁷⁸ *How much legislation comes from Europe?*, House of Commons Library, Research Paper 10/62, 13 October 2010

⁷⁹ “Policy laundering”, after “money laundering”, describes “the use by governments of foreign and international forums as an indirect means of pushing policies unlikely to win direct approval through the regular domestic political process”. Under the “war on terror”, this technique became a central means by which states seek to overcome civil liberties objections to privacy-invading policies. A critical feature of policy laundering is “forum shifting”, which occurs “when actors pursue roles in intergovernmental organisations (IGOs) that suit their purposes and interests, and when opposition and challenges arise, shift to other IGOs or agreement-structures”. See the *Policy Laundering Project*, 2005, <http://www.policylaundering.org>.

⁸⁰ European Parliament study, op.cit note 10, p.22

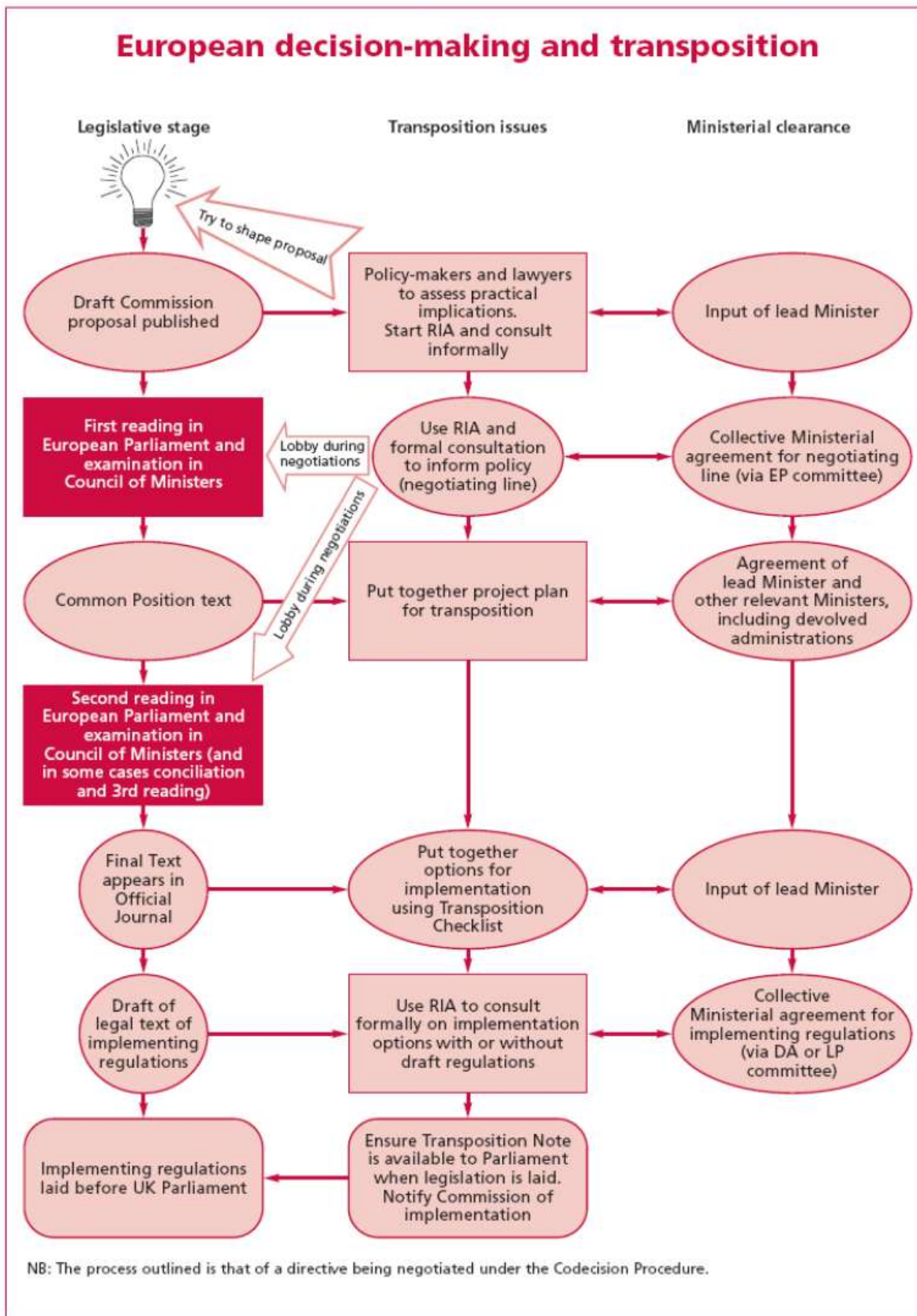
⁸¹ Chris Davies, ‘Minister says UK ‘gold plating’ of EU laws has stopped’, *BBC News*, 24 April 2013, <http://www.bbc.co.uk/news/uk-politics-22277927>; Gold-plating review: operation of the transposition principles in the government’s Guiding Principles for EU Legislation, *gov.uk*, 7 March 2013, <https://www.gov.uk/government/publications/gold-plating-review-operation-of-the-transposition-principles-in-the-government-s-guiding-principles-for-eu-legislation>

⁸² European Parliament study, op.cit note 10, p.12

⁸³ *Ibid.*, p.22-23

the member states. It also underscores the need to conduct substantive investigative research in order to properly assess the legitimacy of national implementation of EU legislation.

Figure 1: UK procedures for negotiating and transposing EU legislation ⁸⁴



⁸⁴ UK Cabinet Office, 'Transposition guide: how to implement European directives effectively', March 2005, http://www.mt.ro/nou/_img/documente/Ghid_de_Transpunere_Legislatie_Comunitara.pdf

Table 1: Transposition of selected EU legal instruments related to counter-terrorism by UK

EU measure	Summary of requirements	UK transposing/implementing measures
Regulation (EC) No 820/2008 laying down measures for the implementation of the common basic standards on aviation security ⁸⁵	Codifies aviation security rules set out in 14 amendments to Regulation 2320/2002/EC on aviation security, including airport security; staff, passenger and baggage screening; use of security scanners etc.	The government is responsible for managing the risks to passengers, workers and cargo in airports and during transit and is developing an “integrated approach for aviation and border security involving the Home Office, the Department of Transport and the UK Border Agency”. “Aviation Security” falls under a dedicated policy on “Managing the risk to transport networks” which develops and implements statutory regulations and issues in consultation with the transport sector. ⁸⁶
Directive 2006/24/EC on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks (see section 6.1.7)	Obliges providers of internet and telephony services to keep information regarding the identities and activities of their subscribers for between 6 and 24 months and provide access to police and security agencies for the purposes of investigating serious crime	The Data Retention (EC Directive) Regulations 2007 and The Data Retention (EC Directive) Regulations 2009 on telephone and internet communications respectively, adopted by statutory instrument in accordance with the European Communities Act 1972 introduced a mandatory retention period of 12 months. UK police and security agencies are empowered to access data held by telecommunications service providers under the Regulation of Investigatory Powers Act. ⁸⁷
Decision 2002/187/JHA setting up Eurojust with a view to reinforcing the fight against serious crime (see section 6.4.2)	Eurojust was established to facilitate co-operation in the investigation of serious cross-border crime cases involving more than two EU member states. Member states must establish structured cooperation with Eurojust.	The UK government appoints National and Deputy National Members of Eurojust responsible for liaison with Eurojust and authorities from other member states for fixed term periods. ⁸⁸ Department of Public Prosecutions and Crown Prosecution Service work closely with Eurojust. ⁸⁹ UK Serious Fraud Office (SFO) has produced an “Operational Handbook on Investigative Assistance within Europe” which sets out framework for cooperation with Eurojust. ⁹⁰ SFO has also issued guidance on the disclosure of information to Eurojust.
Common Position	Establishes common EU	Home Secretary “proscribes” banned EU terrorist

⁸⁵ Commission Regulation (EC) No 820/2008 of 8 August 2008 laying down measures for the implementation of the common basic standards on aviation security, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:221:0008:0022:EN:PDF>

⁸⁶ Home Office, ‘Managing the risk to transport networks from terrorism and other crimes’, <https://www.gov.uk/government/policies/managing-the-risk-to-transport-networks-from-terrorism-and-other-crimes/activity>

⁸⁷ Chris Jones & Ben Hayes, ‘The EU Data Retention Directive: a case study in the legitimacy and effectiveness of EU counter-terrorism policy’, SECILE deliverable 2.4, October 2013

⁸⁸ Sir Jon Cunliffe, ‘Notification of United Kingdom Eurojust appointments, pursuant to Council decision 2002/187/JHA’, 6 July 2012, http://www.parlament.gv.at/PAKT/EU/XXIV/EU/08/73/EU_87333/imfname_10035949.pdf

⁸⁹ European Union Committee, EU policy and criminal justice measures: The UK’s 2014 opt-out, 16 April 2013, paras. 196-198, <http://www.publications.parliament.uk/pa/ld201213/ldselect/ldecom/159/15910.htm>

⁹⁰ Serious Fraud Office, ‘Investigative Assistance within Europe’, March 2013, http://www.sfo.gov.uk/media/103692/investigative_assistance_within_europe_sfo_operational_handbook_topic.pdf

<p>2001/931/CFSP on the application of specific measures to combat terrorism⁹¹</p>	<p>lists of domestic and international “terrorists”; specifies that further European Community acts will freeze the funds of, and block any resources going to, any of the international “terrorists”; states that member states “shall” assist each other as regards criminal investigations etc. into all the designated “terrorists”.⁹²</p>	<p>organisations under Terrorism Act 2000. Treasury is responsible for implementation and administration of international financial sanctions in effect in the UK as well as for domestic designations under the Terrorist Asset-Freezing Act 2010. Treasury then produces a consolidated list of financial sanctions targets in the UK which financial services providers must consult to ensure that they do not breach domestic or international sanctions. Extent of cooperation between UK police and security agencies and their EU counterparts not known but implied by Europol, Eurojust etc. reports.</p>
<p>Recommendation on the development of terrorist profiles⁹³</p>	<p>The text, which was not initially published, suggested that “most but not all EU countries were working on profiles in the area of terrorism” and called upon the member states to “pass on information to Europol which will develop the terrorist profiles and make them available to the relevant authorities in the Member States”. Nationality, means of travel, age, sex, “physical distinguishing features (e.g. battle scars)”, education, “use of techniques to prevent discovery or counter questioning”, places of stay, place of birth, psycho-sociological features, family situation, expertise in advanced technologies and “attendance at training courses in paramilitary, flying and other specialist techniques” were all put forward as characteristics</p>	<p>Not known. In 2008 the <i>Guardian</i> newspaper reported that: “MI5 has concluded that there is no easy way to identify those who become involved in terrorism in Britain, according to a classified internal research document on radicalization... The sophisticated analysis, based on hundreds of case studies by the security service, says there is no single pathway to violent extremism. It concludes that it is not possible to draw up a typical profile of the ‘British terrorist’ as most are “demographically unremarkable” and simply reflect the communities in which they live”.⁹⁴</p>

⁹¹ Council Common Position of 27 December 2001 on the application of specific measures to combat terrorism (2001/931/CFSP), <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:344:0093:0096:EN:PDF>

⁹² ‘EU announces first lists of terrorists and all refugees to be vetted’, *Statewatch News Online*, January 2002, <http://www.statewatch.org/news/2002/jan/02euterr.htm>

⁹³ Council Recommendation of 28 November 2002 on the development of terrorist profiles, https://www.consilium.europa.eu/ueDocs/cms_Data/docs/polju/en/EJN280.pdf

⁹⁴ Alan Travis, ‘MI5 report challenges views on terrorism in Britain’, *The Guardian*, 20 August 2008, <http://www.theguardian.com/uk/2008/aug/20/uksecurity.terrorism1>

	upon which propensity to terrorism might be ascertained.	
Resolution on information exchange on the expulsion of third-country nationals due to behaviour related to terrorist activity or inciting violence or racial hatred ⁹⁵	Calls on member states to inform one another when they expel individuals on these grounds.	Not known.
Agreement on extradition between the European Union and the United States of America (see section 6.5.1)	Sets out minimum standards and procedures to be followed in bilateral extradition treaties between member states and the USA for the extradition of offenders between.	The UK-USA extradition Treaty was signed on 31 March 2003 by the Home Secretary using delegated powers relating to international treaty-making. Parliament was already debating the newly agreed EU Arrest Warrant (EAW) and the subsequent Extradition Act 2003 which would implement that measure. That Act allowed the Home Secretary to decide the extradition procedures applicable to different countries using statutory instrument (SI). ⁹⁶ The SI declaring the USA a “Category 2” country under the Extradition Act and applying a simplified procedure in accordance with the UK-USA Treaty passed into UK law on New Year’s Day 2004. ⁹⁷ That Treaty was thus never subject to a UK parliamentary debate. ⁹⁸

⁹⁵ ‘Adoption of a Council Resolution on information exchange on the expulsion of third-country nationals due to behaviour related to terrorist activity or inciting violence and racial hatred’, 22 March 2007, <http://register.consilium.europa.eu/pdf/en/07/st07/st07159.en07.pdf>

⁹⁶ Sections 69(1), 71(4), 73(5), 74(11)(b), 84(7) and 86(7), Extradition Act 2003.

⁹⁷ The Extradition Act 2003 (Designation of Part 2 Territories) Order 2003, SI No. 3334.

⁹⁸ Ben Hayes, ‘Why we in the UK shouldn’t celebrate these extraditions’, *openDemocracy*, 27 September 2012, <http://www.opendemocracy.net/ben-hayes/why-we-in-uk-shouldn%E2%80%99t-celebrate-these-extraditions>

5 Observations on the transposition of EU counter-terrorism measures

The remainder of this report examines the transposition by the member states of legally binding EU counter-terrorism-related measures. As noted above, it is not possible to provide comprehensive data on either the specific mechanisms used for transposition in each member state or for each CTM.

The table below lists the 50 binding EU counter-terrorism measures that explicitly require the member states to transpose their provisions, together with a summary of information relating to the transposition and review process. For each measure the table notes whether all member states have met the implementation deadline within the allotted timescale (for Directives this information has been gathered from the Eur-Lex database, for other measures from evaluation reports, where available) and whether the measure was implemented to the satisfaction of the EU institutions. This overview is based on the more detailed data provided in section 6, which provides an assessment of the efforts of each member state in this regard (where available). It should be noted that 12 of the 50 measures contain no provisions for review and that in a further four cases, the reviews that should have been carried out in accordance with the legislation cannot be located. The ten most recently adopted measures have yet to be implemented or reviewed.⁹⁹

Where information regarding transposition or implementation is available, it can be observed that only one of the 50 legally binding EU CTMs can be said to have so far been implemented within the requisite time period by all of the member states and to the satisfaction of the EU institutions, by which we mean that no infringement proceedings were launched and no censure or complaint against the member states were recorded in the implementation reports. None of the other measures were implemented on time or satisfactorily from the perspective of the European Commission or EU Council. Interestingly, rather than introducing new counter-terrorism powers or practices, the one EU Decision that was apparently seamlessly transposed concerned the introduction of a peer review mechanism by the member states for evaluating one another's counter-terrorism systems (see section 6.4.3).

It is not only member states that appear to have problems with the implementation of EU counter-terrorism law. It may also be observed that of the 24 reviews of the 50 EU CTMs listed below, only four were conducted by the EU institutions within the time period stipulated by the legislation.

5.1 Overview of transposition and review of EU counter-terrorism measures

Table 2: EU CTMs requiring transposition and review

DIRECTIVES [National transposing legislation provided on EUR-Lex]	IMPLEMENTED ON TIME?	IMPLEMENTED SATISFACTORILY?	REVIEW
Directive 2001/97/EC amending Council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering - Commission [second anti-money laundering Directive]	No	N/A	No provision for review
Directive 2002/58/EC concerning the	No	N/A	Review required by

⁹⁹ See further SECILE deliverable 2.3.

protection of personal data and the protection of privacy in the electronic communications sector [the “e-Privacy Directive”]			October 2006 cannot be located
Directive 2004/80/EC relating to compensation to crime victims	No	No	Review required by January 2009; Commission report produced in April 2009
Directive 2004/82/EC on the obligation of carrier to communicate passenger data [the “API Directive”]	No	N/A	No provision for review
Directive 2005/60/EC on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing [Third anti-money laundering Directive]	No	No	Requires triennial reviews by Commission; first report due December 2010 produced in April 2012
Directive 2005/65/EC on enhancing port security	No	No	Requires five yearly reviews by Commission following first review in December 2008; first report produced in January 2009
Parliament and Council Directive 2006/24/EC on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC	No	No	Review required by September 2010; Commission report produced in April 2011
Parliament and Council Directive 2007/64/EC on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC	No	No	Requires five yearly reviews by Commission following first review in December 2008; first report produced in January 2009
Commission Directive 2008/43/EC setting up, pursuant to Council Directive 93/15/EC, a system for the identification and traceability of explosives for civil uses	No	N/A	No provision for review
Council Directive 2008/114/EC on the identification and designation of European critical infrastructures and the assessment of the need to improve their protection	No	No	Review due to commence by January 2012; Commission report produced June 2012
Directive 2009/16/EC on port State control (Recast)	No	No	Review required by June 2012; Commission report produced in November 2012
Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings	N/A	N/A	Not yet implemented; Review required by

			October 2014
Directive 2011/95/EU on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast)	N/A	N/A	Not yet implemented; Review required by June 2015
Directive 2012/13/EU on the right to information in criminal proceedings	N/A	N/A	Not yet implemented; Review required by June 2015
Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA	N/A	N/A	Not yet implemented; Review required by November 2017
FRAMEWORK DECISIONS			AVAILABLE INFORMATION
Framework Decision 2002/475/JHA on combating terrorism	No	No	First review due December 2003; report published June 2004; further review in November 2007
Framework Decision 2002/465/JHA on joint investigation teams	No	No	First review due July 2004; report published January 2005
Framework Decision 2002/584/JHA on the European arrest warrant and the surrender procedures between member states	No	No	First review due December 2004; report published February 2005; further reviews in January 2006 and April 2011
Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence	No	No	First review due August 2006; report published December 2008
Framework Decision 2005/212/JHA on confiscation of crime-related proceeds, instrumentalities and property	No	No	Review due August 2006; report published December 2007
Framework Decision 2005/222/JHA on attacks against information systems	No	No	Review due September 2007; report published July 2008
Framework Decision 2006/783/JHA on the application of the principle of mutual recognition to confiscation orders	No	No	Review due November 2009; report published August 2010
Framework Decision 2006/960/JHA on simplifying the exchange of information and	No	No	Review due December 2006;

intelligence between law enforcement authorities of the member states of the European Union			Commission report published May 2011; Council assessment published September 2011
Framework Decision 2008/909/JHA on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union	No	No	Review due December 2012; Council review completed October 2012
Framework Decision 2008/978/JHA on the European evidence warrant for the purpose of obtaining objects, documents and data for use in proceedings in criminal matters	N/A	N/A	Review of implementation due by January 2012 cannot be located; Review of operation due by January 2014
Framework Decision 2009/315/JHA on the organisation and content of the exchange of information extracted from the criminal record between member states	N/A	N/A	Review due April 2015
COMMON POSITIONS			AVAILABLE INFORMATION
Council Common Position 2001/930/CFSP of 27 December 2001 on combating terrorism	N/A	N/A	No provisions for review
Common Position 2001/931/CFSP on the application of specific measures to combat terrorism	N/A	N/A	No provisions for review
Common Position 2005/69/JHA on exchanging certain data with Interpol	No	No	Review of implementation due December 2005; Commission report produced April 2006

DECISIONS			AVAILABLE INFORMATION
Council Decision 2001/792/EC, Euratom of 23 October 2001 establishing a Community mechanism to facilitate reinforced cooperation in civil protection assistance interventions	N/A	N/A	Requires triennial reviews by Commission; reports cannot be located
Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime	No	No	Implementation verified by Eurojust annual reports; Commission also undertook a review on its own initiative in 2004
Council Decision 2002/996/JHA of 18 November 2002 establishing a mechanism for evaluating the legal systems and their implementation at national level in the fight against terrorism	Yes	Yes	Implementation verified by use of EU review mechanism
Council Decision 2003/48/JHA of 19 December 2002 on the implementation of specific measures for police and judicial cooperation to combat terrorism in accordance with Article 4 of Common Position 2001/931/CFSP [repealed by Council Decision 2005/671/JHA, below]	N/A	N/A	No provision for review
Commission Decision 2004/388/EC of 29 April 2004 on an Intra-Community transfer of explosives document	N/A	N/A	No provisions for review
Council Decision 2005/211/JHA of 24 February 2005 concerning the introduction of some new functions for the Schengen Information System, including in the fight against terrorism	N/A	N/A	No provisions for review
Council Decision 2005/671/JHA of 20 September 2005 on the exchange of information and cooperation concerning terrorist offences	N/A	N/A	No provisions for review
Commission Decision 2006/758/EC of 22 September 2006 on amending the SIRENE Manual	N/A	N/A	Includes provisions for review by both Council and Commission; Council review cannot be located; Commission report scheduled for 24 November 2013 according to work programme
Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II)	N/A	N/A	No provisions for review; SIS II went online in April 2013 after lengthy delays
Council Decision 2007/779/EC of 8 November	N/A	N/A	Requires triennial

2007 Council Decision establishing a Community civil Protection Mechanism (recast)			reviews by Commission; first report cannot be located
Council Decision 2007/845/JHA of 6 December 2007 concerning cooperation between Asset Recovery Offices of the member states in the field of tracing and identification of proceeds from, or other property related to, crime	No	No	Council review required by December 2010; Commission report produced in April 2011
Council Decision 2008/615/JHA of 23 June 2008 Council Decision on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime [Prüm Decision]	No	No	Council review required by July 2012; Report on implementation of automated data exchange produced in 2013
Council Decision 2008/616/JHA of 23 June 2008 on the implementation of Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime [Prüm Decision]	No	No	As above
Council Decision 2008/617/JHA of 23 June 2008 on the improvement of cooperation between the special intervention units of the member states of the European Union in crisis situations	N/A	N/A	No provisions for review
Council Decision 2008/633/JHA of 23 June 2008 concerning access for consultation of the Visa Information System (VIS) by designated authorities of member states and by Europol for the purposes of the prevention, detection and investigation of terrorist offences and of other serious criminal offences	N/A	N/A	Two reports due in October 2013
Commission Decision 2009/83/EC of 23 January 2009 Commission Decision amending Regulation (EC) No 725/2004 of the European Parliament and of the council as far as the IMO Unique Company and Registered Owner Identification Number Scheme is concerned (notified under document number C(2009) 148) [related to Regulation (EC) No 725/2004]	N/A	N/A	No provisions for review
Council Decision 2009/316/JHA on the establishment of the European Criminal Records Information System (ECRIS) in application of Article 11 of Framework Decision 2009/315/JHA	N/A	N/A	Review required by 27 April 2015
Council Decision 2009/371/JHA of 6 April 2009 establishing the European Police Office (Europol)	N/A	N/A	Report on implementation of Decision produced by Rand Corporation (does not deal with

			national implementation but rather functioning with regard to Europol's requirements)
INTERNATIONAL TREATIES			AVAILABLE INFORMATION
Agreement on extradition between the European Union and the United States of America	N/A	N/A	Common EU-US review due no later than five years after entry into force (February 2015)
Agreement on extradition between the European Union and the United States of America	N/A	N/A	Common EU-US review due no later than five years after entry into force (February 2015)
Agreement between EC and USA on intensifying and broadening the Agreement on customs cooperation and mutual assistance in customs matters to include cooperation on container security and related matters	N/A	N/A	Joint Working Group to report to EU-US Joint Customs Cooperation Council annually on implementation of agreement; no public reports available

5.2 Infringement proceedings for failure to transpose Directives

As noted above, the European Commission can initiate infringement proceedings against individual member states for failure to implement EU Directives (or other obligations under EU law). This procedure is governed by Article 258 of the TFEU. Complaints for failure to meet the deadline for implementing EU law are the responsibility of the Commission whereas complaints for failure to implement the laws correctly may be brought to the Commission's attention by the European Parliament, citizens, businesses, NGOs and others – in the words of the Commission, "anyone".¹⁰⁰

The Commission begins the process by giving formal notice to the member state concerned that it believes it has failed to fulfil its obligations under the EU treaties to implement the Directive (the "administrative" stage). This notice usually gives the state in question two months to respond to the allegations or to correct their action (or inaction). If the Commission is not satisfied with the response it receives from that member state, it submits a "reasoned opinion" with a further deadline for compliance. If the state still does not comply, the Commission can bring the matter before the European Court of Justice (ECJ) and request the imposition of a fine. This can take the form of a lump sum or a penalty that increases over time.¹⁰¹ The table below shows that eight out of 11 EU Directives related to counter-terrorism that should have by now been implemented in full have resulted in full infringement proceedings against one or more member states at the ECJ.

¹⁰⁰ European Commission, 'Exercise your rights', http://ec.europa.eu/eu_law/your_rights/your_rights_en.htm

¹⁰¹ Nigel Foster (2012) *EU Law Directions*. Oxford: Oxford University Press, pp.174-187

Table 3: Infringement proceedings at the ECJ concerning EC counter-terrorism related Directives

DIRECTIVES [National transposing legislation provided on EUR-Lex]	INFRINGEMENT PROCEEDINGS?
Parliament and Council Directive 2001/97/EC amending Council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering - Commission [second anti-money laundering Directive]	Italy
Parliament and Council Directive 2002/58/EC concerning the protection of personal data and the protection of privacy in the electronic communications sector [the “e-Privacy Directive”]	Greece Portugal
Council Directive 2004/80/EC relating to compensation to crime victims	Italy
Council Directive 2004/82/EC on the obligation of carrier to communicate passenger data [the “API Directive”]	Poland
Parliament and Council Directive 2005/60/EC on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing [Third anti-money laundering Directive]	Belgium Spain France Ireland Poland Sweden
Parliament and Council Directive 2005/65/EC on enhancing port security	Estonia UK
Parliament and Council Directive 2006/24/EC on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC	Austria Germany Greece Ireland Netherlands Sweden (2010 and 2013)
Parliament and Council Directive 2007/64/EC on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC	Poland
Commission Directive 2008/43/EC setting up, pursuant to Council Directive 93/15/EC, a system for the identification and traceability of explosives for civil uses	No
Council Directive 2008/114/EC on the identification and designation of European critical infrastructures and the assessment of the need to improve their protection	No
Directive 2009/16/EC on port State control (Recast)	No
Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings	Deadline for transposition 27 October 2013
Directive 2011/95/EU on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast)	Deadline for transposition 21 December 2013
Directive 2012/13/EU on the right to information in criminal proceedings	Deadline for transposition 2 June 2014
Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA	Deadline for transposition 16 November 2015

Each year the European Commission produces a report on the application of EU law containing

statistics on the number of proceedings in respect to each stage of the Article 258 process.¹⁰² In 2010 the Commission issued 1,168 formal notices but despite a breakdown of proceedings by subject area, it is extremely difficult to ascertain how the rate of failure to implement the above counter-terrorism related Directives compares to other areas. But with 94% of infringement proceedings said to be settled before they reach the ECJ,¹⁰³ problems in this area do appear to be particularly acute. As suggested above, without more forensic investigation it is very difficult to ascertain whether this actually relates to possible difficulties with the EU legislation itself or to circumstances in specific member states. The “Data Retention Directive” (2006/24/EC) has clearly been particularly problematic. This is the subject of a detailed investigation in SECILE deliverable D2.4.

5.3 Implementation reports

It is evident from the implementation reports produced by the European Commission (see section 6.1, below) that the overwhelming concern of the review process is if and how the member states have transposed EU Directives. Where the Commission does identify failures in this regard, it shows very little concern whatsoever with ascertaining the underlying factors that may have produced these outcomes. This is hardly surprising given the Commission’s mandate and reliance on infringement proceedings to ensure implementation.

The Commission has evaluated eight of the 11 counter-terrorism related Framework Decisions identified in the course of the research. Although it frequently complains that the member states have provided insufficient information, in general these assessments are considerably more detailed than the corresponding reviews of the aforementioned Directives. Nevertheless, the priority is still to “name-and-shame” those governments that have failed to meet their obligations under EU law, with the Commission frequently expressing concern that the Member States have failed to implement the provisions on time or in accordance with the legislation (see further section 6.2, below). Again there is little regard for why this may be the case, although very occasionally the reports do at least touch on such matters. The report on the implementation of Framework Decision 2005/212/JHA on the confiscation of the proceeds of crime, for example, notes that:

Article 3(2) appears to have posed the most problems with respect to its implementation. These problems relate primarily to legal traditions and fundamental principles, in particular as regards the administration of the burden of proof, the link usually required between the offence for which an individual has been convicted and the property confiscated, the right to a fair trial and the need for the penalty to be proportional to the facts of the case.¹⁰⁴

Of the 18 counter-terrorism related EU Decisions addressed to the member states and requiring implementation at the national level, only ten contain review provisions.¹⁰⁵ Two measures require

¹⁰² European Commission, ‘29th annual report on monitoring the application of EU law (2011)’, COM(2012) 714 final, 30 November 2012,

http://ec.europa.eu/eu_law/docs/docs_infringements/annual_report_29/com_2012_714_en.pdf

¹⁰³ Foster, *op. cit.*, pp.178-179

¹⁰⁴ European Commission, ‘Report from the Commission pursuant to Article 6 of the Council Framework Decision on confiscation of crime-related proceeds, instrumentalities and property (2005/212/JHA)’, COM(2007) 805 final, 17 December 2007, p.5, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2007:0805:FIN:EN:PDF>

¹⁰⁵ Council Decision 2001/792/EC; Council Decision 2002/996/JHA; Commission Decision 2006/758/EC; Council Decision 2007/779/EC; Council Decision 2007/845/JHA; Council Decision 2008/615/JHA; Council Decision 2008/616/JHA; Council Decision 2008/633/JHA; Council Decision 2009/316/JHA; Council Decision 2009/371/JHA

periodic review,¹⁰⁶ and three require reviews by both the European Commission and EU Council.¹⁰⁷ Three out of the ten requisite reviews do not appear to have been carried out¹⁰⁸ and a further three are not yet due.¹⁰⁹ The implementation of the Eurojust Decision has been reviewed by the Commission on its own initiative rather than to comply with the legal requirements of the Decision.¹¹⁰ While the picture is similar for that which emerges for Directives and Framework Decisions – slow and uneven implementation (see section 6.3, below) – those reviews that have been conducted are less concerned with the national legislation used to implement the Decision at national level and (relatively) more concerned with the effectiveness of the national measures. This is particularly notable in respect to the evaluation of the implementation of the Decision establishing Europol (the European Police Office) which was conducted by privately contracted consultants. This review highlighted the member states’ lack of willingness to share information with Europol and the possibility of introducing legally binding provisions to ensure that information is shared in future (a perennial problem and key feature of the Commission’s latest Europol proposals).¹¹¹

5.4 Conclusions

The ways in which EU member states have implemented the numerous counter-terrorism measures introduced at EU level since September 2001 is extremely difficult to assess. What is most notable about the implementation of the measures examined here is not the varying forms that they have taken at national level, but the fact that member states have frequently been so slow to implement measures, and in a number of cases have not implemented them at all until faced with legal action. The reasons for this, however, are beyond the remit of this study. Where they have been implemented in whole or part, the Commission’s assessments often complain of inconsistency with the EU provisions on which national measures are based. Given the stated goal of the EU to create an “Area of Freedom, Security and Justice”, this should be of some concern for the Commission and for all those who wish to see common and consistent application of the law across the EU.

The magnitude of the task facing anyone seeking to understand how EU counter-terrorism law has been transposed is compounded by a failure to include provisions for review in the legislation itself on a systematic basis, failures on the part of the EU institutions to actually conduct those reviews, and failures to make reviews readily available and easily accessible where they have taken place. All of this leaves the public and indeed the EU institutions with little knowledge of whether these measures have actually been implemented, and, more importantly, how they function in practice.

¹⁰⁶ Council Decision 2001/792/EC; Council Decision 2007/779/EC; Council Decision 2008/633/JHA

¹⁰⁷ Commission Decision 2006/758/EC; Council Decision 2007/845/JHA

¹⁰⁸ Council Decision 2001/792/EC; Commission Decision 2006/758/EC; Council Decision 2007/779/EC

¹⁰⁹ Commission Decision 2006/758/EC; Council Decision 2008/633/JHA; Council Decision 2009/316/JHA

¹¹⁰ European Commission, ‘Report from the Commission on the Legal Transposition of the Council Decision of 28 February 2002 Setting up Eurojust with a View to Reinforcing the Fight Against Serious Crime’, COM(2004)457 final, 6 July 2004, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2004:0457:FIN:EN:PDF>; European Commission, ‘Annex to the Report on the Legal Transposition of the Council Decision of 28 February 2002 Setting up Eurojust with a View to Reinforcing the Fight Against Serious Crime’, SEC(2004) 884, 6 July 2004, http://www.asser.nl/upload/euowarrant-webroot/documents/cms_eaw_id1049_2_SEC.2004.884.pdf

¹¹¹ See Article 7(5) of the Commission’s proposal for a new Europol Regulation, http://ec.europa.eu/governance/impact/ia_carried_out/docs/ia_2013/com_2013_0173_en.pdf. The issue of provision of information to Europol is likely to be a contentious issue, particularly amongst member states in debates in the Council. Disagreements have already arisen over the issue in preliminary discussions. See ‘Summary of the COSI debate on the revision of Europol’s legal basis’, 23 May 2012, <http://www.statewatch.org/news/2013/jun/2012-9104-12-cosi-debate.pdf>




This is particularly problematic in light of the fact that legislation intended to deal with the problem of terrorism frequently impinges upon fundamental rights.

It seems to be somewhat paradoxical that the democratic legitimacy of the legislation is ostensibly derived from the member states' participation in the decision-making process (a process they monopolised in respect to the old "third pillar"), yet the European Commission frequently takes those states to task for failing to properly implement the measures they have developed. It is arguably even more problematic that it does so largely in the absence of any qualitative assessment of the factors that might have caused these failures.




6 Summary of data on transposition of EU counter-terrorism measures

6.1 Directives

6.1.1 Directive amending Council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering - Commission [second anti-money laundering Directive]

Parliament and Council Directive 2001/97/EC		4 December 2001																										
Deadline for implementation		15 June 2003		National legislation																								
Review of transposition		Not found																										
STATE	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SI	SK	UK	
 112	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
 113	?	?	?	?	?	?	?	?	?	?	?	?	?	?	?	?	?	?	?	?	?	?	?	?	?	?	?	?




6.1.2 Directive concerning the protection of personal data and the protection of privacy in the electronic communications sector [the “e-Privacy Directive”]

Parliament and Council Directive 2002/58/EC		12 July 2002																									
Deadline for implementation		31 October 2003		National legislation																							
Review of transposition		Not found																									
STATE	A T	B E	B G	C Y	C Z	D E	D K	EE	E L	ES	FI	F R	H U	IE	IT	LT	L U	LV	M T	N L	PL	P T	R O	SE	SI	SK	U K
	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
	N	N	N	N	N	N	N	N	Y	N	N	N	N	N	N	N	N	N	N	N	N	Y	N	N	N	N	N




¹¹² This icon denotes whether the measure was implemented on time.

¹¹³ This icon denotes whether the measure was implemented satisfactorily, by which we mean that no infringement proceedings were launched and no censure or complaint against the member states were recorded in the implementation reports produced by the European Commission or Council of the EU.




6.1.3 Directive relating to compensation to crime victims

Council Directive 2004/80/EC		29 April 2004																									
Deadline for implementation		1 January 2006		National legislation																							
Review of transposition		Commission report on the application of Council Directive 2004/80/EC (COM(2009) 170 final) Commission staff working document accompanying Commission report (SEC(2009) 495)																									
STATE	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SI	SK	UK
	Y	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
	N	N	N	N	N	N	N	N	Y	Y	N	Y	N	N	Y	Y	Y	N	Y	N	N	N	Y	N	Y	Y	N




6.1.4 Directive on the obligation of carrier to communicate passenger data [the “API Directive”]

Council Directive 2004/82/EC		29 April 2004																									
Deadline for implementation		5 September 2006		National legislation																							
Review of transposition		No provisions for review																									
STATE	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SI	SK	UK
	Y	Y	Y	Y	Y	Y	NA	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
																					Y						




6.1.5 Directive on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing [Third anti-money laundering Directive]

Parliament and Council Directive 2005/60/EC	26 October 2005																										
Deadline for implementation	15 December 2007	National legislation																									
Review of transposition	Commission report on the application of Directive 2005/60/EC on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (COM(2012) 168 final, 11 April 2012) Commission staff working paper - Compliance with the anti-money laundering directive by cross-border banking groups at group level (SEC(2009) 939 final, 30 June 2009)																										
STATE	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SI	SK	UK
	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y	Y
	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N		N	N	N	N	N	N	N




6.1.6 Directive on enhancing port security

Parliament and Council Directive 2005/65/EC	26 October 2005																										
Deadline for implementation	15 June 2007	National legislation																									
Review of transposition	Commission report assessing the implementation of the Directive on enhancing port security (COM(2009) 2 final, 20 January 2009)																										
STATE	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SI	SK	UK
	N	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	
	/	N	Y	Y	/	Y	N	Y	Y	Y	N	N	/	N	Y	N	/	N	Y	N	Y	N	N	N	N	/	Y




6.1.7 Directive on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC

Council and Parliament Directive 2006/24/EC		15 March 2006																										
Deadline for implementation		15 September 2007 [telephony]		National legislation																								
		15 March 2009 [internet]																										
Review of transposition		Commission evaluation report on the Data Retention Directive (COM(2011) 225 final, 18 April 2011)																										
STATE	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SI	SK	UK	
	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
	Y	Y	Y	Y	Y	Y	N	N	N	N	N	N	Y	Y	N	N	N	N	N	N	N	N	Y	Y	Y	N	N	

6.1.8 Directive on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC

Council and Parliament Directive 2007/64/EC		13 November 2007																									
Deadline for implementation		1 November 2009		National legislation																							
Review of transposition		Tipik Communication Agency, Directive 2007/64/EC - General report on the transposition by the member states																									
STATE	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SI	SK	UK
	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N	Y




6.1.9 Directive setting up, pursuant to Council Directive 93/15/EC, a system for the identification and traceability of explosives for civil uses

Commission Directive 2008/43/EC		4 April 2008																									
Deadline for implementation		5 April 2009 [application from 5 April 2012]		National legislation																							
Review of transposition		No review provisions																									
STATE	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SI	SK	UK
	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
	?	?	?	?	?	?	?	?	?	?	?	?	?	?	?	?	?	?	?	?	?	?	?	?	?	?	?




6.1.10 Council Directive on the identification and designation of European critical infrastructures and the assessment of the need to improve their protection

Council Directive 2008/114/EC		8 December 2008																										
Deadline for implementation		12 January 2011		National legislation																								
Review of transposition		Commission staff working document on the review of the European Programme for Critical Infrastructure Protection (EPCIP) (SWD(2012) 190 final, 22 June 2012)																										
STATE	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SI	SK	UK	
	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	
	N	N	N	N	N	N	N	N	N	N	N	N	N		N	N	N	N	N	N	N	N	N	N	N	N	N	N




6.1.11 Directive on port State control (Recast)

Parliament and Council Directive 2009/16/EC		23 April 2009																									
Deadline for implementation		31 December 2010		National legislation																							
Review of transposition		Commission report assessing the implementation and impact of measures taken according to the Directive 2009/16/EC on port State control (COM(2012) 660 final, 16 November 2012)																									
STATE	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SI	SK	UK
	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
	/	Y	Y	Y	/	Y	N	Y	Y	N	N	Y	/	N	Y	N	/	N	N	N	Y	Y	N	N	N	N	Y




6.1.12 Directive on the right to interpretation and translation in criminal proceedings

Parliament and Council Directive 2010/64/EU		20 October 2010																									
Deadline for implementation		27 October 2013		National legislation																							
Review of transposition		due 27 October 2014																									
STATE	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SI	SK	UK
					Y											Y		Y		Y							
																											




6.1.13 Directive on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast)

Parliament and Council Directive 2011/95/EU		13 December 2011																									
Deadline for implementation		21 December 2013		National legislation																							
Review of transposition		due 21 June 2015																									
STATE	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SI	SK	UK
	Y	Y			Y											Y	Y										
																											

6.1.14 Directive on the right to information in criminal proceedings




Parliament and Council Directive 2012/13/EU		22 May 2012																									
Deadline for implementation		2 June 2014		National legislation																							
Review of transposition		due 2 June 2015																									
STATE	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SI	SK	UK
	Y	Y			Y											Y	Y										
																											

6.1.15 Directive establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA




Parliament and Council Directive 2012/29/EU		25 October 2012																									
Deadline for implementation		16 November 2015		National legislation																							
Review of transposition		due 16 November 2017																									
STATE	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SI	SK	UK
						Y										Y		Y									
																											

6.2 Framework Decisions




6.2.1 Framework Decision on combating terrorism

<p>Council Framework Decision 2002/475/JHA</p>	<p>13 June 2002</p>																										
<p>Deadline for implementation</p>	<p>31 December 2002</p>																										
<p>Review of implementation</p>	<p>Report from the Commission based on Article 11 of the Council Framework Decision of 13 June 2002 on combating terrorism (COM(2004) 409 final, 8 June 2004)</p> <p>See also: Annex to the Report from the Commission (SEC(2004) 688, 8 June 2004)</p> <p>Report from the Commission based on Article 11 of the Council Framework Decision of 13 June 2002 on combating terrorism (COM(2007) 681 final, 6 November 2007)</p> <p>See also: Annex to the Report from the Commission (SEC(2007) 1463, 6 November 2007)</p>																										
<p>STATE</p>	<p>AT</p>	<p>BE</p>	<p>BG</p>	<p>CY</p>	<p>CZ</p>	<p>DE</p>	<p>DK</p>	<p>EE</p>	<p>EL</p>	<p>ES</p>	<p>FI</p>	<p>FR</p>	<p>HU</p>	<p>IE</p>	<p>IT</p>	<p>LT</p>	<p>LU</p>	<p>LV</p>	<p>MT</p>	<p>NL</p>	<p>PL</p>	<p>PT</p>	<p>RO</p>	<p>SE</p>	<p>SI</p>	<p>SK</p>	<p>UK</p>
																											
	<p>Y</p>	<p>Y</p>				<p>Y</p>	<p>Y</p>			<p>Y</p>	<p>Y</p>	<p>Y</p>	<p>Y</p>	<p>Y</p>	<p>Y</p>		<p>Y</p>		<p>Y</p>	<p>Y</p>	<p>Y</p>		<p>Y</p>		<p>Y</p>		




6.2.2 Framework Decision on joint investigation teams

Council Framework Decision 2002/465/JHA	13 June 2002																										
Deadline for implementation	1 January 2003																										
Review of implementation	Report from the Commission on national measures taken to comply with the Council Framework Decision of 13 June 2002 on Joint Investigation Teams (COM(2004) 858 final, 7 January 2005)																										
STATE	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SI	SK	UK
																											
																											




6.2.3 Framework Decision on the European arrest warrant and the surrender procedures between member states

<p>Council Framework Decision 2002/584/JHA</p>	<p>13 June 2002</p>																											
<p>Deadline for implementation</p>	<p>31 December 2003 National provisions also detailed on EU-funded website: http://www.ecba-eaw.org/contents/ See also European Judicial network website: http://www.ejn-crimjust.europa.eu/ejn/EJN_StaticPage.aspx?Bread=12</p>																											
<p>Review of implementation</p>	<ul style="list-style-type: none"> - Report from the Commission based on Article 34 of the Council Framework Decision of 13 June 2002 on the European Arrest Warrant and the surrender procedures between member states (COM(2005) 63 final, 23 February 2005) and Annex to the Report from the Commission (SEC(2005) 267, 23 February 2005) - Report from the Commission of 13 June 2002 on the European Arrest Warrant and the surrender procedures between member states (revised versions) (COM(2006) 8 final, 24 January 2006) and Annex to the Report from the Commission (SEC(2006) 79, 24 January 2006) - Report from the Commission on the implementation since 2007 of the Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between member states (COM(2011) 175 final, 11 April 2011) 																											
<p>STATE</p>	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SI	SK	UK	
																												
	Y	Y	Y			Y	Y	Y	Y	Y			Y				Y	Y		Y	Y	Y	Y		Y	Y	Y	




6.2.4 Framework on the execution in the European Union of orders freezing property or evidence

Framework Decision 2003/577/JHA		22 July 2003																										
Deadline for implementation		2 August 2005																										
Review of implementation		Report from the Commission on the execution in the European Union of orders freezing property or evidence (COM(2008 885 final, 22 December 2008)																										
STATE	A T	B E	B G	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SI	SK	UK	
																												
	Y	Y	Y		Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y		Y		Y	Y	Y	Y	Y		Y	Y	Y	




6.2.5 Framework Decision on confiscation of crime-related proceeds, instrumentalities and property

Council Framework Decision 2005/212/JHA		24 February 2005																										
Deadline for implementation		15 March 2007																										
Review of implementation		Report from the Commission on confiscation of crime-related proceeds, instrumentalities and property (2005/212/JHA) (COM(2007) 805 final, 17 December 2007)																										
STATE	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SI	SK	UK	
																												
	Y	Y	Y		Y	Y	Y	Y	Y		Y	Y	Y	Y	Y				Y			Y	Y		Y			




6.2.6 Framework Decision on attacks against information systems

Council Framework Decision 2005/222/JHA		24 February 2005																										
Deadline for implementation		16 March 2007																										
Review of implementation		Report from the Commission based on Article 12 of the Council Framework Decision of 24 February 2005 on attacks against information systems (COM(2008) 448 final, 14 July 2008)																										
STATE	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SI	SK	UK	
																												
	Y	Y	Y		Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y		Y		Y	Y	Y	Y	Y		Y	Y	Y	




6.2.7 Framework Decision on the application of the principle of mutual recognition to confiscation orders

Council Framework Decision 2006/783/JHA		6 October 2006																										
Deadline for implementation		24 November 2008																										
Review of implementation		Report from the Commission based on Article 22 of the Council Framework Decision 2006/783/Jha of 6 October 2008 on the application of the principle of mutual recognition to confiscation orders (COM(2010) 428 final, 23 August 2010)																										
		[A second report is due by 24 November 2013]																										
STATE	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SI	SK	UK	
																												
	Y	Y	Y		Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y		Y		Y	Y	Y	Y	N		Y	N	N	




6.2.8 Framework Decision on simplifying the exchange of information and intelligence between law enforcement authorities of the member states of the European Union

Council Framework Decision 2006/960/JHA		18 December 2006																										
Deadline for implementation		19 December 2006																										
Review of implementation		Commission: Operation of the Council Framework Decision 2006/960/JHA of 18 December 2006 ("Swedish Initiative") (SEC(2011) 593 final, 14 May 2011) Council: Assessment of compliance pursuant to Article 11(2) - Draft Report (13970/11, 13 September 2011)																										
STATE	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SI	SK	UK	
																												
	Y	Y					Y		Y	Y			Y				Y				Y					Y		




6.2.9 Framework Decision on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union

Council Framework Decision 2008/909/JHA		27 November 2008																										
Deadline for implementation		5 December 2011																										
Review of implementation		Implementation of the Council Framework Decision 2008/909 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union (6345/3/12 REV 3, 29 October 2012)																										
STATE	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SI	SK	UK	
																												
			Y		Y	Y	Y		Y		Y		Y	Y					Y	Y						Y	Y	

6.2.10 Framework Decision on the European evidence warrant for the purpose of obtaining objects, documents and data for use in proceedings in criminal matters




Council Framework Decision 2008/978/JHA		18 December 2008																										
Deadline for implementation		19 January 2011																										
Review of implementation		Review of implementation mandated by Article 23 and due no later than 19 January 2012 cannot be located.		Review of operation mandated by Article 24 due no later than 19 January 2014																								
STATE	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SI	SK	UK	
																												
																												

6.2.11 Framework Decision the organisation and content of the exchange of information extracted from the criminal record between member states




Council Framework Decision 2009/315/JHA		25 February 2009																										
Deadline for implementation		27 April 2012																										
Review of implementation		Due no later than 27 April 2015																										
STATE	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SI	SK	UK	
																												
																												

6.3 Common Positions




6.3.1 Common Position on combating terrorism

Council Common Position 2001/930/CFSP		27 December 2001																									
Deadline for implementation		27 December 2001																									
Review of transposition		No provisions for review																									
STATE	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SI	SK	UK
																											
																											

6.3.2 Common Position on the application of specific measures to combat terrorism




Council Common Position 2001/931/CFSP		27 December 2001																									
Deadline for implementation		27 December 2001																									
Review of transposition		No provisions for review																									
STATE	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SI	SK	UK
																											
																											

6.3.3 Common Position on exchanging certain data with Interpol




Council Common Position 2005/69/JHA										24 January 2005																													
Deadline for implementation										24 January 2005																													
Review of transposition										COM(2006) 167 final																													
STATE	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SI	SK	UK												
																																							
				N			N	N	N	N		N		N						N	N	N			N		N												

6.4 Decisions




6.4.1 Decision establishing a Community mechanism to facilitate reinforced cooperation in civil protection assistance interventions

Council Decision 2001/792/EC		23 October 2001																										
Deadline for implementation		1 January 2002																										
Review of transposition		Commission required to undertake triennial evaluation, no reports can be located																										
STATE	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SI	SK	UK	
																												
																												




6.4.2 Decision 2002/187/JHA setting up Eurojust with a view to reinforcing the fight against serious crime (amended by Council Decision 2003/659/JHA and Council Decision/426/JHA)

Council Decision 2002/187/JHA		28 February 2002																										
Deadline for implementation		6 September 2003																										
Review of transposition		COM(2004) 457 final SEC(2004) 884																										
STATE	A T	B E	B G	C Y	C Z	D E	D K	E E	E L	E S	F I	F R	H U	I E	I T	L T	L U	L V	M T	N L	P L	P T	R O	S E	S I	S K	U K	
	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	Y	N	N	N	N	N	N




6.4.3 Decision establishing a mechanism for evaluating the legal systems and their implementation at national level in the fight against terrorism

Council Decision 2002/996/JHA		18 November 2002																									
Deadline for implementation		Took effect as of 18 November 2002, implemented as soon as member states participate in evaluation mechanism																									
Review of transposition		Assessment undertaken through member state participation in the mechanism established																									
STATE	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SI	SK	UK
	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
																											




6.4.4 Decision on the implementation of specific measures for police and judicial cooperation to combat terrorism in accordance with Article 4 of Common Position 2001/931/CFSP [repealed by Council Decision 2005/671/JHA, below]

Council Decision 2003/48/JHA		19 December 2002																									
Deadline for implementation		19 December 2002																									
Review of transposition		No provisions for review																									
STATE	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SI	SK	UK
																											
																											




6.4.5 Decision on an Intra-Community transfer of explosives document

Commission Decision 2004/388/EC											29 April 2004																
Deadline for implementation											15 October 2004																
Review of transposition											No provisions for review																
STATE	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SI	SK	UK
																											
																											




6.4.6 Decision concerning the introduction of some new functions for the Schengen Information System, including in the fight against terrorism

Council Decision 2005/211/JHA											24 February 2005																
Deadline for implementation											Implemented by a series of further Decisions: 2006/631/JHA 2006/229/JHA 2006/228/JHA 2005/727/JHA 2005/719/JHA																
Review of transposition											No provisions for review																
STATE	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SI	SK	UK
																											
																											




6.4.7 Decision on the exchange of information and cooperation concerning terrorist offences

Council Decision 2005/671/JHA											20 September 2005																
Deadline for implementation											20 September 2005																
Review of transposition											No provisions for review																
STATE	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SI	SK	UK
																											
																											




6.4.8 Decision on amending the SIRENE Manual

Commission Decision 2006/758/EC											22 September 2006																
Deadline for implementation											22 September 2006																
Review of transposition											One Commission report cannot be located, another due 24 November 2013																
STATE	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SI	SK	UK
																											
																											




6.4.9 Decision on the establishment, operation and use of the second generation Schengen Information System (SIS II)

Council Decision 2007/533/JHA		12 June 2007																										
Deadline for implementation		2 July 2007 (entry into force, SIS II came into use April 2013 after many years of delay)																										
Review of transposition		Due three years after into operation of SIS II																										
STATE	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SI	SK	UK	
																												
																												




6.4.10 Decision establishing a Community civil Protection Mechanism (recast)

Council Decision 2007/779/EC		8 November 2007																										
Deadline for implementation		No deadline set in legislation																										
Review of transposition		Not found																										
STATE	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SI	SK	UK	
																												
																												




6.4.11 Decision concerning cooperation between Asset Recovery Offices of the member states in the field of tracing and identification of proceeds from, or other property related to, crime

Council Decision 2007/845/JHA		6 December 2007																										
Deadline for implementation		18 December 2008																										
Review of transposition		COM(2011) 176 final																										
STATE	A T	B E	B G	C Y	C Z	D E	D K	E E	E L	E S	F I	F R	H U	I E	I T	L T	L U	L V	M T	N L	P L	P T	R O	S E	S I	S K	U K	
	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N
	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	Y	N	Y	Y	N	N	Y	N	Y	Y	




6.4.12 Decision on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime [Prüm Decision]

Council Decision 2008/615/JHA										23 June 2008																													
Deadline for implementation										13 July 2008 (entry into force, implementation dealt with by Council Decision 2008/616/JHA)																													
Review of transposition										COM(2012) 732 final																													
STATE	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SI	SK	UK												
	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y											
	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y											




6.4.13 Decision on the implementation of Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime [Prüm Decision]

Council Decision 2008/616/JHA										23 June 2008																													
Deadline for implementation										Within one year of 13 July 2008 except for provisions on actual exchange of data (within three years of 13 July 2008)																													
Review of transposition										Most recent: 5075/5/13 REV 5																													
STATE	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SI	SK	UK												
	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y	Y	Y	Y												
						Y						Y					Y																						



6.4.14 Decision on the improvement of cooperation between the special intervention units of the member states of the European Union in crisis situations

Council Decision 2008/617/JHA		23 June 2008																										
Deadline for implementation		23 December 2008																										
Review of transposition		No provisions for review																										
STATE	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SI	SK	UK	
																												
																												




6.4.15 Decision concerning access for consultation of the Visa Information System (VIS) by designated authorities of member states and by Europol for the purposes of the prevention, detection and investigation of terrorist offences and of other serious criminal offences

Council Decision 2008/633/JHA		23 June 2008																										
Deadline for implementation		Implementing Decision awaiting approval: 11431/13																										
Review of transposition		Two reports (Commission and Council) are due in October 2013																										
STATE	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SI	SK	UK	
																												
																												




6.4.16 Decision amending Regulation (EC) No 725/2004 of the European Parliament and of the council as far as the IMO Unique Company and Registered Owner Identification Number Scheme is concerned (notified under document number C(2009) 148) [related to Regulation (EC) No 725/2004]

Commission Decision 2009/83/EC											23 January 2009											HTML										
Deadline for implementation											Requires implementation of amendments to Regulations by 1 January 2009																					
Review of transposition											No provisions for review																					
STATE	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SI	SK	UK					
																																
																																

6.4.17 Decision on the establishment of the European Criminal Records Information System (ECRIS) in application of Article 11 of Framework Decision 2009/315/JHA




Council Decision 2009/316/JHA											25 February 2009																					
Deadline for implementation											7 April 2012																					
Review of transposition											Report due at the latest by 27 April 2015																					
STATE	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SI	SK	UK					
																																
																																

6.4.18 Decision establishing the European Police Office (Europol)




Council Decision 2009/371/JHA											6 April 2009																	
Deadline for implementation											1 January 2010																	
Review of transposition											RAND Europe, Evaluation of the implementation of the Europol Council Decision and of Europol's activities																	
STATE	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SI	SK	UK	
																												
																												

6.5 International treaties


6.5.1 Agreement on extradition between the European Union and the United States of America

										Deadline for implementation										Following completion of exchange of bilateral instruments (February 2010)																			
Review of transposition										February 2015																													
STATE	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SI	SK	UK												
																																							
																																							

6.5.2 Agreement on mutual legal assistance between the European Union and the United States of America

										Deadline for implementation										Following completion of exchange of bilateral instruments (February 2010)																			
Review of transposition										February 2015																													
STATE	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SI	SK	UK												
																																							
																																							

6.5.3 Agreement between EC and USA on intensifying and broadening the Agreement on customs cooperation and mutual assistance in customs matters to include cooperation on container security and related matters

										Deadline for implementation										28 April 2004																			
Review of transposition										EU-US working group reports regularly to respective institutions; reports not made public																													
STATE	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SI	SK	UK												
