

Commission Assessed Added Value of Directive on Combating Terrorism

Thomas Wahl



News

On 18 November 2021, the European Commission published a [report that assessed the added value of Directive 2017/541 on combating terrorism](#). The Directive is the main criminal law instrument at the EU level to combat terrorism. It lays down minimum standards for the definition of terrorist offences and offences related to terrorism and for penalties, while at the same time granting rights to protection, assistance, and support to victims of terrorism. In September 2020, the Commission published a report that assessed the legislative transposition of the EU rules, which had to be done by 8 September 2018 (→ [euclid 3/2020, 182](#)). The present report goes beyond the mere assessment of transposition and includes a wider analysis of the relevance, effectiveness, efficiency, coherence and EU added value, including the impact of the Directive on fundamental rights and freedoms (cf. [Art. 29\(2\) of the Directive](#)). Findings are based on desk research and field research, involving a number of EU and Member States' authorities as well as civil society organisations.

AUTHOR

Thomas Wahl

Senior Researcher
Max Planck Institute for the
Study of Crime, Security and
Law

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The Commission report lists several issues that contributed to the positive functioning of the Directive, e.g.:

- The objectives were generally achieved;
- Several improvements were triggered by the Directive, such as enhanced legal clarity and enhanced cooperation;
- Clear added value with regard to combating terrorism;
- Even though the Directive has had an impact on fundamental rights and freedoms, the limitations largely meet the requirements of necessity and proportionality;
- The Directive has not had a problematic impact on the rule of law.

Despite these positive issues, the report also found several shortcomings, which need to be addressed by the EU institutions and the Member States. Such issues include:

- Difficulties in proving terrorist intent, which mainly result from factual circumstances, e.g. if evidence is located abroad;
- Some Member States find it challenging to classify violent activities of right-wing extremism as acts of terrorism;
- Several challenges remain in relation to the assistance and protection of victims of terrorism: problems result, for example, from the fact that not all Member States have designated single contact points and the lack of a secure tool for exchanging information on individual situations.

The Commission concluded, *inter alia*, that more needs to be done to improve the use of battlefield information. It also stated that it will further monitor the implementation of the Directive and initiate infringement proceedings, if necessary.

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