

# CONTEMPORARY ANTI-TERRORISM MEASURES IN FRANCE AND AUSTRIA

Can they be pivotal for other European Union countries?

[Analysis after the attacks in France and Austria]

# P REFACE

In view of the repeated terrorist attacks in the European Union and notably in the French Republic, it is essential to analyse anew not only threats but also methods and means used to combat terrorism. This is indispensable for increasing the security level and minimising the risk of further attacks. Moreover, the EU member states are obliged to cooperate at international level in order to simultaneously improve national legislation. At present, a need to strengthen anti-terrorism system in European Union is firmly supported by Paris and Vienna.

Terrorism is a constant phenomenon in the international environment. The French Republic is persistently faced with terrorist threats and it is the most frequently attacked state in the European Union in the 21st century. Since the 1950s France has experienced virtually all types of terrorism: anti-colonial in the 1950s, right-wing in the 1960s, left-wing and separatist in Corsica and the Basque Country in the 1970s and 1980s, afterwards, jihadism (Islamic terrorism) which began to be seen as a separate threat since 1980,<sup>1</sup> then nationalist since the 1990s, and now religiously motivated domestic terrorism.<sup>2</sup> Nowadays, two stages of the expansion of terrorist threats in the French Republic should be distinguished. The first is national, and the second - international. Moreover, the latter is also a threat to other countries in the European Union.

Islamic State of Iraq and the Levant claimed responsibility for the deadliest terrorist attack in France's history, which occurred in November 2015 with eight coordinated attacks across Paris, including mass shootings and suicide bombings. The attacks resulted in 137 deaths and over 400 people being injured. Some of the perpetrators linked to the Paris Attacks, including the alleged leader Abdelhamid Abaaoud, had visited Syria and returned radicalized.<sup>3</sup>

1. G. Kepel, *Sortir du chaos. Les crises en méditerranée et au Moyen-Orient*, Paris 2018, p. 23-69.

2. International Institute for Counter-Terrorism, *The Paris Black Friday 13/11/2015 Attacks - What do we know? What should we do?*, Special Report, 15.11.2015, p. 2.

3. J. Halliday, J. Bucks, *Abdelhamid Abaaoud: what we know about the Paris attacks ,mastermind*, <https://www.theguardian.com/world/2015/nov/16/abdelhamid-abaaoud-suspected-mastermind-of-paris-terror-attacks>, access: 29.12.2020.

Austria has, in fact, a long history of dealing with political violence and terrorism, as it suffered from domestic terrorism related to minority issues (e.g. South-Tyrolean conflict) in the 1960s, transnational, such as German left-wing terrorism in the 1970s, and terrorist threat posed by the Palestinian organizations in the 1980s'.<sup>4</sup>

Due to its previous experiences, Austria had already put in place anti-terrorism laws to counter terrorism and, as a response to Palestinian terror, established the special police force “Cobra”, all before September 11 happened.

The events of terrorist attack in the USA in 2001 completely changed the perception of terrorism and how effective counterterrorism must look like. The brutality towards innocent strangers on such scale was a novelty.

Austria has immediately reacted to the attacks in 2001 with an anti-terrorism law package, stricter refugee-laws and laws on immigration, and has equipped the security forces with more capabilities



4. Heinz Vetschera (1992) Terrorism in Austria: Experiences and responses, *Terrorism and Political Violence*, 4:4, 213-214.

# ANTI-TERRORISM MEASURES IN FRANCE

## THE MOST SIGNIFICANT PROVISIONS OF THE LAW

Since the attacks of 13 November 2015, due to a continuing state of emergency,<sup>5</sup> for nearly two years France lived under perpetual tension. Eventually, a new law has been created to combat terrorist threats.<sup>6</sup> As was indicated by the Minister of the Interior of the French Republic:<sup>7</sup> 'The state of emergency cannot be a permanent state of affairs, but terrorist threat remains permanent'.<sup>8</sup> Currently, France is the country in which the fastest and the most innovative anti-terrorist measures and tools are being developed. Therefore, the following key solutions have been introduced:

### ALLOWING FOR SETTING PROTECTION PERIMETERS TO ENSURE SECURITY OF MAJOR EVENTS

Protection perimeters may be established by securing places or mass events exposed to terrorist threats. Surveillance is performed by prefects (persons responsible for defence and security delegated by designated departments) who implement control and verification measures for those entering a designated area. A number of necessary actions will be undertaken by deployed officers (of different services) or municipal police officers. It is governmental intention to maintain a high level of security during sporting, cultural and festive events or gatherings (demonstrations), as they constitute main targets of terrorist attacks. This law allows prefects to verify and infiltrate persons before their entering a designated area.<sup>9</sup>

5. Loi n° 55-385 du 3 avril 1955 relative à l'état d'urgence, Dernière modification: 30 juin 2018. A state of emergency may be declared throughout French territory, in the overseas departments subject to Article 74 of the Constitution and in New Caledonia, in any case of imminent danger resulting from serious public order violations upon events which, by their nature and gravity, are deemed a disaster in public space. The terms 'state of emergency' and 'government-declared state of emergency' in relation to the situation in the French Republic can be used interchangeably.
6. O. Duhamel, Terrorism and Constitutional Amendment in France, « European Constitutional Law Review » 2016, vol. 12, n° 1, pp. 1-5.
7. Ministère de l'Intérieur, L'essentiel de la Loi renforçant la sécurité intérieure et la lutte contre le terrorisme, Service de presse de M. Gérard Collomb, ministre d'Etat, ministre de l'Intérieur, 30 October 2017.
8. My own translation of: „L'état d'urgence ne peut pas être un état permanent, mais la menace terroriste, elle, reste permanente”.
9. Commission nationale consultative des droits de l'Homme, Avis sur le projet de loi renforçant les dispositions relatives à la lutte contre le terrorisme, Assemblée plénière – 25 septembre 2014 <https://www.ldh-france.org/wp-content/uploads/2014/09/14.09.25-Avis-projet-de-loi-terrorisme-version-JORF.pdf> [accessed: 20.11.2020].

## ALLOWING FOR CLOSURE OF SELECTED PLACES OF WORSHIP

Deployed prefects are allowed to administratively ban a place of worship if it encourages acts of terrorism or propaganda<sup>10</sup> while spreading the faith. The closure procedure shall take 48 hours. During that period of time, a representative of a place of worship may lodge an interim order application before the administrative court, which will decide on the matter before authorities will be allowed to undertake any type of action. Such closure period may last a maximum of 6 months (extendable) and penalty for removing the blockade amounts to €45 000.<sup>11</sup>

## INDIVIDUAL SURVEILLANCE SYSTEM – ARREST (NOT ONLY HOUSE ARREST)

It is allowed to take action against persons suspected of having relation with terrorists, terrorist organisations or persons supporting or proclaiming terrorism. Such persons shall be obliged to remain within municipality (without undermining their right to work and maintain contact with their families). They shall be obliged to report to the Police or the Gendarmerie<sup>12</sup> on a daily basis and their situation shall be examined every 3 months. Suspects must provide all telephone numbers and means of communication they use (including social media access details). Investigation lasts for a period of at least 3 months, with a possible extension to one year. In the event of suspicion of escape or failure to comply with recommendations, this form of custody may be combined with wearing an electronic surveillance. These measures may be applied to any person whose actions are questionable and whose behaviour may constitute a threat.<sup>13</sup>

It is important to highlight the process of surveillance of prisoners when they are released. Sentenced to seven years in prison in 2014, Flavien Moreau was released in January 2020 (first French jihadist sentenced on his return from Syria). After ten months of freedom, he was indicted for fraud and carrying a weapon. He also failed to comply with his judicial supervision.<sup>14</sup>

10. LOI n° 2017-1510... op. cit. Art. 2.

11. Commission nationale consultative des droits de l'Homme, Avis... op. cit.

12. Person concerned may be exempted from this obligation if they agree to be placed under electronic surveillance.

13. LOI n° 2017-1510... op. cit. Art. 3. Ministère de l'Intérieur, L'essentiel... op. cit.

14. Le Parisien, Flavien Moreau, premier djihadiste français condamné à son retour de Syrie, de nouveau en prison. 2.12.2020. [accessed: 13.12.2020].

## A NEW SYSTEM OF SEARCH AND CONFISCATION

On receiving an order from a judge at the Supreme Court of Paris (Tribunal de grande instance de Paris), prefects and deployed persons may conduct a search of premises, residence, organisation or company.<sup>15</sup> The person, with whom the search takes place, may be detained for 4 hours. A search cannot be conducted within premises of lawyers, judges or journalists. The law introduced makes it possible to combat terrorism in a decisive manner upon acquiring information that a suspect may pose a threat.<sup>16</sup>

## ALLOWING FOR INVESTIGATION RELATED TO RADICALISATION

An official (officer) carrying out a mission or profession related to security and defence may be transferred or even removed if, in course of administrative investigation, their propensity for radicalisation is disclosed. Procedure shall also apply to military and prison officers.<sup>17</sup> The new law allows to take action on mere suspicions and not as was the case formerly as part of an open investigation. It also involves a suspect being revoked of certain concessions. Any inconsistency is resolved by an appointed committee.<sup>18</sup>

The legislator has also created a new sanction provided in Article 10 of the Act, i.e., penalties for parents who incite their children to commit acts of terrorism or travel abroad for such purpose.<sup>19</sup> Defining a new offence and imposing sanctions in the form of a 15-year imprisonment, a fine of EUR 225,000 for parents and the loss of parental authority<sup>20</sup> are a European precedent.<sup>21</sup>

## PASSENGER NAME RECORD (PNR)

An anti-terrorism act that allows security services to use information about the passengers (made available by individuals, organisations or travel agencies) travelling by air and sea (data entered at registration and boarding will be directly transferred to

15. LOI n° 2017-1510... op. cit. Art. 4.

16. Ministère de l'Intérieur, *L'essentiel...* op. cit., p. 6.

17. LOI n° 2017-1510... op. cit. Art. 11.

18. Ministère de l'Intérieur, *L'essentiel...* op. cit., p. 7.

19. LOI n° 2017-1510... op. cit. Art. 10.

20. Where an act is committed by a person exercising parental authority over a minor, the court of first instance shall decide on the total or partial withdrawal of parental authority in accordance with Articles 378 and 379-1 of the Civil Code. It may then rule on the withdrawal of parental authority in respect of other minor children of that person.

21. R. De Massol De Rebetz, M. Van Der Woude, *Marianne's liberty in jeopardy? A French analysis on recent counterterrorism legal developments.* „Critical Studies on Terrorism” 2020, vol. 13, n° 1, pp. 1-23.

services which will require specific information to counter terrorism<sup>22</sup>). It should be indicated that airports are among the most vulnerable in national security structure.

Annually, millions of travelling passengers from all over the world increase the risk of terrorists entering a state's territory. While an ascertainable selection is impossible, certain indications may point out to suggest someone could pose a potential threat. Foremost, in the age of the Internet, most payments are made by card or bank transfers. When a purchase is made (of tickets and journeys), operators automatically obtain a certain amount of personal data. Even if it is not the card's holder that is used in payment process, the transaction itself remains a lead. Bookings for single and transit flights are visible in airport service systems. Services controlling terminals are accountable for properly assessing passengers and their travel history. Basic elements to be taken into account are nationality, type of flight (single, combined), destination and general appearance.

## **MONITORING TECHNIQUES - SURVEILLANCE OF WIRELESS COMMUNICATION**

Articles 15-18 establish a legal framework for supervision of wireless communications<sup>23</sup> to be conducted by designated services.<sup>24</sup> Its aim is to detect connections that may be linked to terrorist threats by transmitting certain data and information online.

## **EXTENSION OF IDENTITY CHECKS IN CROSS-BORDER AREAS**

The Schengen Agreement allows for a 6-hour identity check within a 10-kilometre radius along internal borders, as well as in ports, airports and stations open to international traffic. French law extends the duration of these checks to 12 hours, maintains a 10-kilometre radius within external border crossings and jurisdiction of services in areas near stations, airports and ports, also within 10 kilometers.<sup>25</sup> At the same time, it constitutes a measure that should primarily benefit fight against illegal immigration.

22. LOI n° 2017-1510... op. cit. Art. 12, 13.

23. LOI n° 2017-1510... op. cit. Art. 15, 16, 17, 18.

24. As specified in the article L. 811-2 i L. 811-4.

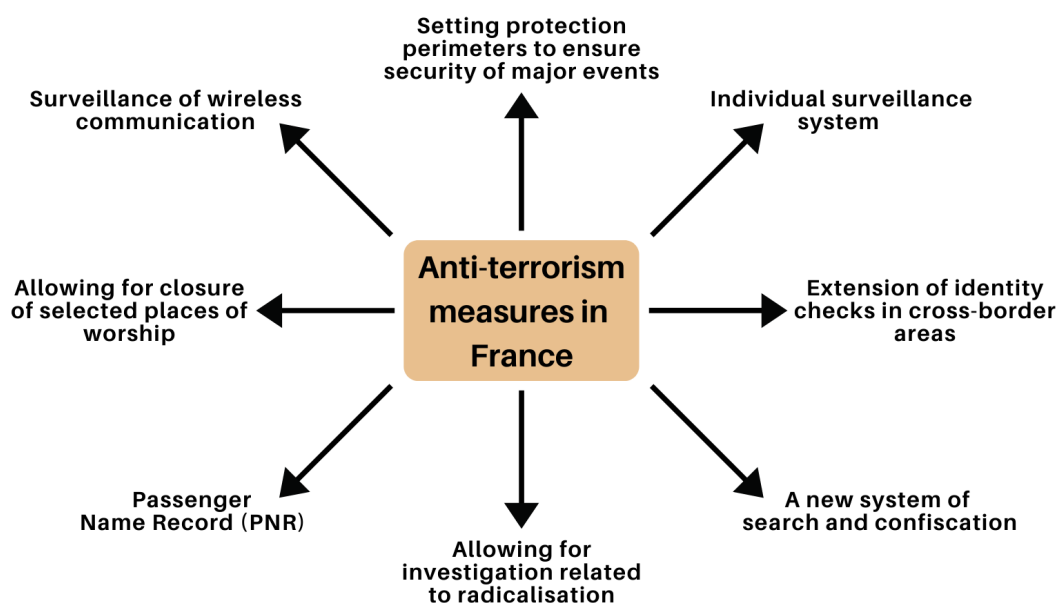
25. LOI n° 2017-1510... op. cit. Art. 19.

## EFFECTS OF THE LAW

Since the act officially entered into force on 30 October 2017, the French Republic has been affected by terrorist attacks on several occasions; however, it must also be indicated that many others have been foiled.<sup>26</sup> Both the Minister of the Interior and the Secretary of State to the Minister of the Interior have positively assessed the effectiveness of the law and stressed the operational effectiveness of security services, which provides adequate protection for French citizens.<sup>27</sup>

The act introduced is evaluated on yearly basis. The 2020 report indicates that from 1 November 2017 to 31 December 2019, 504 protection perimeters were designated throughout the country, 7 places of worship were closed, 229 individual surveillance systems were applied and 149 searches were conducted. In addition, several actions were recommended, including, in particular<sup>28</sup>:

- transfer of information on supervision of individuals to national and territorial prosecutor’s offices,
- allowing prefects to close venues which act as places of worship, as well as those belonging to the same legal or natural persons,
- permanent control and monitoring of persons convicted of terrorism in order to verify their possible radicalisation,
- providing services with facilitated access to computer data of the suspects.



26. J. Wiels, Le gouvernement défend l'utilité de la loi antiterroriste de 2017, LCP-Assemblée nationale, 12 February 2019. <http://www.lcp.fr/la-politique-en-video/le-gouvernement-defend-lutilite-de-la-loi-antiterroriste-de-2017> [accessed: 10 October 2020].

27. Ministère de l'Intérieur, Premier bilan de l'application de la loi renforçant la sécurité intérieure et la lutte contre le terrorisme, Communiqué de Presse, 12 February 2019.

28. M. Daubresse, Rapport d'information fait au nom de la commission des lois constitutionnelles, de législation, du suffrage universel, du Règlement et d'administration générale (1) sur le contrôle et le suivi de la loi n° 2017-1510 du 30 octobre 2017 renforçant la sécurité intérieure et la lutte contre le terrorisme. Rapport d'information n° 348 (2019-2020) de M. Marc-Philippe Daubresse, fait au nom de la commission des lois, déposé le 26 février 2020.



# ANTI-TERRORISM MEASURES IN AUSTRIA

## **A**NTI-TERRORISM IN AUSTRIA GOVERNMENT RESPONSES

In line with the previous way of dealing with terrorism, Austria's government has immediately reacted to its most recent attack on November 2 2020 in Vienna with a comprehensive counter-terrorism package. It was presented before and passed by the council of ministers<sup>29</sup> and consists of the following strands:

- Measures to prevent the spread of extremist ideas,
- ensuring effectiveness of investigation methods and cooperation of responsible authorities,
- the effectiveness in controlling potential terrorists,
- stricter laws to combat terrorism and religiously motivated extremism,
- deradicalization in the prison system
- stricter gun laws.

A legislative package was drafted by all responsible ministries and is currently subjected to the expert review procedure. It will then be presented to parliament as a government bill. The following text should serve as a description of the counter-terrorism measures the government has introduced so far.

### **EXTREMISM PREVENTION**

By allowing to close places of worship in the event of terrorism propaganda being spread and by introducing a directory of imams and registering foreign imams during the period of religious activity in Austria, the government seeks to achieve better transparency and better prevention of radicalisation.

In line with this is the aim for a more effective enforcement of the Islam Law, which was already passed in 2015.<sup>30</sup> Mosques and religious associations undertaking anti-democratic, radical Islamist, unconstitutional activities in disguise of religious

29. Ministerial Council Decision November 2020: [https://www.bundeskanzleramt.gv.at/dam/jcr:858c710d-1643-40ee-9ea7-ec63ad-20cf0d/37\\_27\\_mrv.pdf.i](https://www.bundeskanzleramt.gv.at/dam/jcr:858c710d-1643-40ee-9ea7-ec63ad-20cf0d/37_27_mrv.pdf.i)

30. Bundesgesetz über die äußeren Rechtsverhältnisse islamischer Religionsgesellschaften – Islamgesetz 2015  
StF: BGBl. I Nr. 39/2015.

practice can be closed in this framework. Next to this, there are efforts to establish a reporting office for online content that glorifies violence („cyber jihadism”), something that does not exist in Austria so far.

## **EFFECTIVENESS OF INVESTIGATION METHODS AND COOPERATION OF AUTHORITIES**

In terms of better surveillance methods, the aim is an adaptation of the surveillance regulation to the current technical standards when it comes to unencrypted, internet-based communication such as Voice over LTE.

When it comes to the legal sector, the intent is to bundle the jurisdiction of public prosecutors and courts in charge for terrorism cases, as well as introducing a legal obligation on the part of Federal Office for the Protection of the Constitution,<sup>31</sup> the Austrian intelligence service to provide the public prosecutor with information about criminal procedural findings. This should serve the purpose of allowing the public prosecutor’s office intervene directly on the basis of comprehensive information from the security authorities directly responsible for investigating and surveilling.

Liaisons will be posted to ensure that the flow of communication functions properly. There will be case conferences with all relevant authorities. While in custody it is necessary to take action to prevent further radicalisation.

## **CONTROLLING POTENTIAL TERRORISTS MORE EFFECTIVELY**

Courts and public prosecutors will also need to be prepared better for dealing with terrorism. Following the imprisonment, the aim of the current Austrian government is for more surveillance for terrorist perpetrators. This will be one of the more critical aspects to be discussed in parliament. The period of judicial conditions after detention is also planned to be extended.

## **STRICTER LAWS TO COMBAT TERRORISM AND RELIGIOUSLY MOTIVATED EXTREMISM**

Austria seeks to combat terrorism with strengthening some of its already existing laws. This is done by planning on stricter rules on money laundering and terrorist financing. Causing an additional aggravation factor within the criminal law for religiously motivated political extremism.

■ 31. Bundesamt für Verfassungsschutz und Terrorismusbekämpfung (BVT).

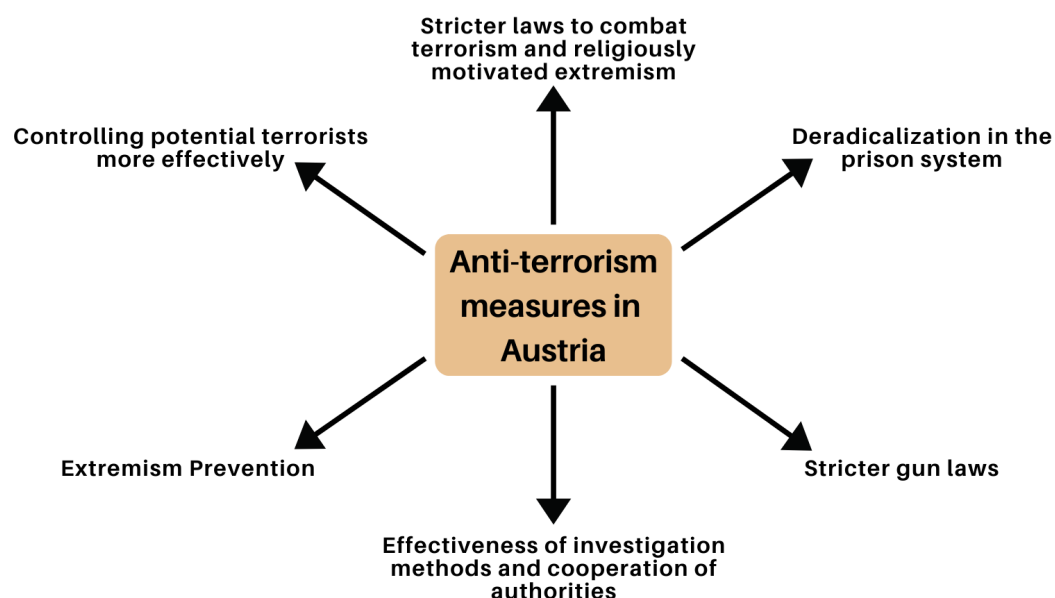
## DERADICALIZATION IN THE PRISON SYSTEM

Prisons in Austria so far have served as radicalisation facilitators. The government aims to counteract this trend with an individualised deradicalisation plan as well as the establishment of needs-based security departments in prisons and the establishment of a “clearing agency” responsible for the implementation of risk assessments and case discussions of each prisoner.

## STRICTER GUN LAWS

When it comes to gun laws the aim is again to look into the strengthening of already existing laws, in this case the Weapons Act:<sup>32</sup> Every time a new weapon ownership card is issued, the extremism file of the intelligence service (BVT) must first be checked for clearance.

People who have been convicted of terrorist offences shall be banned from possession and acquisition of any weapon, weapon components, or ammunition for life. Violations should to be reported to the court immediately.



32. Bundesgesetz über die Waffenpolizei (Waffengesetz 1996 – WaffG) StF: BGBl. I Nr. 12/1997.

## RECOMMENDATIONS

The law of 30 October 2017 on strengthening internal security and fight against terrorism (renforçant la sécurité intérieure et la lutte contre le terrorisme<sup>1</sup>), which is currently in force in the French Republic, is one of the most recent legal regulations on combating terrorism in the world. Its principles are crucial to the intensification of counter-terrorism policy and should form a basis for organising other counter-terrorism systems in European Union member states. Although French methods are not entirely resistant to threats (as is indicated by attacks in France taking place in September and October 2020), they are constantly being improved and modified, while the number of attacks has fallen significantly since 2017. As a result, with France's domestic terrorist experience as a benchmark, it is possible to develop new solutions for other countries. Furthermore, security policy in the French Republic is based on a democratic system – the same as in other EU member states. Therefore, it seems that other governments that have plans to improve their anti-terrorist systems (and will therefore introduce legislative changes), should benefit from some of the solutions applied in the French Republic.

Austria has a long history of dealing with all sorts of terrorist attacks. It has, therefore had to react to quickly changing threats. While it is not alone in the fight against Islamic terrorism it managed to come up with a national counter-terrorism package in a fast manner. Following this national effort will be the time to look at examples and best-practice cases from countries that were in similar situations and facing a similar threat, such as France. Next to this, it might also be time for updated and more modern EU counter-terrorism efforts.

The analysis of the experience, methods and activities of the French Republic and Austria in the fight against terrorism is important for the development of systems of combating terrorist threats in other countries due to the need to constantly improving methods of counteracting terrorism. Moreover, the improvement of security in other European countries is a determinant increasing the international sense of stability and balance, which is crucial for all EU Member States.

33. LOI n° 2017-1510 du 30 octobre 2017 renforçant la sécurité intérieure et la lutte contre le terrorisme (1), JORF n°0255 du 31 octobre 2017 texte n° 1.

The European Union oversees a number of initiatives aimed at coordinating national anti-terrorist strategies in the Member States. Therefore, it is important to identify common internal and external terrorist threats and create national legislation, and then adapt it to the requirements and needs of the European community. What is also important, the proposed solutions should be consistent at the level of multilateral cooperation in order to effectively counteract emerging terrorist threats throughout the European Union. The Member States must, on their own responsibility, organise mutual cooperation between relevant services or institutions responsible for ensuring national and international security. Policy processes in the EU tend to be more effective when two or more member states to lead the way on certain issues. France and Austria could take the lead on counter-terrorism affairs, given the recent attacks and experience with counter-terrorism measures.



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