

In the past years jihadist terrorism and radicalization have become some of the most critical threats to the Mediterranean region, including the European side. Emerging trends, lessons learned and overviews of the security status of the countries in the area, however, point out that radicalization and extremism are a complex global phenomena that may differ from country to country. Against this background, while approaching the phenomenon according to a multidisciplinary perspective, the file rouge of this volume is the intention to describe challenges and strategies of security with a view to the preventive dimension thus going beyond the simple adoption of ad hoc measures of response. Moving from radicalization and extremism in Italy, new trends and policies of contrast, prevention and de-radicalization in North Africa, with a specific focus on Morocco and Tunisia, are illustrated according to a comprehensive approach. Each contribution makes evident the need to involve both the national/local authorities and the society at large in efforts against violent radicalization and extremism, and broadly speaking terrorism, as well as to cooperate with regional and international organisations, like the European Union, the African Union and competent branches of the United Nations.

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ISBN 979-12-5477-072-6



9 791254 770726

€ 25,00



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Villani

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A focus on Morocco and Tunisia

Marco Borraccetti  
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Progetto Open Access Consorzio Alfabeta  
Il volume beneficia di un contributo alla pubblicazione da parte del  
Dipartimento di Scienze Politiche e Sociali dell'Università di Bologna

Fondazione Bologna University Press  
Via Saragozza 10, 40123 Bologna  
tel. (+39) 051 232 882  
fax (+39) 051 221 019

ISBN 979-12-5477-072-6  
ISBN online 979-12-5477-073-3

[www.buonline.com](http://www.buonline.com)  
[info@buonline.com](mailto:info@buonline.com)

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In copertina: elaborazione grafica DoppioClickArt

Impaginazione: DoppioClickArt – San Lazzaro (BO)

Prima edizione: dicembre 2022

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## ACKNOWLEDGMENTS

This book is the outcome of a research carried out in the scope of the JASMIN project '*Jueneesse Active pour une Société capable de promouvoir l'Employabilité e l'INclusion*' (Project n. AID 011417), coordinated by the Italian NGOs Overseas and CEFA, and co-founded by the Italian Agency for Development Cooperation.

# CHAPTER V

## EU COUNTER-TERRORISM AND RADICALIZATION MEASURES IN MOROCCO AND TUNISIA IN THE FRAMEWORK OF THE EUROPEAN NEIGHBOURHOOD POLICY

*Susanna Villani*

**ABSTRACT:** The European Union and its Member States, especially those overlooking the Mediterranean Sea, have always had strong relations with the countries of North Africa but, starting from the new millennium, security and counter-terrorism have represented an area of great concern that has become increasingly important in terms of policies to be set with respect to this region. The chapter intends to present the strengthened dialogue and cooperation in the area of security between the EU on the one hand, and Morocco and Tunisia, on the other one, as framed in the context of the European Neighbourhood Policy. Indeed, the latter represents the evolutive framework for the adoption of legal instruments based on the EU internal security strategy and external relations law for countering terroristic activities and radicalism. The novelties introduced by the Lisbon Treaty have then allowed to manage the EU cooperation strategy in the security sector on the basis of soft and hard law mechanisms resulting in a sort of ‘cross-pillarization’ of anti-terrorism objectives aimed at improving security from multiple and combined perspectives.

**KEYWORDS:** European Neighbourhood Policy – EU counter-terrorism strategy – AFSJ – CFSP – Human Rights – Association Agreements

### 1. Introduction

The revolutionary wave that spread out through most of the North African countries during the Arab Spring in 2010 and 2011 marked the beginning of change and uncertainties in the region. Still, while some North African countries are undergoing an arguably successful transition, others remain unstable and continue to struggle with deeply rooted socio-economic, political and ide-

ological differences. Inevitably, this has an impact over the other side of the Mediterranean Sea.

The European Union (EU) and its Member States, especially those overlooking the Mediterranean, have always had strong relations with the countries of North Africa. When the Treaty of Rome attributed to the European Economic Community (EEC) the competence to propose, negotiate and enforce all aspects of trade relations with non-member States, North African countries started to negotiate agreements with the EEC at the same time as they gained national independence from European colonial rule. Notwithstanding the changed nature of the relationship, after the end of the Cold War, the process of enlargement the EU embarked on shifted the balance away from the Mediterranean exactly when issues such as economic stagnation, irregular migration and radicalization in North Africa were gaining the attention of policy-makers in Southern Europe.

Currently, the EU is still on the way to define a coherent set of policies towards that region which may successfully combine geopolitical interests with a thorough understanding of the complex local dynamics and demands. In the last decade, the migration crisis has acquired centrality in the EU political agenda thus calling for a closer collaboration between the Union and North Africa but the room for improvement is still large in this domain.

Starting from the new millennium, security and counter-terrorism have represented an area of great concern that has become increasingly important in terms of policies to be set with respect to North Africa. Obviously, this trend reflects growing EU concern about the influence of the Islamic State group (ISIS) and other terrorist organisations in the region, the large number of foreign fighters from North African countries, and the North African connections of terrorists who have carried out attacks within Europe since 2004. For this reason, the EU Member States, as well as the EU institutions, have often demonstrated a strong interest in understanding security threats that come from North Africa and in working with North African countries, including the Kingdom of Morocco and the Republic of Tunisia, to address the potential sources of threat. It goes without saying that both the countries on which the present work is focused on benefit from an advanced status in their relations with the EU.<sup>1</sup>

The EU-Moroccan relations date back to the 1960s, when the former European Community signed a first economic agreement with the Kingdom. Since then, bilateral relations have been solid, but some significant episodes of political tension, mainly due to issues of territorial integrity like the question of Western Sahara,<sup>2</sup>

<sup>1</sup> Bicchi (2010); Khader (2013); Dworkin (2016); Zigin (2019).

<sup>2</sup> The EU's trade agreements with Morocco have come under the scrutiny of the EU Court of Justice for challenging their *de facto* application to Western Sahara, disputed between Morocco and the Polisario Front which invokes the right to self-determination in relation to the territory. In 2016, in *Front*



have been registered. Since 2000, the entry into force of the EU-Morocco Association Agreement<sup>3</sup> establishing the first free trade area has marked the multifaceted relations between the EU and Morocco which have later benefited from an advanced status with the EU neighbourhood policy. On 27 June 2019, the EU and Morocco confirmed this intense relationship by releasing a joint statement after the Association Council outlining priorities and themes for a closer cooperation in the years ahead.<sup>4</sup>

The Republic of Tunisia represents a strategic partner for the EU given the long-lasting and close political, economic, social, and cultural ties, firstly institutionalized in the 1976 Cooperation Agreement,<sup>5</sup> in which the EU granted unilateral tariff preferences for most Tunisian industrial products. Later, it was the first Southern Mediterranean country to sign a Euro-Mediterranean Agreement, establishing an association with the EU.<sup>6</sup> In the immediate aftermath of the 2011 Revolution, the EU pledged to support the Tunisian people's transition towards greater democracy, freedom and social justice thus establishing a privileged partnership and an ambitious action plan for its implementation. The EU-Tunisia political dialogue has increased significantly since the Revolution, with regular high-level exchanges and visits as well as thematic dialogues, the signature of a mobility partnership in 2014<sup>7</sup>

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*Polisario*, the EU Court of Justice concluded that the EU-Morocco Association and Liberalization Agreements did not extend to the territory of Western Sahara (Court of Justice, judgment of 21 December 2016, case C-104/16 P, *Council of the European Union v. Front Polisario*). In 2018, the Court found that also the Fisheries Partnership Agreement as well as the 2013 Fisheries Protocol did not cover the territory of and waters adjacent to Western Sahara (Court of Justice, judgment of 27 February 2018, case C-266/16, *The Queen on the application of Western Sahara Campaign UK v. Commissioners for Her Majesty's Revenue and Customs, Secretary of State for food and Rural Affairs*). More recently, in an order delivered on 30 November 2018, the Court followed the approach adopted in *Front Polisario* and in *Western Sahara Campaign UK* and held that the territorial scope of the EU-Morocco Aviation Agreement does not include the territory in question (General Court, order of 30 November 2018, case T-275/18, *Front Polisario v. Council of the European Union*). For comments on the dispute according to an international and EU law perspectives, see Kassoti (2019); Van der Loo (2019); Odermatt (2020).

<sup>3</sup> Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, on the other, OJ L 70, 18.03.2000.

<sup>4</sup> Press Release, Joint declaration by the European Union and Morocco for the fourteenth meeting of the Association Council, 27.06.2019.

<sup>5</sup> Cooperation Agreement between the European Economic Community and the Republic of Tunisia, OJ L 256, 25.04.1976.

<sup>6</sup> Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Tunisia, on the other, OJ L 97, 30.03.1998.

<sup>7</sup> European Commission, Déclaration conjointe pour le Partenariat de Mobilité entre la Tunisie, l'Union Européenne et ses Etats membres participants, 03.03.2014, available at <https://home->

and the negotiations for a Deep and Comprehensive Free Trade Area (DCFTA) launched in 2015.<sup>8</sup> Tunisia is also one of the countries on the southern shore of the Mediterranean which has benefitted most from its participation in European research programmes since 1 January 2016. It is also the only country in the Southern Neighbourhood and Africa which is associated with the Horizon 2020 European Framework Programme for Research and Innovation. In effect, the Tunisian bodies have participated 87 times in 68 grants funded under Horizon 2020, receiving EUR 11.2 million in direct EU contributions to support highly advanced collaboration with European research centres.<sup>9</sup>

Against this background, this chapter intends to present the strengthened dialogue and cooperation between the EU on the one hand, and Morocco and Tunisia, on the other one, in the area of security, by focusing on the legal instruments the Union has elaborated according to its internal security strategy and external relations law for countering terroristic activities and radicalism. To this end, the EU-Southern neighbouring countries relations will be framed in the context of the European Neighbourhood Policy (ENP) as the evolutive framework for the adoption of legal instruments setting bilateral cooperation in security matters (Section 2). Being the latter a peculiar sector of intervention, the work will propose a reflection on the evolution of the EU counter-terrorism strategy with a view to the novelties introduced by the Lisbon Treaty and the main elements of interaction between the legal instruments belonging to the Area of Freedom, Security and Justice, and to the Common Foreign and Security Policy (Section 3). The EU strategy of cooperation in the fight against terrorism in Morocco and Tunisia will be based on the joint reading of these two areas, by critically analysing the use of soft and hard law mechanisms in order to verify to what extent they reflect the ‘cross-pillarization’ of anti-terrorism objectives aimed at improving security from multiple and combined perspectives (section 4). Finally, some concluding remarks will follow (Section 5).

## 2. The EU approach to North Africa under the lens of the European Neighbourhood Policy

The EU external relations are generally considered to cover all relations between the European Union and third States or other international organisations, thus

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affairs.ec.europa.eu/system/files/2016-12/declaration\_conjointe\_tunisia\_eu\_mobility\_fr.pdf (accessed: 14.09.2022). For comments, Lilam, Del Sarto (2015).

<sup>8</sup> For a comment, see Zardo (2017).

<sup>9</sup> European Council, Press release, EU-Tunisia relations: For a renewed partnership, 04.06.2021, available at <https://www.consilium.europa.eu/it/press/press-releases/2021/06/04/communique-conjoint-a-la-presse-relations-ue-tunisie-pour-un-partenariat-renouvele/> (accessed: 01.09.2022).

concerning competences and procedures, as well as norms and rules laid down in agreements concluded with third parties. After the qualification in 1963 of the Community as constituting a new legal order of international law,<sup>10</sup> one year later the Court confirmed the Community's own legal capacity and capacity of representation at the international level,<sup>11</sup> as now set in Article 47 TEU. This has allowed the Union to start interacting with the wider world in a more effective way by acting according to the objectives and principles set in Articles 3 and 21 TEU, respectively. Moreover, the Lisbon Treaty has definitely expanded the role of the High Representative of the Union for Foreign Affairs and Security Policy – figure created under the Treaty of Amsterdam – adding significant new responsibilities for coordinating and carrying out the EU foreign and security policy.<sup>12</sup> The Treaties also draw a peculiar distinction: on one hand there is the general Union competence to engage in 'external action' on the basis of the principle of parallelism of competences;<sup>13</sup> on the other, there is the distinctive competence to conduct a Common Foreign and Security Policy (CFSP), which is 'subject to specific rules and procedures'.<sup>14</sup> However, the distinction is not always clear-cut, especially in those areas of intervention which may potentially affect both general topics (e.g. trade, development cooperation and environmental issues) and security and political concerns (e.g. peace, democracy, protection of human rights and prevention of conflicts). The result is that, sometimes, different areas of intervention are prone to be intertwined, albeit with different degrees of interaction according to the final goal of the action. Such a complexity is also evident when the EU has to deal with specific partner countries or areas of interest, like the neighbouring ones to which the Treaties now dedicate an *ad hoc* set of instruments under the so-called European Neighbourhood Policy (ENP).<sup>15</sup>

The first official document dealing with the relationship with neighbouring countries was the Communication entitled *Wider Europe – Neighbourhood* adopted by the European Commission in 2003 and whose main objective was the strengthening of the stability and security in the neighbour area.<sup>16</sup> By engaging neighbour-

<sup>10</sup> Court of Justice, judgment of 5 February 1963, case 26-62, *NV Algemene Transport- en Expeditie Onderneming van Gend & Loos v Netherlands Inland Revenue Administration*.

<sup>11</sup> Court of Justice, judgment of 15 July 1964, case 6-64, *Flaminio Costa v E.N.E.L.*

<sup>12</sup> See, Article 18 TEU.

<sup>13</sup> Court of Justice, judgment of 31 March 1971, case 22/70, *Commission of the European Communities v Council of the European Communities (ERTA)*. For comments, Schütze (2014); Cremona (2018).

<sup>14</sup> For comments on the CFSP, see Wessel (2021); Cardwell (2015); Cremona (2018a); Blockmans (2018).

<sup>15</sup> For comments on the evolution of the European Neighbourhood Policy, see Dannreuther (2004); Blockmans, Van Vooren (2012); Comelli (2013); Casolari (2013).

<sup>16</sup> Communication from the Commission to the Council and the European Parliament, *Wider Europe-Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours*, COM

ing countries and putting in place soft methods of coordination, it represented the first sophisticated policy expected to contribute to the strategic goal of creating a ring of friends and a zone of stability. Indeed, the strategic document of the European Commission emphasised that the ENP could offer a means for an enhanced and more focused policy approach of the EU towards its neighbours, bringing together the principal instruments at the disposal of the Union and its Member States. However, lacking initially a specific Treaty basis and relying essentially on informal meetings, for years, the ENP has been criticized for its half-hearted promises as well as weak institutional and legal frameworks, as also confirmed by the European Commission itself in several of its following strategy papers.<sup>17</sup> These shortcomings have been partially overcome by the adoption of the Treaty of Lisbon that has allowed the EU to strengthen the ENP by introducing a formal legal basis (Article 8 TFEU) for the EU to develop “a special relationship” with its neighbours aimed at establishing “an area of prosperity and good neighbourliness, founded on the values of the Union and characterised by close and peaceful relations based on cooperation”.

Article 8(1) TEU prescribes (i) the establishment of an area of prosperity and good neighbourliness, (ii) founded on the values of the Union, (iii) characterised by close and peaceful relations based on cooperation. In effect, this provision formally integrates the EU neighbourhood policy in the EU constitutional framework,<sup>18</sup> being it included within the Common Provisions in Title 1 of the TEU, so in the same place of Article 2 TEU which lists the respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights as fundamental values of the EU. Hence, Article 8 TEU not only sets a specific provision on relations with neighbouring countries, but reflects a general provision in the TEU, which gives the Union a mandate to seek to develop relations and build partnerships with third countries that share its principles and values. Besides be-

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(2003) 104 final, 11.03.2003. The framework was formalized in 2004 by the Communication from the Commission, European Neighbourhood Policy, Strategy Paper, COM (2004) 373 final, 12.05.2004. For comments, see Emerson (2004); Kelley (2006); Cremona, Hillion (2006); Blockmans, Łazowski (2006); Balfour, Missiroli (2007); Cremona (2008); Edwards (2008); Van Vooren (2011).

<sup>17</sup> Communication from the Commission to the Council and the European Parliament, On strengthening the European Neighbourhood Policy, COM (2006) 726 final, 04.12.2006; Communication from the Commission to the Council and the European Parliament, A Strong European Neighbourhood Policy, COM (2007) 774 final, 05.12.2007.

<sup>18</sup> Article 8 TEU stipulates the following: “1. The Union shall develop a special relationship with neighbouring countries, aiming to establish an area of prosperity and good neighbourliness, founded on the values of the Union and characterised by close and peaceful relations based on cooperation. 2. For the purposes of paragraph 1, the Union may conclude specific agreements with the countries concerned. These agreements may contain reciprocal rights and obligations as well as the possibility of undertaking activities jointly. Their implementation shall be the subject of periodic consultation”. For an elaborate and insightful discussion on this point, see Blockmans (2011), p. 113.

ing based on the claim of (already) existing shared values, a noticeable element of the ENP is the EU's encouragement of the partner countries to embrace international norms and standards, notably by concluding international and regional human rights agreements. This notwithstanding, Article 8 does not reflect a formal approach based on conditionality as for the compliance with these values; rather, it points towards the development of an active policy of reform and transformation of the neighbouring States, in line with but not compelled by its own values and interests. In principle, this is also justified by the fact that, despite this strong reference to the EU values, the ENP is not oriented to promote necessarily the accession process to the EU of neighbour countries. It is, instead, a special instrument of foreign policy that remains multi-pillar in nature and intended for building communication and shared objectives related to issues such as security, democracy, human rights, political freedom, and trade liberalization. Accordingly, the policy has been designed to prevent the emergence of new dividing lines between the enlarged EU and its neighbours and to offer them the chance to participate in various EU activities to be developed with each neighbour individually, on the basis of its needs, capacities and reform objectives. In this regard, it is interesting to be noted that the ENP initiatives continue to be implemented for the most part by means of tailored soft-law instruments. As a way of example, joint Action Plans<sup>19</sup> generally set out an agenda of political and economic reforms with short and medium-term priorities of three to five years covering a number of key areas for specific action, such as political dialogue and reform; trade and measures preparing partners for gradually entering the EU commercial sector; justice and home affairs; energy, transport, information society, environment and research and innovation; and social policy and people-to-people contacts. In addition, the EU and the neighbouring countries may share mutual commitments to common values, principally within the fields of the rule of law, good governance, the respect for human and minority rights, the promotion of good relations, and the principles of market economy and sustainable development. The EU also expects the partners to abide by international law and collaborate in conflict resolution, the fight against terrorism and Weapon of Mass Destruction (WMD) proliferation. As a matter of the fact, all of these remain expectations and general political commitments without the opportunity to set effective monitoring instruments and enforcing provisions.

Despite this policy has been traditionally envisaged as incremental and flexible, thanks notably to the fact that it was forged outside the Treaty framework and carried out on the basis of soft law instruments, the “constitutionalisation”

<sup>19</sup> For a list of the ENP Actions Plans see [https://www.eeas.europa.eu/eeas/enp-action-plans\\_en](https://www.eeas.europa.eu/eeas/enp-action-plans_en) (accessed:05.09.2022).

of the neighbourhood competence has introduced new constraints. In the first place, the inclusion of this provision in the Common Provisions of the TEU implies that the objective of the EU's special relationship with its neighbours shall be mainstreamed into other policies of the EU. In practical terms, it entails that the EU institutions shall take account of neighbourhood policy aims when exercising Union competences, for instance in elaborating the Union's transport, energy, environment policies, in the development of the internal market. At the same time, the instruments through which the ENP can be implemented have to be borrowed from other parts of the Treaties, thus making Article 8 TEU a container concept which needs other legal bases in the TFEU to survive in the changing environment of the neighborhood. In the second place, it is remarkable that Article 8(2) TEU prescribes that ENP objectives should be reached not only through soft law instruments, but also the conclusion of "specific agreements", ranging from partnership and cooperation agreements to association agreements. While the former are based mainly on development cooperation objectives as of in Article 208 TFEU and concluded on the basis of Article 212 TFEU, the latter are negotiated in order to promote economic growth and political stability in third countries and to create a security zone around the borders of the Union on the basis of reciprocity. Indeed, the ENP is also supported by Article 217 TFEU that provides for the specific legal base for concluding association agreements that, in line with the EU Court of Justice judgment in *Demirel* case,<sup>20</sup> involve reciprocal rights and obligations, common action and a special procedure.

Thus, apart from development cooperation, the increasingly frequent negotiation of association agreements is due to the intention of establishing privileged links with third States, whose content diversifies and transcends the purely economic or commercial dimension, being able to pursue a plurality of purposes. In short, one may argue that the choice of the legal basis, the content and the procedure of adoption of bilateral agreements between the EU and the ENP countries depends on the objectives, the depth of political and economic cooperation, and the extent to which national legislation is harmonized to the EU *acquis*. Exactly for the variety of potential legal bases for the negotiation of external agreements, which can be now found in different places in the Treaties, however, some scholars argue whether the agreements with the neighbours are to be "seen as part of Union foreign policy or as something different".<sup>21</sup> Indeed, while the EU is used to negotiating comprehensive agreements with third countries, those to be concluded with the neighbouring ones should be formally based and oriented to reach the objectives set in Article 8 TEU

<sup>20</sup> Court of Justice, judgment of 30 September 1987, Case 12/86, *Meryem Demirel v Stadt Schwäbisch Gmünd*.

<sup>21</sup> Dashwood, Maresceau (2008), p. 50.

in order to mark the “special relationship”. Accordingly, in the opinion of the writer, the ENP should be conceived as a sub-category of the whole EU external action according to a cross-cutting approach which justifies the adoption of legal instruments regulating with both CFSP and non-CFSP issues.

As a confirmation of this reading, in 2011, the EU reviewed the ENP and strengthened its focus on promoting deep and sustainable democracy and inclusive economic development. The EU also stressed the role that civil society plays in the democratic process and introduced the ‘more for more’ principle, under which the EU shall develop stronger partnerships with those neighbours that make greater progress towards democratic reform. In order to achieve these objectives, in 2014 the European Neighbourhood Instrument (ENI) was established as the key EU financing instrument for bilateral cooperation with neighbouring countries.<sup>22</sup> In March 2015, the Commission and the European External Action Service (EEAS) launched a consultation process for a further review of the ENP, then supported by the European Parliament which adopted a resolution on 9 July 2015 underlining the need for a more strategic, focused, flexible and coherent ENP.<sup>23</sup> Along these lines and based on the results of the consultation, on 11 November 2015, the EEAS and the Commission presented a communication concerning the ENP review.<sup>24</sup> For the purposes of the present work, suffice it to say that the revised ENP aims, *inter alia*, to major engagement with partners in the security sector, broadly intended, by offering a tailor-made cooperative approach in accordance with the progress made in the EU strategy against terrorism that has inevitably crossed paths with the EU external action.

<sup>22</sup> Regulation (EU) No 232/2014 of the European Parliament and of the Council of 11 March 2014 establishing a European Neighbourhood Instrument, OJ L 77/27, 15.03.2014. In 2021, the ENI was replaced by the Neighbourhood, Development and International Cooperation Instrument (NDICI) – Global Europe – which now frames the EU’s cooperation with neighbouring countries for the 2021-2027 period. Under the new Global Europe NDICI, an increased emphasis on blending EU grants with loans from European and international financing institutions will allow partner countries to unlock substantial levels of concessional funding for investments. The new system of guarantees provided for under the Global Europe NDICI will give access to additional funds from the crowding-in of both public and private investors. See, Regulation (EU) 2021/947 of the European Parliament and of the Council of 9 June 2021 establishing the Neighbourhood, Development and International Cooperation Instrument – Global Europe, amending and repealing Decision No 466/2014/EU of the European Parliament and of the Council and repealing Regulation (EU) 2017/1601 of the European Parliament and of the Council and Council Regulation (EC, Euratom) No 480/2009, PE/41/2021/INIT, OJ L 209, 14.6.2021.

<sup>23</sup> European Parliament resolution of 9 July 2015 on the review of the European Neighbourhood Policy (2015/2002(INI)).

<sup>24</sup> Joint Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Review of the European Neighbourhood Policy, JOIN(2015) 50 final, 18.11.2015.

### 3. The evolving EU (external) counter-terrorism strategy

The beginning of the modern era of the EU counter-terrorism strategy can be located in the 1970s when it slowly entered the realm of the integration process thus requiring major cooperation at the supranational level. In 1976 the first organized platform on Terrorism, Radicalism, Extremism, and International Violence (the so-called TREVI group) was established by the ministers of justice and interior/home affairs of the Member States.<sup>25</sup> It consisted of high-level gatherings of ministerial representatives and top national security officials in order to exchange information and provide mutual assistance on terrorism and related international crimes. In action until 1992, this represented a revolutionary stage in a context where the fight against terrorism was traditionally perceived just as a domestic security concern. The integration process then moved forward very substantially, leading to the establishment of a supranational organisation with much more extensive ambitions, competences and structures than that of the European Community of the 1970s. In particular, since the Treaty of Amsterdam, the EU was assigned with relevant actions on internal security matters and had even been given an explicit mandate to provide EU citizens with enhanced internal security in the context of the Union's area of freedom, security and justice (AFSJ). Indeed, while the Union was preparing to be an area of free circulation, the delicate balance between internal freedom of movement and external openness on the one hand, and freedom and security on the other hand, has proved to be crucial for the future.<sup>26</sup>

The terrorist attacks in the United States and the EU in the early 2000s inaugurated a new and unprecedented climate of cooperation between the EU Member States and the EU institutions in that field, alongside the development of the AFSJ.<sup>27</sup> Indeed, the post-9/11 period confronted the Member States both with the opportunity and the need for a more substantial common response to the 'new' terrorist threat that occurred in Europe with the Madrid attacks in 2004 and those in London in 2005. The general reticence to abandon control over terrorist threats at the national level gave way to an increased desire for a common strategy for overcoming the weaknesses in national and supranational emergency preparation and response. Such an enhanced political focus on terrorism also made it possible to accelerate decision-making processes on specific dimensions of intervention, including law enforcement and judicial cooperation, intelligence cooperation, border controls and the adoption of measures for combating the fi-

<sup>25</sup> Coolsaet (2010); Bures (2012).

<sup>26</sup> Marhold (2016). [**not in the references**]

<sup>27</sup> Bendiek (2006); Cardwell (2009); Argomaniz (2011).



nancing of terrorism.<sup>28</sup> The EU as a whole has thus acquired an increasingly important role as an actor in counter-terrorism practices based on the four strategic ‘pillars’ covering prevention, preparedness, response and recovery to be built alongside the Member States’ action.

Against this background, in 2002 the Council adopted the first substantial legislative act in the fight against terrorism, the Council Framework Decision 2002/475 on Combating Terrorism,<sup>29</sup> notably coupled with the Framework Decision 2002/584 establishing the European Arrest Warrant.<sup>30</sup> Decision 2002/475 started with a clear identification of terrorism as “one of the most serious violations” of the “universal values” – i.e. human dignity, liberty, equality, solidarity, respect for human rights and fundamental freedoms – and “principles” – i.e. rule of law and democracy – on which the EU is founded.<sup>31</sup> An additional emphasis was put on the definition of terrorism as a threat to the fundamental political, constitutional and socio-economic foundations of the EU and its Member States, as then formally claimed in the *European Security Strategy* which was adopted the following year by the European Council.<sup>32</sup>

The Security Strategy emphasized that terrorism not only endangers lives and causes huge costs but also “seeks to undermine the openness and tolerance of our societies”.<sup>33</sup> The reference was, especially, to the global hierarchical Al-Qaeda network and its logistical bases and cells in the UK, Italy, Germany, Spain and Belgium, that had been uncovered and dismantled. This notwithstanding, the wave of terrorism affecting the EU territory was not only described as being “linked to violent religious extremism” but also as arising out of complex causes that “include the pressures of modernization, cultural, social and political crises, and the alienation of young people living in foreign societies”.<sup>34</sup> Hence, the Strategy was not limited to tackle the religious extremism but marked a clear step towards the recognition of the complexity of the threat and the resulting need for a multidimensional response beyond the repressive and military measures. Indeed, the act listed terrorism as the first of the key threats the Union was facing in the security domain and described it as a threat having both an internal and an external dimension. Aware that “Europe

<sup>28</sup> A selection of relevant contributions include: den Boer, Monar (2002); Keohane (2007); Bossong (2008); O’Neill (2011); Argomaniz (2011); Eckes (2011); Murphy (2019).

<sup>29</sup> Council Framework Decision 2002/475 of 13 June 2002 on combating terrorism, OJ L 164, 22.06.2002.

<sup>30</sup> Council Framework Decision 2002/584 of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, OJ L 190/1, 18.07.2002.

<sup>31</sup> Decision 2002/475, Preamble, para. 1-2.

<sup>32</sup> European Council, A secure Europe in a better world - European security strategy, 12.12.2003 [Not published in the Official Journal].

<sup>33</sup> *Ibid.*, p. 3.

<sup>34</sup> *Ivi.*

is both a target and a base for such terrorism”,<sup>35</sup> the Strategy linked terrorism with other international threats including, in particular, the proliferation of weapons of mass destruction, as well as State failure and organized crime, thus making it part of a set of interrelated security threats rather than an individual and isolated one. This perspective represented the central argument for a multi-layered response to the terrorist challenge that required an extensive common action providing “a mixture of intelligence, police, judicial, military and other means”.<sup>36</sup>

The content of the first European Security Strategy provided a quite substantial conceptual basis for the following *EU Counter-Terrorism Strategy* that was adopted by the European Council in December 2005.<sup>37</sup> The new Strategy broadly reaffirmed the earlier threat assessment but placed a particular emphasis on the threat posed by home-grown terrorism through radicalization and terrorist recruitment within the EU Member States. For this purpose, the Strategy defined the strategic objectives of EU actions and the main measures under four stages: prevention of radicalization and recruitment, protection of citizens and infrastructure, pursuing of terrorists across borders and response to the consequences of terrorist attacks.<sup>38</sup> Accordingly, the adoption of the first European Union Strategy for Combating Radicalization and Recruitment to Terrorism as an integral part of the Counter-Terrorism Strategy was also agreed. The strategy and the accompanying classified Action Plan contained both joint standards and new measures: while recognising the primacy of the Member States in the field of radicalization and recruitment, the strategy proposed a set of specific measures for implementation at EU level. In particular, the terrorist activities perpetrated by Al-Qaeda and extremists inspired by it required a strong intervention for disrupting the activities of networks and individuals drawing people into terrorism, ensuring that mainstream opinion prevails over extremism and promoting more vigorously security, justice and democracy. In this regard, the strategy against radicalization was marked by a strong emphasis on improving long-term integration and the dialogue, especially, with Muslim communities and religious authorities. Scarred by the attacks to the hearth of EU cities, in comparison to the 2003 European Security Strategy, these designed instruments preferred to focus on the internal dimension and on the Member States’ capacity to cope with radicalization within the EU borders.

The Lisbon revision partially changed the context with the introduction of specific provisions for EU action in the area of counter-terrorism, thereby widening

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<sup>35</sup> Ivi.

<sup>36</sup> Ibid., p. 7.

<sup>37</sup> Ekengren (2007); Bosson (2008); Keohane (2008).

<sup>38</sup> Council of the European Union, The EU Counter-Terrorism Strategy, 30.12.2005, available at <https://data.consilium.europa.eu/doc/document/ST%2014469%202005%20REV%204/EN/pdf> (accessed: 25.08.2022).

the EU's competences and upholding the institutional framework.<sup>39</sup> In particular, Article 83 TFEU now lists terrorism among the serious crimes with a cross-border dimension, thus allowing the possibility to establish common minimum rules. However, the Union's competence is not aimed at a full harmonisation in areas like the fight against terrorism. From an EU constitutional point of view, this is also confirmed by the so-called 'national identity clause' enshrined in Article 4(2) TEU, which states that "national security remains the sole responsibility of each Member State"<sup>40</sup> and by Article 72 TFEU, which recognises national prerogatives over maintaining law and order and safeguarding internal security. Thus, most of the powers and capabilities in the field of counter-terrorism still remain with the Member States: in this way, they are subject to national threat perceptions and political discourses and are protected against any form of "Europeanisation" by strong, persisting, notions of national sovereignty and the principle of territoriality of law enforcement.<sup>41</sup> The area of counter terrorism does not form an ordinary shared competence, but rather one in which the joint action depends heavily on the willingness of Member States that remain the principal actors in this domain. This notwithstanding, from a legislative point of view, the adoption of the EU Directive 2017/541 on combating terrorism<sup>42</sup> in March 2017 has profoundly changed the landscape of EU counter-terrorism law. Proposed less than three weeks after the terrorist attacks in Paris in November 2015, it has introduced a first common list of terrorist conducts to be criminalised and made punishable by the Member States as criminal offences.<sup>43</sup> At the same time, such a list serves as a benchmark for further improving cooperation and information exchange between national authorities, especially when dealing with the prevention of radicalism. In this regard, Directive 2017/541 also provides for the most recent definition of radicalization as a phased or complex process in which an individual embraces a radical ideology of belief that accepts, uses, or condones violence.

The changes occurred over the last years have intensified the combination of AFSJ legislative and operational measures in the internal fight against terrorism.<sup>44</sup> On the one hand, the adoption of legislative acts has provided for a common

<sup>39</sup> For a comment, see Eckes (2011).

<sup>40</sup> For a deeper analysis of the implications of Article 4(2) TEU, see Cloots (2015); Di Federico (2017); Schnettger (2019);

<sup>41</sup> Monar (2007).

<sup>42</sup> Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA, OJ L 88 of 31.3.2017. For a recent comment on the opportunity to revise the directive, see Gherbaoui, Scheinin (2022).

<sup>43</sup> Directive (EU) 2017/541, Article 2.

<sup>44</sup> Herlin Karnell, Matera (2014); Poli (2016).

minimum definition of terrorist acts while leaving the Member States a wide margin of discretion concerning penalties. On the other one, a considerable number of instruments have been adopted to enhance cross-border counter-terrorism capabilities within the EU, although no complete operational powers have been transferred to EU structures as such. In this regard, since 9/2001, the mandate and actual role of Europol<sup>45</sup> and Eurojust<sup>46</sup> has been strengthened several times as of both analysis functions and the support of cross-border investigations and prosecutions. This confirms that the counter-terrorism objectives and legislation have served on more than one occasion as a political catalyst to integrate and develop the AFSJ. Thus, while some instruments adopted by the Union were primarily concerned with countering terrorism, others pertained to EU criminal law and policing competences and only indirectly served counter-terrorism purposes. Moreover, it is noteworthy the creation of the Office of the EU's Anti-Terrorism Coordinator, a completely new senior office with supporting staff to monitor and help coordinating EU and national counter-terrorism efforts.<sup>47</sup> All this is clearly aimed at equipping the Union with a minimum of common response capacity – in addition to coordinated national capacities – to the defined common terrorist threat.<sup>48</sup> This corresponds not only to the internal security dimension of the EU's common threat definition within the AFSJ, but also to the understanding that a variety of instruments are needed and that the EU is particularly vulnerable because of the abolition of internal borders.

The emerging threat of international terrorism has also served as a catalyst for constitutional and institutional reforms as well as substantive innovations also in the external dimension of the EU action as an extension of the AFSJ.<sup>49</sup> Actually, already at the time of the response to 9/11 attacks the EU emphasised the complementarity of internal and external action to counter-terrorism (and other security threats). However, the development of the EU's external dimension of its counter-terrorism policy has been at the heart of numerous legal disputes and contro-

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<sup>45</sup> Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA, OJ L 135, 24.5.2016.

<sup>46</sup> Regulation (EU) 2018/1727 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for Criminal Justice Cooperation (Eurojust), and replacing and repealing Council Decision 2002/187/JHA, OJ L 295, 21.11.2018.

<sup>47</sup> See the press release document concerning the appointment of the first EU Counter-terrorism Coordinator, available at <http://www.consilium.europa.eu/uedocs/cmsUpload/Transcript.pdf> (accessed: 03.09.2022).

<sup>48</sup> Coolsaet (2010).

<sup>49</sup> Wessel, Marin, Matera (2011).

versies pertaining especially to the institutional dimension. Indeed, the main concern was linked to issues of competence and the balance of powers between the institutions and between the EU and its Member States in a topic where, at the time of the Amsterdam Treaty, the extension of the external dimension of countering terrorism was not clear. Hence, besides giving way to a supranational approach to the fight against terrorism as already set up in the AFSJ domain, the Lisbon Treaty has also formally conferred new and proper powers in this domain. Indeed, Article 43 TEU establishes an express competence to combat terrorism through CFSP, and more precisely the Common Security and Defence Policy (CSDP), whereas Article 215 TFEU confers a competence on the Union to adopt sanctions against non-State organisations and individuals, implicitly on the grounds of their association with terrorism.<sup>50</sup> Hence, as argued by Hillion, both Article 43 TEU and 215 TFEU establish competences that are potentially more constraining on EU institutions and Member States and more constrained in their exercise than pre-Lisbon CFSP competences, given the increased integration of the old ‘second pillar’ with the EU constitutional order.<sup>51</sup> The Lisbon Treaty has thus given substance to the ambition to develop a comprehensive policy pertaining to the security of the Union that is linked with the AFSJ and the external relations of the EU, including the CFSP and CSDP facets.<sup>52</sup> However, such an ambition requires a set of efforts for delivering a comprehensive security policy to be read under the specific constitutional requirement of ensuring consistency between the different areas of external action and between external action and other policies of the Union under Article 21 TEU.

As a result of this, alongside its Member States, the EU has an active role in the UN context by participating in the UN Counter-Terrorism Executive Directorate (CTED)<sup>53</sup> and has adhered to a number of international initiatives such as the Global Counter Terrorism Forum (GCTF),<sup>54</sup> the Global Coalition against

<sup>50</sup> As well known, counter-terrorist sanctions against individual have been deeply criticized for breaching fundamental rights, in particular, the right to judicial review as demonstrated in the Khadi saga (Court of First Instance, T-315/01, *Kadi v. Council and Commission*, [2005] ECR II-3649, and the Court of Justice (COJ), C-402/05 P and C-415/05 P, *Kadi I* [2008] ECR I-6351). For comments on individual sanctions regime, see Eckes (2012); Erlbacher (2019).

<sup>51</sup> Hillion (2014), p. 14.

<sup>52</sup> Matera (2014).

<sup>53</sup> The Counter-Terrorism Committee Executive Directorate is a Special Political Mission which was established by UN Security Council resolution 1535 (2004) to assist the work of the CTC and coordinate the process of monitoring the implementation of resolution 1373 (2001). CTED's mandate was extended until the end of 2025 by Security Council resolution 2617 (2021).

<sup>54</sup> The Global Counterterrorism Forum (GCTF) is an informal, apolitical, multilateral counterterrorism platform now chaired by Canada and Morocco. Further information are available at <https://www.thegctf.org/>.

ISIL/Daesh<sup>55</sup> and the Financial Action Task Force (FATF)<sup>56</sup> to promote a strategic long-term approach to counter-terrorism and the violent extremist ideologies that underpin it. Parallel to this, the EU cooperates bilaterally with third countries in the field of counter-terrorism on the basis of different instruments, including the systematic use of 'political dialogues' and assessment missions to third countries or groups of third countries. Besides, it provides certain countries with technical assistance and training, including the support for counter-terrorism capacity-building and countering violent extremism initiatives.

The external dimension of the EU's fight against terrorism confirms the increasing importance of AFSJ agencies such as Europol and Eurojust as key actors in this area. Indeed, these bodies have been conferred the powers to conclude international agreements with third countries, so as to enhance police and judicial cooperation. However, while the main structure of the agreements concluded by Europol is generally the same, the scope of each agreement, the intensity of the cooperation that each agreement establishes depend on the type of agreement that the Agency has concluded. In this regard, it should be stressed that Europol can conclude two types of agreements with third countries: strategic agreements to establish stable mechanisms for working together with external partners, and operational agreements which include mechanisms to share personal data between the parties and/or that foresee concrete operational cooperation.<sup>57</sup> In addition to these 'traditional' instruments, since 2000s the EU has also been systematically inserting clauses on cooperation against terrorism and terrorist financing in stabilisation and association agreements and partnership and cooperation agreements.<sup>58</sup> In this way, there has been a sort of 'cross-pillarization' of anti-terrorism objectives and instruments belonging to the AFSJ, which have spread also to external relations by becoming ancillary to and integrated in other policy sectors.

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<sup>55</sup> The Global Coalition against Daesh was formed in September 2014 and is now composed of 85 members committed to tackling Daesh on all fronts. Beyond the military campaign in Iraq and Syria, the Coalition is committed to: tackling Daesh's financing and economic infrastructure; preventing the flow of foreign terrorist fighters across borders; supporting stabilisation and the restoration of essential public services to areas liberated from Daesh; and countering the group's propaganda. Further information are available at <https://theglobalcoalition.org/en/>.

<sup>56</sup> The Financial Action Task Force (FATF) is the global money laundering and terrorist financing monitoring body established in July 1989 by a Group of Seven (G-7) Summit in Paris. Further information are available at <https://www.fatf-gafi.org/about/historyofthefatf/>.

<sup>57</sup> For insights, see Matera (2014), p. 29 et seq.

<sup>58</sup> Despite the different scope of the agreements, provisions on countering terrorism are similar and include the following three main features: i) reference to UN Security Council Resolution 1373(2001)42 on combating terrorism and other relevant UN resolutions, ii) reference to the exchange information on terrorist groups and iii) reference to the exchange best practices on countering terrorism. Moreover, some agreements also contain an express reference to cooperation on combating money laundering, some with a particular emphasis on combating the financing of terrorism.

In light of the constantly evolving nature of the threats from international terrorism, the Council decided to further update its previous evaluations and adopted, on 15 June 2020, the *Conclusions on EU External Action on Preventing and Countering Terrorism and Violent Extremism*.<sup>59</sup> In the path of this, on 24 July 2020 the European Commission set out the updated *EU Security Union Strategy*,<sup>60</sup> covering the period from 2020 to 2025 and still focusing on specific priority areas that comprise also terrorist threats. In addition, on 9 December 2020 the European Commission adopted the updated *EU Counter-Terrorism Agenda* as new and comprehensive document focusing on the entire chain and various aspects of counter-terrorism to boost the EU's resilience to this kind of threats.<sup>61</sup> As was the 2005 Strategy, such an Agenda is based on four main pillars that aim to support Member States in better anticipating, preventing, protecting and responding to terrorism. In particular, it stresses the need to prevent attacks by addressing radicalization and supporting local actors and building more resilient communities. In comparison to previous documents, the new Agenda now explicitly addresses and requires major intervention at the external level by improving cooperation with partner countries outside of the EU, both within its direct neighbours, but also beyond. As such, alongside the cooperation with other international organisations, the Commission and the High Representative are asked to set up cooperation with Western Balkan partners in the area of firearms, negotiate international agreements with Southern Neighbourhood countries to exchange personal data with Europol, and enhance strategic and operational cooperation with other regions such as the Sahel region, the Horn of Africa, other African countries and key regions in Asia.<sup>62</sup>

Ultimately, it seems that counter-terrorism objectives are sought and attained not only by the adoption of specific instruments belonging both to the CFSP/CSDP and the AFSJ, but also with the set up of initiatives that have a strong link with the broader ENP area. In the wake of this overall approach, the next section will be devoted to illustrating the specific instruments of cooperation and the strategies the EU has developed in North Africa, and especially in Morocco and Tunisia, for combating terrorism and radicalization.

<sup>59</sup> Council of the European Union, Council Conclusions on EU External Action on Preventing and Countering Terrorism and Violent Extremism, 16.06.2020.

<sup>60</sup> Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions on the EU Security Union Strategy, COM/2020/605 final, 24.07.2020.

<sup>61</sup> Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, A Counter-Terrorism Agenda for the EU: Anticipate, Prevent, Protect, Respond, COM/2020/795 final, 09.12.2020.

<sup>62</sup> For comments, see Farinpour (2021).

#### 4. EU instruments for countering terrorism in Morocco and Tunisia

The EU has been present in North Africa since 1979 as a result of colonial legacies, geographic proximity, deep-seated inter-cultural and religious ties, economic, political and security-related relations of individual EU Member States with countries and stakeholders in the region. However, the attempt to establish legal and institutional instruments able to encourage the positive connections between the EU and North Africa have met a number of challenges. The end of the Cold War brought a wind of optimism that resulted in the 1995 Euro-Mediterranean partnership – based on bilateral association agreements<sup>63</sup> – for making the Mediterranean basin an area of dialogue, exchange and cooperation, ensuring “peace, stability and prosperity”.<sup>64</sup>

Unfortunately, the expectations carried out by the so-called Barcelona Process were distanced from reality<sup>65</sup> and the conflicting views and priorities of the EU Member States had a negative impact on security-related matters in the region. In the post-Arab Spring, the attainment of effective results of major cooperation has been outclassed by the perception of insecurity due to the presence of terroristic groups which have increasingly diversified their sources of income over the last decade, have gained better access to illicit resources, terrorism and transnational organised crime have become increasingly interconnected. Indeed, the strengthening of Daesh groups has been supported by theft and extortion from the territories under their control, kidnapping for ransom, illicit trafficking, fundraising through modern communication networks, and material support from foreign terrorist fighters. Likewise, Al-Qaeda in the Islamic Maghreb has closely cooperated with some of the organised crime networks that are active in the Sahel and the Maghreb. Against this background, the countries of the region have shaped their approaches to the fight against violent extremism according to their distinct

<sup>63</sup> The list of Euro-Mediterranean Association Agreements is available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:r14104>. For an analysis of these model of integration with Mediterranean countries see Pieters, 2010.

<sup>64</sup> Euro-Mediterranean partnership: Barcelona Declaration. Work programme. Euro-Mediterranean conference. Barcelona, 27-28 November 1995. The Declaration was signed by Algeria, Cyprus, Egypt, Israel, Jordan, Lebanon, Malta, Morocco, the Palestinian Authority, Syria, Tunisia and Turkey.

<sup>65</sup> See the evaluations proposed in the Joint Declaration of the Paris Summit for the Mediterranean, adopted under the co-presidency of the President of the French Republic and the President of the Arab Republic of Egypt, in the presence of, inter alia, the EU, the UN, the Gulf Cooperation Council, the Arab League, the African Union, the Arab Maghreb Union, the Organisation of the Islamic Conference, and the World Bank, Paris, 13 July 2008. The Joint declaration is based on the Communication from the Commission to the European Parliament and the Council, Barcelona Process: Union for the Mediterranean, COM (2008) 319 final, 20.05.2008.



histories and capabilities, and also the EU has indicated specific options in working with them for purposes of stabilisation.<sup>66</sup>

Recently, within the ENP framework, on February 2021, the EU institutions adopted the Joint Communication entitled *Renewed partnership with the Southern Neighbourhood – A new Agenda for the Mediterranean*<sup>67</sup> and the *Accompanying Investment Plan for the Southern Neighbours*.<sup>68</sup> The Agenda has the aim of relaunching and strengthening the strategic partnership between the EU and its Southern Neighbourhood partners. Indeed, it draws for the first time on the full and comprehensive EU toolbox and the groundbreaking opportunities of the twin green and digital transitions, in order to relaunch cooperation in tackling governance, socio-economic, climate, environmental and security challenges. Among the different sources of major insecurity, a special place is reserved to challenges like terrorism, hybrid threats as well as cybercrime and organised crime, including the trade of illegal firearms, drug trafficking and money laundering, which – despite some positive outcomes – continue to feed instability and stifle prosperity.

Over the last decades, in the counter-terrorism domain, the Union has acted through the ENP mechanisms of cooperation with the authorities of the North African countries by primarily relying on soft law (even though significant) mechanisms. In the first place, some specific lines of action have been performed for suppressing the financing of terrorism via appropriate anti-money laundering frameworks. In particular, the EU has encouraged Member States to provide technical assistance to third countries to help them comply with international Anti-Money Laundering and Countering Financing of Terrorism (AML/CFT) regime, including commitments to monitor, disrupt, and deny the financing of terrorism and funds associated with terrorist activity.<sup>69</sup> In this regard, it is noteworthy that, in February 2018, Tunisia was included on the list prepared by the European Commission about third countries' strategic deficiencies in their legal frameworks for anti-money laundering and counter-terrorist financing measures. Given the progress achieved and the efforts made, in 2019 the FATF – and later also the European Commission – decided

<sup>66</sup> For a deeper analysis, see Cimini, Simoncini, Chapter I of this volume.

<sup>67</sup> Joint Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *Renewed partnership with the Southern Neighbourhood. A new Agenda for the Mediterranean*, JOIN(2021) 2 final, 09.02.2021.

<sup>68</sup> Joint Staff Working Document, *Renewed Partnership with the Southern Neighbourhood Economic and Investment Plan for the Southern Neighbours* Accompanying the document *Joint Communication to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of the Regions, Renewed partnership with the Southern Neighbourhood A new Agenda for the Mediterranean*, SWD/2021/23 final, 09.02.2021.

<sup>69</sup> Money laundering and terrorist financing is managed at the international level by the regulatory strategy, a set of soft rules associated with international financial regulation to address or pre-empt potential damage to the stability of the international financial system. For comments, see Beekarry (2011).

to remove Tunisia from the blacklist.<sup>70</sup> In 2021, also Morocco was included in the high risk third country jurisdictions to be monitored by the Task Force. Since then, Morocco has adopted several internal legislative measures in order to strengthen its capacities in the anti-money laundering/countering the financing of terrorism area and still continues to develop its institutional framework. However, the European Commission still argues that more progress is necessary to address effectively money laundering investigation and prosecution in Morocco. In order to facilitate this process, the Commission is providing targeted technical assistance to national authorities in order to help address the limits identified by the FATE.<sup>71</sup>

Furthermore, the EU has encouraged Member States to cooperate with third countries' national authorities for improving the culture and professionalism of the security forces. In particular, Morocco has developed close bilateral counter-terrorism cooperation, especially with Belgium, Spain and France and regularly deals with terrorist networks being also the co-chair of the Global Counter Terrorism Forum and a member of the Global Coalition against Daesh. Moreover, Rabat hosts one of the EU-funded regional CBRN Centres of Excellence (CoE) for the improvement of regional cooperation in the CBRN (Chemical, Biological, Radiological and Nuclear) domain, which represents one of the major challenges of the current times.<sup>72</sup>

As of Tunisia, it has made significant advances in its security and counter-terrorism policies through also the impetus of some closest EU Member States in terms of engagement in security issues. In particular, France, with its historic ties to Tunisia, has led direct work with the country's security services, including the provision of intelligence assistance and equipment to the Tunisian special forces. In effect, European officials generally agree that since 2015 Tunisia's security services have considerably improved their capacity to prevent and respond to terrorist threats. However, in comparison to Morocco, Tunisia's internal security and counter-terrorism strategy and structures are still weak and so far, have failed to effectively resolve consolidated security problems. Accordingly, the EU institutions have focused on security sector reform, including assistance in drawing up and implementing a pro-

<sup>70</sup> Supporting Tunisia's efforts in the fight against money laundering and terrorism financing, Parliamentary question - E-000271/2020, 17.01.2020.

<sup>71</sup> Answer given by Ms McGuinness on behalf of the European Commission to the Parliamentary question - E-000682/2022, 12.04.2022.

<sup>72</sup> The origins of the so-called CBRN CoE initiative can be found in the Instrument for Stability and it now fits within the Instrument contributing to Stability and Peace (IcSP) set in Regulation (EU) No 230/2014 of the European Parliament and of the Council of 11 March 2014 establishing an instrument contributing to stability and peace, OJ L 77/1 of 15.3.2014. The CBRN COE network currently involves 54 partner countries across 8 regions. Morocco hosts the Secretariat of the African Atlantic Façade composed of Benin, Cameroon, Côte d'Ivoire, Gabon, Liberia, Morocco, Mauritania, Senegal and Togo. For comments, Sabol et al, 2015; Sc, 2015.

gramme to provide independent oversight of the police, and developing the investigative capacity of security services under the rule of law.

As previously pointed out, the relevance acquired by security issues in the ENP, combined with the CFSP and AFSJ facets, has highlighted the need to combine both soft and hard law instruments; however, the EU strategy *vis-à-vis* Morocco and Tunisia is still far from relying also on hard law instruments. In the first place, it is noteworthy that, in comparison to the association agreements concluded with other countries of the area (e.g. Algeria and Egypt),<sup>73</sup> no clauses dealing with counter-terrorism are present in those concluded with Tunisia and Morocco. Indeed, while the term ‘terrorism’ is completely absent in the whole content of these agreements, the unique reference to security-related matters is included in the Title dedicated to the political dialogues that, despite relevant in institutional terms, cannot establish coercive measures neither provide for enforcement mechanisms thus remarking the cooperative nature of the relationship. Such a choice suggests the necessity to remain within the context of the soft law instruments and, in case, of *ad hoc* and compartmentalised instruments, such as the AML/CFT regime, without a comprehensive vision. In broader terms, the absence of specific provisions on security and terrorism suggests the limitedness of the reciprocal nature of the commitments by, instead, underlining the persistent imbalance in setting rights, duties and interests and confirming the role of the EU as a donor more than as a real partner in the fight against terrorism.

A second significant shortcoming concerns the bilateral cooperation in the exchange of personal data, a needed step to address the phenomenon of foreign terrorist fighters and effectively detect, prevent and prosecute terrorism travel, terrorist misuse of the Internet, terrorism financing as well as the nexus with organised crime. Indeed, as Wolff pointed out, Euro-Mediterranean partners should be asked to “put in place the necessary institutions” if the EU is to effectively externalize its investigative activities under the AFSJ external dimension.<sup>74</sup> Originally, when the AFSJ-related issues and agencies were not clearly embarked in the external fight against terrorism, the EU had taken great care to ensure the Mediterranean countries adopted and implemented laws in line with the Euro-Mediterranean Code of Conduct on Countering Terrorism adopted in 2005.<sup>75</sup> However, the code just required members to “exchange information on a *voluntary basis* on terrorists and their support networks” [emphasis

<sup>73</sup> See, Euro-Mediterranean Agreement establishing an Association between the European Community and its Member States, of the one part, and the People’s Democratic Republic of Algeria, of the other part, OJ L 265, 10.10.2005, Article 90; Euro-Mediterranean Agreement establishing an Association between the European Communities and their Member States, of the one part, and the Arab Republic of Egypt, of the other part, OJ L 304/39, 30.09.2004, Article 59.

<sup>74</sup> Wolff (2012), p. 196.

<sup>75</sup> Euro-Mediterranean Code of Conduct on Countering Terrorism, 2005, available at <https://ec.europa.eu/environment/archives/enlarg/med/pdf/terrorism.pdf> (accessed: 03.09.2022).

added], requiring members to work bilaterally to develop effective and operational cooperation as well as the sharing of best practices and expertise. In addition, the Euro-Med Code of Conduct generally emphasized the need to, *inter alia*, promote good governance and human rights, and to foster respect for all religions and intercultural understanding in line with the EU's own anti-radicalization programmes.

After the Lisbon revision and the introduction of a legal basis for concluding agreements pertaining to the exchange of classified information for counter-terrorism purposes, the Commission has put forward recommendations to the Council to authorise the opening of negotiations for an agreement between the EU and Morocco,<sup>76</sup> as well as another one with Tunisia<sup>77</sup> to allow the exchange of personal data with Europol. At the time of writing, however, the two agreements have not been concluded thus confirming the complexity, if not reticence, to negotiate about so sensitive issues which affect fundamental rights of individuals, including privacy and personal data protection under Articles 7 and 8 of the EU Charter of Fundamental Rights.<sup>78</sup> Goes without saying that the lack of adequate data protection measures has already proven to be an obstacle in the development of bilateral relations. Indeed, given that terrorism tends to be more prevalent in States characterised by low human rights standards, combating terrorism effectively and protecting fundamental human rights are not simple to be combined.

As stressed by the European Parliament in its resolution concerning the opening of negotiations for an EU-Morocco Agreement on the exchange of personal data,<sup>79</sup> the transfer of personal sensitive data is extremely sensitive and gives rise to profound concerns given the different legal framework, societal characteristics and

<sup>76</sup> Recommendation for a Council Decision authorising the opening of negotiations for an agreement between the European Union and the Kingdom of Morocco on the exchange of personal data between the European Union Agency for Law Enforcement Cooperation (Europol) and the Moroccan competent authorities for fighting serious crime and terrorism, COM/2017/0808 final, 20.12.2017.

<sup>77</sup> Recommendation for a Council Decision authorising the opening of negotiations for an agreement between the European Union and Tunisia on the exchange of personal data between the European Union Agency for Law Enforcement Cooperation (Europol) and the Tunisian competent authorities for fighting serious crime and terrorism COM/2017/0807 final, 20.12.2017.

<sup>78</sup> Article 7: "Everyone has the right to respect for his or her private and family life, home and communications"; Article 8: "1. Everyone has the right to the protection of personal data concerning him or her. 2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified. 3. Compliance with these rules shall be subject to control by an independent authority".

<sup>79</sup> European Parliament resolution of 4 July 2018 on the Commission recommendation for a Council decision authorising the opening of negotiations for an agreement between the European Union and the Kingdom of Morocco on the exchange of personal data between the European Union Agency for Law Enforcement Cooperation (Europol) and the Moroccan competent authorities for fighting serious crime and terrorism (COM(2017)0808 – 2018/2064(INI)).

cultural background of these States compared with the Union. But, if one reads these measures of cooperation within the broader context of the ENP, the political and security partnership cannot ignore the values set in Article 2 TEU, including the respect of human rights and dignity, and the principles set in Article 21 TEU. As pointed out by Wolff, this leads to a dilemma for the EU: how to pursue a strategy “in which it seeks cooperation in the fight against terrorism with law enforcement agencies that do not enjoy full independent from executive power, and do not apply basic principles of justice”.<sup>80</sup> Accordingly, it would be necessary to define specific standards to be respected as regards fundamental rights and freedoms also in the fight against terrorism through the elaboration of an effective and rule-of-law compatible investigation and criminal justice system.

## 5. Conclusive remarks

This contribution sought to provide the reader of this volume with an overview of the main ways in which the EU exercises its external powers to combat terrorism with partner countries in North Africa by moving from the ENP as a general context. The latter represents, indeed, the area of competence which, especially after the Lisbon revision, has marked the framework for developing specific interventions and setting measures of cooperation with Southern neighbour countries.

Being a comprehensive and articulated area of competence based on legal instruments that are precise in their *ratione loci* scope of application, it naturally deals with counter-terrorism actions that have been progressively regulated beyond the EU internal borders. In effect, the EU counter-terrorism strategy is composed of a variety of instruments that pertain the external dimension of the AFSJ and the pure CFSP-related provisions. Moreover, it has emerged the increasing EU consideration of counter-terrorism cooperation in specific instruments provided also in the establishment of closer means of cooperation such as association and partnership agreements. The opportunity to rely on a plurality of legal and binding instruments represents a significant legal leap forward that has reinforced the EU approach towards the complexity of mechanisms that can be functional to the attainment of security objectives, including counter-terrorism and radicalization. This has confirmed the opportunity to read the positive interaction between, on the one hand, the ENP when pursuing security objectives, and, on the other one, the CFSP and AFSJ-related provisions concerning terrorism. Yet, the different instruments taken into consideration in this paper reveal that the EU's strategy on counter-terrorism is firmly anchored to the exchange of (classified) information, the exchange of other personal data and the exchange of data to tackle money laundering. However, it has been also evidenced that the EU

<sup>80</sup> Wolff (2012), p. 150.

counter-terrorism strategy in the targeted countries, i.e. Morocco and Tunisia, albeit quite efficient in the results performed, is far from being supported by a strong combination of soft and hard law instruments. On the contrary, it is still based on a pragmatic, project-centred approach typical of the pre-Lisbon era, and characterised by a multi-layered institutional framework which requires political and legal efforts to maintain major coherence.

As pointed out by Cardwell, the EU's engagement with the neighbouring countries has a "double-edged nature" with the drive to secure cooperation on crime and terrorism without, however, a strong emphasis on encouraging reform. Indeed, while the EU is formally engaged in multiple and different actions, at the same time it has not sufficiently pushed for the introduction of clear obligations on counter-terrorism for the parties of bilateral agreements. At the same time, it cannot be neglected that the EU must act according to the principles set in Article 21 TEU and, as stressed in Article 8 TFEU, its ENP must be inspired by the EU values set in Article 2 TEU. As a consequence, even though the such a policy is not formally based on a sort of conditionality – in comparison to the accession procedure set in Article 49 TEU – the pre-condition of sharing the Union's values may be perceived as a sign of an indirect conditionality that underpins the "special relationship" with the neighbours.<sup>81</sup> Where minimum standards are not met, the Union is still reluctant to deeply cooperate and conclude specific agreements that could undermine fundamental rights safeguards. Ultimately, one of the biggest challenges for the future of the EU's external action in counter-terrorism will probably be linked to ensure coherence and consistency of the different dimensions in which it is executed in the full respect of its own legal order, comprising human rights and democratic legitimacy.

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<sup>81</sup> Joint Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A new response to a changing Neighbourhood, COM (2011) 303 final, 25.05.2011, p. 5: "Commitment to human rights and fundamental freedoms through multilateral treaties and bilateral agreements is essential. But these commitments are not always matched by action. Ratification of all the relevant international and regional instruments and full compliance with their provisions, should underpin our partnership".

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