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Europeanization Of The Fight Against Terrorism: A Comparative  
Analysis Of The Czech Republic, Germany And Austria

Master's Thesis

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I hereby declare that this Master's Thesis on the topic of Europeanization Of The Fight Against Terrorism: A Comparative Analysis Of The Czech Republic, Germany And Austria is my original work and I have acknowledged all sources used. I further declare that the text of this thesis including footnotes has 103 248 characters with spaces.

In Olomouc on the 31 March 2024

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Bc. Tereza Teichmannová

I would like to thank my supervisor Mgr. et Mgr. Ondřej Filipec, Ph.D., for his patience, guidance, help and inspiration.

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## Table of Contents

Introduction. Aims of the thesis. Research questions.....	5
1. The theory of Europeanisation of law .....	7
1.1. Development at EU level.....	10
1.1.1. Legislation: EU Regulations, Directives and Decisions.....	10
1.1.2. Exploring the role of the SDEU .....	11
1.2 Penetration of individual legal states.....	13
1.2.1. Harmonisation efforts .....	13
1.2.2. Standardisation efforts .....	14
2. The evolution of EU anti-terrorism policy .....	16
2.1 Cooperation with the international community .....	16
2.1.1. European Police Agency (Europol).....	18
2.1.2. The European Union Agency for Cooperation in Criminal Justice (Eurojust) .....	18
2.2 Legislation for cooperation and coordination of action within the EU .....	19
2.2.1. Security measures and information sharing.....	21
2.2.2. Financing terrorism .....	22
2.2.3. Dissemination of terrorist content online .....	23
2. Experience of selected countries with terrorism .....	25
3.1. Austria .....	25
3.2. Czech Republic.....	26
3.3. Germany .....	27
4. Implementation of directives, involvement of selected countries in the EU agenda, comparison .....	29
4.1. Austria .....	29
4.2. Czech Republic.....	35
4.3. Germany .....	39
4.4. Comparison.....	43
Conclusion.....	45
Reference list.....	47
Summary.....	56

## **Introduction. Aims of the thesis. Research questions.**

The fight against terrorism is one of the European Union's priorities. This priority has become particularly important since the attacks of 11 September 2001, which prompted not only EU Member States but also the whole world to take security measures. At the same time, Germany and Austria have also done so, having committed themselves by their membership of the European Union to adopting objectives that lead to combating terrorist offences on their territory and, at the same time, to cooperation on this issue. The third state selected for this work is the Czech Republic, which joined the Union in 2004 and has begun to participate more in EU counterterrorism activities. The states are involved in the European Counter Terrorism Association (TE-SAT). At first glance at the geographical location of these neighbours, one might think that their experience would be similar. However, despite the similar geography of the three countries, the experience of the Czech Republic, Germany and Austria in counterterrorism differs.

The thesis focuses on mapping this divergent experience of terrorism, engagement with the EU agenda and comparing the implementation of EU legislation. By its nature, it offers a very close link between the fields of EU policy and European law. On the form of treatment, the thesis is structured in four main chapters. Chapter One, *The Theory of Europeanization of Law*, is devoted to defining the concept of Europeanization in the field of law, the form of legislation at the EU level. The role of the Court of Justice in the process of Europeanization is important, as it ensures the consistency of EU law. The process of penetration into individual legal states in terms of harmonisation and standardisation efforts is not neglected. The chapter includes publications or statements by prominent authors such as Claudio M. Radaelli and Cristina Ferreira. The intention of including this chapter is to answer the research question "*What is Europeanization in the field of law?*". The second chapter focuses on the development of EU anti-terrorism policy together with the directives that have been adopted over the years. The research question for this chapter is "*What is the content of specific instruments applied at EU level?*". The third chapter presents the issue of terrorism in the Czech Republic, Germany and Austria. The content is the characteristics of terrorist attacks that have taken place in their territories in recent years. One major attack and the response to it in each of the selected countries is mentioned in passing. The last chapter is *Implementation of the Directives, the involvement of the selected countries in the EU agenda, and a comparison*. The division of the subchapters corresponds to the names of the selected countries. The last subchapter is devoted to a comparison of these states. The official websites of individual ministries, the text of

directives and laws are used for the elaboration. The aim of the chapter is to provide an answer to the research question: *"To what extent is the Europeanisation of the fight against terrorism taking place at the level of the three selected states?"*

# 1. Theories of the Europeanisation of law

The purpose of the chapter The Theory of Europeanization of Law is to answer the first research question "*What is Europeanization in the field of law?*". In order to sufficiently capture the topic, the chapter is further divided into two main subchapters. The first subchapter Development at the EU level is devoted to the horizontal process of Europeanisation, while the second subchapter Penetration into individual states is based on the vertical process.

The concept of Europeanisation is not uniformly and precisely defined, hence there are many different definitions. Europeanisation is seen as a process, not a phenomenon with a uniform characteristic.<sup>1</sup> Claudio M. Radaelli's much-quoted definition of Europeanisation speaks of Europeanisation as "*processes of formation, diffusion and institutionalisation of formal and informal rules, procedures, policy paradigms, styles, ways of 'doing things' and sharing of views and norms, which are first defined and consolidated within EU policy processes and then incorporated into the logic of domestic (national and sub-national) discourse, political structures and public policies*".<sup>2</sup> Borneman and Fowler identify the process of Europeanisation as important for Europe for both internal and external reasons. This process defines new forms of identification with territory and people. The EU itself is consolidating the enforcement of pan-European norms at different levels, where different interests, including national security, are gradually being institutionalised.<sup>3</sup>

Europeanisation in the field of law has been discussed by Cristina Ferreira (2009), who has divided the process into three perspectives (direct legal integration, indirect legal integration, perspective beyond the EU). The process of direct legal integration is based on two fundamental principles: the principle of primacy and the principle of direct effect. The EU's constitutional and legal structure requires its institutions and Member States to take adequate measures to implement and enforce the provisions of the Treaties and other legislative acts. The process of indirect legal integration involves a genuine, voluntary, autonomous process whereby Member States adopt EU principles and/or concepts exclusively in the field of national law, thereby extending the scope of EU law beyond common obligations. According to the author, this phenomenon is complex and invisible because there is no conflict of powers between the social

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<sup>1</sup> RICHARDSON, J. MAZEY, S. (Eds.) *European Union: power and policy-making*. 4th ed. London: Routledge, 2015. ISBN 9781315735399.

<sup>2</sup> RADAELLI, C. M. Europeanisation: Solution or problem? *European Integration Online Papers* [online]. 2004 vol. 8, No. 16 [viewed 8 January 2024]. Available from: <https://ssrn.com/abstract=601163>.

<sup>3</sup> BORNEMAN, J. FOWLER, N. Europeanization. *Annual Review of Anthropology*. 1997, 26. pp 487-514.

and national legal orders. The third perspective is the extension of EU law beyond physical borders. In this perspective, the author highlights the specific character and nature of EU law, which is an added value not only for other countries but also for organisations. Thus, non-EU lawmakers may find valuable material for legal analysis and rationales in already existing foreign legal sources, such as EU law specifically. The influence is naturally most obvious in neighbouring states that are members of the European Economic Area (EEA).<sup>4</sup>

In the publication "The Europeanization of Law in a Legal Theoretical Context: an Interpretation of Basic Concepts", Miloš Večera and Tatiana Machalová list the mechanisms that are applied mainly through legal instruments in the process of Europeanization of law. These mechanisms are:

- *"governance through negotiation" (a key form of Europeanisation in areas ranging from fisheries to immigration policy),*
- *Governance through hierarchy (in areas where EU institutions have a high degree of delegated powers over nation states),*
- *Positive integration (e.g. market rules, pollution limits, common agricultural policy, etc.)*
- *negative integration (consisting of removing barriers to integration, e.g. in competition, telecommunications, postal services, etc.),*
- *facilitated coordination (in areas where Member States are the main actors and the EU is a platform for cooperation and exchange of experience, e.g. in education policy)."*<sup>5</sup>

According to Michal Bobek, the ideal form of Europeanisation is a broader normative vision. The author addresses this topic in his publication "Europeanization of Public Law", where he considers Europeanization in a broader scale as, among other things, a broader image of internationalization or "globalization" of administrative or public law in general. The process of Europeanization seeks to create a common legal space and identity, where the process itself is part of the broader task of legal scholarship. The aim is to seek coherence at different levels.

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<sup>4</sup> FERREIRA, Cristina. The Europeanization of Law, In: OLIVEIRA, Jorge Costa, CARDINAL, Paulo (eds.). One Country, Two Systems, Three Legal Orders Perspectives of Evolution. Berlin: Springer, 2009, pp. 171.

<sup>5</sup> VEČERA, M. MACHALOVÁ, T. *Europeanization of law in a legal theoretical context: interpretation of basic concepts*. Brno: Masaryk University, 2010. ISBN 978-80-210-5171-3.



According to Bobek, national legal scholarship has similar aims, and as far as quality national legal scholarship is concerned, they can be called the same aims.<sup>6</sup>

The essence of Europeanisation is the creation of common European models in the governance of certain issues, which are further translated into national legislation and organisational arrangements. Common European models can be strict or loose, which implies a range of responsibilities for individual countries.<sup>7</sup> In terms of substantive scope, more precisely the areas that are affected at the national level, political scientists usually divide the subject of Europeanisation into three dimensions: *Politics, Policy and Politics*. This paper focuses on the *Policy* dimension, which specifically includes norms and objectives, policy instruments, resources, organisational structures and actor networks.

The chapter dealt with the issue of Europeanisation in the field of law and its definitions. The process of Europeanisation cannot be clearly characterised as it is a set of diverse processes. A frequently cited author in relation to Europeanisation in the field of law is Claudio M Radaelli, who describes this process as the formation, expansion and institutionalisation of EU rules, procedures, policy paradigms and norms, which are then translated into domestic policy. Another author mentioned is Cristina Ferreira, who distinguishes three perspectives on the Europeanisation of law. Miloš Večera and Tatiana Machalová identify mechanisms of Europeanisation of law that include governance through negotiation, governance through hierarchy, positive integration, negative integration and facilitated coordination. Michal Bobek characterizes Europeanization as a process that seeks to create a common legal space and identity, while the process itself is part of the broader task of legal scholarship. The following subchapter is devoted to the specific legislation that figures at the EU level and the role of the CJEU.

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<sup>6</sup> BOBEK, Michal. Europeanization of Public Law. In: VON BOGDANDY, A. et al. (ed.), *The Max Planck Handbook in European Public Law: The Administrative State*. Oxford University Press, 2016.

<sup>7</sup> ZEMANOVÁ, Š. Research on Europeanization - current problems and perspectives. *International Relations*, 2007, 4, 29-51.

## **1.1. Development at EU level**

The European Union has several pieces of legislation, not all of which are legally binding on EU Member States. At the same time, only some of them apply to all EU Member States and others only to selected countries. Legislation also includes the treaties establishing the European Union and its functioning, which were concluded between the governments of the member countries and correspond to the legal form of treaties. Regulations, directives and decisions are included in the category of legally binding rules. Non-binding EU legislation includes recommendations and opinions.<sup>8</sup> The following two subsections look in more detail at the types of legislation and the role of the Court of Justice of the European Union in the Europeanisation process.

### **1.1.1. Legislation:EU regulations, directives and decisions**

EU regulations are part of the secondary sources of Community law and are characterised by their unifying effect and the aim of unifying legislation in different areas, with full validity in all Member States (direct effect). In terms of the impact on national institutional structures, the impact of the Regulation is considered to be minor, but there is the potential to trigger complex institutional changes in the Member States. While Regulations are directly applicable, Directives are not.<sup>9</sup> The EU Directives, as drafted, set targets that all EU countries must meet, but these can be met by different practices of national authorities. Directives are transposed into national law with the need to comply with the content, method of transposition together with transparent and transposition measures in the form of a generally binding legal act. Each Member State is responsible for the way in which an EU directive is transposed into national legislation. The spatial effects of applied directives vary to a large extent from country to country, and reasons for this may include differences in the functioning of national spatial planning systems, the transposition of directives and their interpretation by the courts, the influence of different national administrative cultures on the process, or a combination of these

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<sup>8</sup> European Union. Types of legislation. [online]. [viewed 21 March 2024]. Available from: [https://european-union.europa.eu/institutions-law-budget/law/types-legislation\\_en](https://european-union.europa.eu/institutions-law-budget/law/types-legislation_en).

<sup>9</sup> Ibid;

BAUER, M. W. KNILL, CH. PITSCHEL, D. Differential Europeanization in Eastern Europe: The Impact of Diverse EU Regulatory Governance Patterns. *Journal of European Integration* 29, 2007, 4, pp. 405-423.

factors.<sup>10</sup> EU decisions are directly applicable and binding on all those to whom they are addressed. They are usually addressed to specific persons, undertakings or states.<sup>11</sup>

### **1.1.2. Examining the role of the SDEU**

The Court of Justice of the European Union (CJEU) is responsible for ensuring that EU law is consistent and for interpreting and applying the Treaties. If the CJEU finds an EU act to be contrary to EU law, it declares it invalid. EU countries, EU institutions and EU citizens can bring actions before the Court. A Member State has the power to bring actions against the Commission before the Court if sanctions are imposed on businesses.<sup>12</sup>

In relation to Europeanisation, the Court uses Articles 258 and 267. In the event of a failure to fulfil an obligation, the Court uses Article 258 TFEU, which allows the Commission to initiate proceedings against Member States. *If that State fails to comply with the opinion within the time limit set by the Commission, the Commission may refer the matter to the Court of Justice of the European Union.*<sup>13</sup> The existence of Article 267 TFEU has brought about a separate enforcement system. The initiation of legal proceedings comes from the national courts when an entity seeks to enforce a right under EU law. This situation can also arise in the case of a directive not properly implemented into national law.

*"The Court of Justice of the European Union has jurisdiction to rule on preliminary questions relating to:*

*(a) interpretation of the Treaties,*

*(b) the validity and interpretation of acts adopted by the institutions, bodies, offices or agencies of the Union.*

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<sup>10</sup> OTHENGRAFEN, F. Planning Cultures in Europe: Decoding Cultural Phenomena in Urban and Regional Planning. In: KNIELING, J. (ed.). London: Routledge, 2016. ISBN 9781315246727.

European Union. Types of legislation. [online]. [viewed 21 March 2024]. Available from: [https://european-union.europa.eu/institutions-law-budget/law/types-legislation\\_en](https://european-union.europa.eu/institutions-law-budget/law/types-legislation_en).

<sup>11</sup> Ibid.

<sup>12</sup> BUX, U. MACIEJEWSKI, M. Competences of the Court of Justice of the European Union. [europarl.europa.eu](https://www.europarl.europa.eu/factsheets/en/sheet/12/pravomoci-soudniho-dvora-evropske-unie?fbclid=IwAR3CTcRuzCqc__a79l80udjIy2geLZXrpDZ9Hb1Lof9rFs0pT5SkRrB-XEw) [online]. November 2023 [viewed 7 January 2024]. Available from: [https://www.europarl.europa.eu/factsheets/en/sheet/12/pravomoci-soudniho-dvora-evropske-unie?fbclid=IwAR3CTcRuzCqc\\_\\_a79l80udjIy2geLZXrpDZ9Hb1Lof9rFs0pT5SkRrB-XEw](https://www.europarl.europa.eu/factsheets/en/sheet/12/pravomoci-soudniho-dvora-evropske-unie?fbclid=IwAR3CTcRuzCqc__a79l80udjIy2geLZXrpDZ9Hb1Lof9rFs0pT5SkRrB-XEw).

<sup>13</sup> Consolidated version of the Treaty on the Functioning of the European Union - PART SIX: INSTITUTIONAL AND FINANCIAL PROVISIONS - TITLE I: INSTITUTIONAL PROVISIONS - Chapter I: Institutions - Section 5: Court of Justice of the European Union - Article 258 (ex Article 226 of the EC Treaty)

*Where such a question arises before a court of a Member State, that court may, if it considers it necessary to give a ruling on that question in order to give its judgment, request the Court of Justice of the European Union to give a ruling on that question.*

*If such a question arises in a hearing before a court of a Member State whose decision cannot be challenged under national law, that court must refer the matter to the Court of Justice of the European Union.*

*If such a question arises at a hearing before a court of a Member State concerning a person in custody, the Court of Justice of the European Union shall give its decision as soon as possible.*"<sup>14</sup>

In the context of the Europeanisation process, the role of the CJEU provides the deepest and best understood example of the Europeanisation of state structures.<sup>15</sup>

This subchapter deals with European Union legislation, which has different legal binding force and applies either to all Member States or only to certain Member States. Legal measures include treaties on the establishment and functioning of the EU, which are concluded between the governments of member states and take the form of treaties. Legally binding EU rules include regulations, directives and decisions, while recommendations and opinions are not legally binding. Regulations have direct effect and apply throughout the EU, with less influence on national institutional structures. Directives set objectives that all EU countries must meet, but can be met by different procedures of national authorities and must be transposed into national law. EU decisions are directly applicable and binding on all those to whom they apply. The Court of Justice of the European Union (CJEU) ensures compliance with EU law, interprets the Treaties and decides on the validity of EU acts. Member States, EU institutions and citizens can bring actions before the CJEU. The CJEU also rules on preliminary questions concerning the interpretation of the Treaties and the validity of EU acts. In the context of Europeanisation, the CJEU represents a deeper understanding of the Europeanisation of state structures. The next subchapter describes the process of national penetration through harmonisation and standardisation efforts.

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<sup>14</sup> Consolidated version of the Treaty on the Functioning of the European Union - PART SIX: INSTITUTIONAL AND FINANCIAL PROVISIONS - TITLE I: INSTITUTIONAL PROVISIONS - Chapter 1: Institutions - Section 5: Court of Justice of the European Union - Article 267 (ex Article 234 of the EC Treaty)

<sup>15</sup> SWEET, A. S. The European Court of Justice and the judicialization of EU governance. *Living Reviews in European Governance*, 2010, 5(2). ISSN 1813-856X.

## 1.2. Penetration of individual jurisdictions

These processes shape the relationship between domestic and European policy, with the *bottom-up* process determining the decision-making system and the *top-down* process determining the implementation system. European decisions themselves are legally binding on Member States (except for treaty revisions) and regulations are directly applicable. The procedure is different for the adoption of directives, which have to be transposed into national law by national parliaments. Furthermore, directives and regulations must be implemented and enforced by national administrations.<sup>16</sup> The following subsections discuss harmonisation and standardisation efforts. These efforts are inherent in the process of the penetration of European law into national law.

### 1.2.1. Harmonisation efforts

The essence of harmonisation is to achieve similarity in legislation between countries. Harmonisation is achieved primarily through directives, which achieve minimum or maximum harmonisation. Minimum harmonisation through directives means the setting of minimum standards, where it is assumed that the legal systems in some countries have already achieved higher standards. Maximum harmonisation establishes rules not only for the minimum but also for the maximum standards that a directive brings.<sup>17</sup> This harmonisation brings full coverage of the subject matter under consideration, and has been applied in the harmonisation of units of measurement or in the area of consumer protection.<sup>18</sup> Other types of harmonisation are alternative and optional. In alternative harmonisation, national legislators choose between different solutions to protect the public interest. Optional harmonisation refers to the retention of national legislation alongside European legislation.<sup>19</sup>

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<sup>16</sup> BÖRZEL, T.A. Pace-Setting, Foot-Dragging, and Fence-Sitting, Member State Responses to Europeanization. *Journal of Common Market Studies*, 2002. 40 (2), 193-214.

<sup>17</sup> Consolidated text of the Treaty on the Functioning of the European Union PART SIX - INSTITUTIONAL AND FINANCIAL PROVISIONS TITLE I - INSTITUTIONAL PROVISIONS CHAPTER 2 - UNION ACTS, PROCEDURES FOR THEIR ADOPTION AND OTHER PROVISIONS SECTION 1 - LEGAL ACTS OF THE UNION Article 288 (former Article 249 of the EC Treaty)

<sup>18</sup> Chamber of Deputies of the Parliament of the Czech Republic: Department for European Union Affairs. FAQs - European Union. *psp.cz* [online]. [viewed 19 October 2023]. Available from: <https://www.psp.cz/sqw/hp.sqw?k=2506>.

<sup>19</sup> Information system for implementing EU law. Methodological principles for the approximation of the law of an associated state with the law of the European Union on the example of the Czech Republic: II. The functions and concepts of convergence of law. *isap.vlada.cz* [online]. [viewed 19 October 2023]. Available from: <https://isap.vlada.cz/Dul/cesty.nsf/e9098c2cd9b2b953c12563b1000364c0/823cc82a83c5dcbc802566d00054df7b?OpenDocument>.

In areas of a complementary nature, harmonisation of legislation is prohibited. Specifically, the prohibition applies to the following areas of activity: industry, culture, tourism, protection of the improvement of human health, general education, vocational training, youth and sport, civil protection and administrative cooperation.<sup>20</sup>

### **1.2.2. Standardisation efforts**

On 28 March 2003, general guidelines for cooperation with European standardisation organisations were adopted. Stakeholders agreed on a similar standardisation approach, which is *"a voluntary activity based on consensus, carried out by and for the stakeholders themselves, based on openness and transparency, within independent and recognised standardisation organisations, leading to the adoption of standards, compliance with which is voluntary."*<sup>21</sup>

A set of key documents on the European Commission's European standardisation policy is the Vademecum<sup>22</sup> on European standardisation. The Vademecum has no legal status, but serves as a tool for Commission officials, Member States and stakeholders. It is divided into three main processes: requests for standardisation, the role and use of harmonised standards in product harmonisation legislation, regulatory use of standards.<sup>23</sup> At the same time, Regulation (EU) No 1025/2012 was adopted to provide the legal basis for the standardisation process. Articles 8 to 12 set out European standards and other deliverables supporting Union legislation and policies, and set out in more detail the role of the Commission in relation to standardisation (planning process, initiation and requests for standardisation). The Commission has a duty to inform stakeholders before taking concrete action. Legislation may be supported by voluntary European standards, in the case of harmonised standards contained in the Official Journal of the EU.<sup>24</sup>

The subchapter deals with harmonisation and standardisation, which contribute to greater coherence and interoperability between the legal systems of EU Member States. Harmonisation of legislation is aimed at achieving similarity in legislation between countries. This

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<sup>20</sup> Chamber of Deputies of the Parliament of the Czech Republic: Department for European Union Affairs. FAQs - European Union. *psp.cz* [online]. [viewed 19 October 2023]. Available from: <https://www.psp.cz/sqw/hp.sqw?k=2506>.

<sup>21</sup> General Guidelines for the Cooperation between CEN, Cenelec and ETSI and the European Commission and the European Free Trade Association from 28 March 2003.

<sup>22</sup> A handbook containing terms from the professional sector.

<sup>23</sup> Evaluation of the functioning of Regulation (EU) No 1025/2012 of the European Parliament and of the Council of 25 October 2012 on European standardisation with regard to the new developments and challenges facing European standardisation.

<sup>24</sup> *Ibid.*

harmonisation takes place mainly through directives, which may set minimum or maximum standards. Minimum harmonisation sets minimum standards, while maximum harmonisation establishes both minimum and maximum standards. There are also alternative and optional forms of harmonisation. In areas with a complementary character, harmonisation is prohibited, for example in industry, culture or tourism. Standardisation efforts are aimed at voluntary, consensus-based activities carried out by independent standardisation organisations. The European Commission promotes standardisation through various documents such as the *Vademecum on European Standardisation*. This documentation serves as a tool for Commission officials, Member States and other stakeholders. The standardisation process is also regulated by Regulation (EU) No 1025/2012, which sets out European standards and the Commission's role in the standardisation process. In the next chapter, the thesis will focus on the development of EU counter-terrorism policy and the specific instruments applied at EU level.

## **2. The evolution of EU counter-terrorism policy**

The chapter focuses on the EU counter-terrorism policy, the cooperation of the international community in the fight against terrorism and the legal provisions for cooperation as well as the coordination of measures within the EU. The purpose of this section is to answer the second research question: "*What is the content of specific instruments applied at EU level?*"

The origins of EU counter-terrorism policy date back to the 1970s, when the Terrorism, Radicalism, Extremism, Violence Initiative (TREVI) was established within the European Community. This initiative aimed to strengthen cooperation between the Member States of the European Community (the predecessor of the EU) by improving information exchange, coordination and cooperation between Member States. At that time, Member States were already interested in developing common strategies and measures to combat security threats, including terrorism. The TREVI group met informally on a regular basis. Cooperation on internal security cooperation was later replaced by Europol and other initiatives focusing on this area.<sup>25</sup>

The signing of the Maastricht Treaty marks a milestone, as the third pillar of EU cooperation in the area of home affairs and justice is created. This created an area of policy and intergovernmental cooperation between the EU and the Member States. The Maastricht Treaty brought about a change in the organisational structure of the EU, part of which was the transfer of TREVI to the EU. Between the adoption of the Maastricht Treaty and the events of 11 September 2001, another treaty was adopted, which was the Treaty of Amsterdam. The purpose of this treaty was to create an area of freedom, security and justice, which is intrinsically linked to the free movement of persons.<sup>26</sup>

### **2.1. Cooperation with the international community**

The relationship of the European Union to the International Community is set out in the Treaty on European Union in Articles 2 and 3. Article 2 TEU lists the values on which the Union is founded and, subsequently, Article 3(5) TEU advocates these values in the Union's relations with the outside world. In the same context, the Union contributes to the respect and

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<sup>25</sup> DENG, A. *Massnahmen der EU zur Terrorbekämpfung*. Vienna: Landesverteidigungsakademie, 2005.

<sup>26</sup> *Ibid*,

FILIPEC, O. *The phenomenon of terrorism: the Czech perspective*. Olomouc: Palacký University in Olomouc, 2017. ISBN 978-80-244-5040-7.



development of international law and the principles of the UN Charter.<sup>27</sup> The cooperation between the UN and the EU is based on the same values and allows for a wide scope for cooperation, from the financing of terrorism to protection against terrorist attacks. The UN supports the activities adopted by the European Union.<sup>28</sup>

During 2001-2021, several resolutions were adopted by the UN Security Council dealing with the fight against terrorism in accordance with international law, international refugee law and international humanitarian law. Based on Chapter VII of the UN Charter, the first resolution 1371(2001) was an immediate response to the terrorist attacks of 11 September 2001. The resolution adopted *"stresses the need to combat by all means, in accordance with the Charter of the United Nations, threats to international peace and security arising from acts of terrorism."* It also states that *"the acts, methods and practices of terrorism are contrary to the purposes and principles of the United Nations [...] and the deliberate financing, planning and instigation of terrorist acts are also contrary to the purposes and principles of the United Nations."* This was followed two months later by another UN Security Council Resolution 1377 (2001), which *"stresses that acts of international terrorism are contrary to the purposes and principles of the Charter of the United Nations and that the financing, planning and preparation of acts of international terrorism, as well as any support for such acts, are likewise contrary to the purposes and principles of [the Charter]"*. The third resolution was adopted at a distance, resolution 1624 (2005) reaffirming the points made in the previous resolutions. It also stressed that any measures taken to combat terrorism must be in accordance with refugee and humanitarian law. There was also a shift in 2006, when the UN General Assembly adopted the Global Counter-Terrorism Strategy, which provides a common strategic framework for Member States in the fight against terrorism. This was followed by the adoption of another resolution 2178 (2014) focused on refugee status, which is not to be abused by those who facilitate, commit or participate in the organization of terrorist acts. *"Member States shall [...] prevent and repress the recruitment, organization, transportation or equipping of persons travelling to a State other than their State of residence or nationality for the purpose of committing, planning, preparing or participating in terrorist acts or active or passive participation in terrorist training, and the financing of their travel expenses and activities"*. In

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<sup>27</sup> BĄKOWSKI, P. Understanding EU counter-terrorism policy: External dimension of EU counter-terrorism policy. [www.europarl.europa.eu](http://www.europarl.europa.eu) [online]. March 2023 [accessed 08 December 2023]. Available from: [https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/739395/EPRS\\_BRI%282023%29739395\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/739395/EPRS_BRI%282023%29739395_EN.pdf).

<sup>28</sup> VRIES, G. The European Union's Role in the Fight Against Terrorism. *Irish Studies in International Affairs*, vol. 16, 2005, pp. 3-9.

2017, a separate United Nations Office for Counter-Terrorism (UNOCT) was established to be responsible for the above-mentioned issues, alongside the United Nations Office on Drugs and Crime (UNODC).<sup>29</sup>

### **2.1.1. European Police Agency (Europol)**

Europol is an intergovernmental body created to improve the performance and cooperation of competent authorities not only in the fight against terrorism but also against other forms of international crime. Police forces from individual Member States have recourse to this body when international crime affects two or more countries. Europol collects and analyses information. Information may be transferred and exchanged, including on technical matters, where necessary.<sup>30</sup> Access to the information system is restricted to a limited number of people, such as national units or Europol vetted staff. Only the unit that entered the information may modify, correct or delete it. The transmission of this information between national units and the competent authorities of the Member States is governed by national law.<sup>31</sup> Europol has also established the European Counter-Terrorism Centre (ECTC), which is the focal point in the EU for counter-terrorism with the power to collect operational information from law enforcement authorities for analytical purposes. The ECTC provides operational support at the request of Member States in ongoing investigations.<sup>32</sup>

### **2.1.2. The European Union Agency for Cooperation in Criminal Justice (Eurojust)**

Eurojust, which has legal personality and, like Europol, was set up to promote and strengthen cooperation between authorities in the field of legal cooperation. The judicial authorities of the Member States use this institution to investigate and prosecute criminal offences. In addition to promoting cross-border cooperation between national authorities, Eurojust cooperates with a number of other institutions such as Europol, the European Judicial Network and international organisations.<sup>33</sup> According to the 2019 report, Eurojust cooperates closely with Europol. Since 1 September 2019, Eurojust has set up the European Counter-Terrorism Judicial Register,

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<sup>29</sup> International Counter Terrorism. *bmeia.gv.at*, [online]. [viewed 2 December 2023]. Available from: <https://www.bmeia.gv.at/en/european-foreign-policy/global-issues/international-counter-terrorism/>.

<sup>30</sup> Europol. About us. *europol.europa.eu* z [online]. 11 August 2023 [viewed 2 November 2023]. Available from: <https://www.europol.europa.eu/about-europol>.

<sup>31</sup> Convention based on Article K.3 of the Treaty on European Union, on the establishment of a European Police Office (Europol Convention)

<sup>32</sup> Europol. *European Union Terrorism Situation and Trend report (TE-SAT)*. In Te-Sat. 2016.

<sup>33</sup> European Union Agency for Criminal Justice Cooperation (Eurojust). About us. *eurojust.europa.eu* z [online]. [viewed 2 April 2023]. Available from: <https://www.eurojust.europa.eu/about-us>.

whose function is to collect information on ongoing and completed judicial proceedings in the field of counter-terrorism.<sup>34</sup>

This part of the thesis deals with the origins of the European Union's anti-terrorism policy, which dates back to the 1970s. At that time, the TREVI initiative was created to strengthen cooperation between Member States in the field of internal security. Following the signing of the Maastricht Treaty, this area became part of the third pillar of the EU, which brought about organisational changes and the transition of TREVI to EU jurisdiction. The content of the subchapter then focuses on EU cooperation with the international community, in particular the UN Security Council. Several resolutions on counter-terrorism were adopted between 2001 and 2021, emphasising the importance of respecting international law and the principles of the UN Charter. These documents also set out common strategies and measures in the fight against terrorism and stress the need to protect refugees from being used for terrorist purposes. In 2017, a separate United Nations Office on Counter-Terrorism (UNOCT) was established to coordinate international counter-terrorism activities. In the context of international cooperation, the role of two key EU criminal justice institutions, Europol and Eurojust, cannot be overlooked. Europol is an intergovernmental body created to strengthen cooperation in the fight against terrorism and other forms of international crime. Eurojust is an EU institution with legal personality which serves to promote cooperation between the judicial authorities of the Member States. Its main task is to coordinate the investigation and prosecution of crimes with a cross-border dimension. Eurojust cooperates not only with national authorities but also with other EU institutions and international organisations such as Europol and the European Judicial Network. Its aim is to ensure the effective investigation and prosecution of crimes within the EU. I devote the following subsection to specific legislation for cooperation and coordination of measures within the EU.

## **2.2 Legislation for cooperation and coordination of action within the EU**

In the aftermath of the attacks in the USA on 11 September, a legal framework for the fight against terrorism<sup>35</sup> within the EU was established. The first document issued by the European Council after its extraordinary meeting was the Resolution and Action Plan of 21 September 2001. This was followed by the publication of EU Council Common Position 2001/930/CFSP on combating terrorism of December 2001 and EU Council Common Position 2001/931/CFSP

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<sup>34</sup> Eurojust. *Eurojust Report on Counter-Terrorism*. December 2020.

<sup>35</sup> "Terrorism is planned, premeditated and politically motivated violence, directed against uninvolved persons, to achieve desired objectives." - Security Policy Department, mvcr.cz

on the use of special measures to combat terrorism. Council Common Position 2001/931/CFSP Article 4 provides for Member States to assist each other through police and judicial cooperation in criminal matters, as a result of Title VI of the Treaty on European Union, in preventing and combating terrorist acts.<sup>36</sup>

Framework Decision 2002/475/JHA of 13 June 2002 has become the cornerstone of the EU criminal justice response in the fight against terrorism. This Decision was later amended by Council Framework Decision 2008/919/JHA. The purpose of the Decision is to harmonise national legislation and introduce minimum penalties for terrorist offences in EU countries. Its content is the definition of terrorist offences, offences linked to terrorist groups or offences linked to terrorist activities. In addition to the above, the decisions lay down rules for implementation. With the adoption of Council Framework Decision 2008/919/JHA, additional offences linked to terrorist activities have been newly included. These offences are: public incitement to commit a terrorist offence, recruitment of terrorists and training of terrorists. Decision 2008/919/JHA expired on 19 April 2017 and Decision 2002/475/JHA was implicitly repealed and replaced by Directive 2017/541 of the European Parliament and of the Council on combating terrorism. The adopted Directive now treats the commission of a terrorist act in the same way when it has not actually occurred (association with a terrorist group, acts linked to terrorist activities, which have been newly supplemented by travel for terrorist purposes or facilitation of travel and knowingly co-operating with funds to be used to commit these offences). In addition to other improvements to previously established procedures, EU states have been required to introduce penalties and sanctions for responsible natural and legal persons. There is also a new focus on online terrorist content and its blocking. At the same time, victim support has not been overlooked in the Directive.<sup>37 38</sup>

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<sup>36</sup> SVOBODA, I. HRBATA, M. Extremism and terrorism as destabilizing elements of society. *Vojenské rozhledy*, 2014, 23 (55), Nr. 1, pp. 33-41, ISSN 1210-3292.

Consolidated version of the Treaty on European Union - Title I - Common provisions - Article 6 (former Article 6 of the EU Treaty).

Council Common Position of 27 December 2001 on the application of special measures to combat terrorism

Declaration on combating terrorism adopted by European Council at its meeting on 25 March 2004.

<sup>37</sup> Council Framework Decision of 13 June 2002 on combating terrorism

<sup>38</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

In December 2020, the Commission issued a Communication on the EU's counter-terrorism agenda, responding to the recent wave of attacks in EU countries, which have been blamed not only on entities such as the Islamic State and al-Qaeda networks, but also on violent right-wing and left-wing extremists. The document focuses on four pillars to combat terrorism: anticipation, prevention, protection and response. In the area of anticipation, strategic intelligence plays an important role, contributing to the shaping and development of EU counter-terrorism policy and legislation. National security and intelligence services should conduct thorough risk assessments and pass these on to the EU Intelligence and Information Centre. Addressing and countering radicalisation and extremist ideologies should help to prevent attacks. Furthermore, the Communication stresses the need for protection in public spaces, critical infrastructure and modernising the management of the EU's external borders. In the event of a terrorist attack, Member States should make maximum use of Europol and Eurojust. In this context, it is important to ensure an appropriate legal framework for bringing perpetrators to justice, while ensuring support and protection for victims.<sup>39</sup>

### **2.2.1. Security measures and information sharing**

The exchange of information in the field of terrorist offences was established by Council Decision 2005/671/JHA, according to which information that may affect two or more EU countries is to be collected and transmitted to Europol or Eurojust as appropriate. To this end, a specialised unit is to be created to be responsible for transmitting information relating to this agenda to Europol. The Decision further specifies the data concerned. For Eurojust, each country shall also designate at least one authority as national rapporteur on terrorism. Countries should also set up joint investigation teams to investigate individual terrorist offences. All information gathered in connection with terrorist offences is made available to other EU countries without delay. Two years after the above-mentioned decision was issued, the Council issued a recommendation which specifically focused on the procedure for sharing experiences in the area of terrorist kidnappings. The recommendation contains a draft format for the transfer of this information, together with suggestions containing further information, for example whether political demands were at play. The transfer process should be carried out in

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<sup>39</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

accordance with national law and in accordance with the treatment of personal data. Furthermore, the information should be transferred to Europol.<sup>40</sup>

The sharing of information is enshrined in Directive 2017/541 of the European Parliament and of the Council of the EU in paragraph 32, which emphasises the importance of sharing it together with experience in order to prevent radicalisation leading to terrorism. This should make it more successful for Member States to coordinate their national policies in this area. The Directive also amends parts of EU Council Decision 2005/671/JHA as follows. Article 2(6) is replaced by the following: *"Each Member State shall take the necessary measures to ensure that relevant information collected by its competent authorities in the context of criminal proceedings pending in relation to terrorist offences is made available as soon as possible, whether or not upon request and in accordance with national law and relevant international legal instruments, to the competent authorities of another Member State where it may be used in the prevention, detection, investigation or prosecution of terrorist offences referred to in Directive (EU) 2017/541."* In parallel, additional new paragraphs 7 and 8 have been added. Paragraph 7 enumerates the exceptions in which paragraph 6 does not apply, which are a threat to an ongoing investigation, the security of an individual or a threat to the essential security interests of the Member State concerned. Article 8 instructs Member States to take the necessary measures to enable the competent authorities, upon receipt of information, to take timely action, where appropriate, in accordance with national law.<sup>41</sup>

### **2.2.2. Financing terrorism**

In the area of money laundering and terrorist financing, Directive 2005/60/EC was adopted, which provided for measures to establish the true identity of customers, to report transactions that are flagged as suspicious and to put in place preventive procedures. The new Directive 2015/849 repealed the above-mentioned Directive. The Directive included strengthening rules that primarily concerned customer identification with a focus on beneficial owners, storing beneficial ownership information on companies in a central register in each Member State and streamlining cooperation between FIUs. During 2018, another Directive was adopted to complement and strengthen the application of Directive 2015/849 on the prevention of the use

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<sup>40</sup> Council Decision 2005/671/JHA of 20 September 2005 on the exchange of information and cooperation concerning terrorist offences.

<sup>41</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.

of the financial system for money laundering or terrorist financing. Directive 2018/1673 regulates the criminal fight against money laundering and related financing of terrorism and organised crime. The adopted Directive aims to facilitate police and judicial cooperation between EU Member States, criminalise knowing money laundering (even if the perpetrator was suspected) and prevent the use of more lenient legal systems.

The document contains several key points, which are: crimes and activities with other factors, aggravating circumstances that increase the seriousness of crimes, penalties and sanctions, tools for investigation and cooperation. <sup>4243 44</sup>

### **2.2.3. Dissemination of terrorist content online**

EU measures have been taken to prevent radicalisation, which poses a serious threat due to the development of new technologies and the use of the internet and social media. In this context, the EU Regulation 2021/784 of the European Parliament and of the Council on combating the dissemination of terrorist content online was adopted in 2021. This regulation is directed at hosting service providers, who are responsible for removing or disabling access to it within one hour. The content does not omit the procedure for cross-border takedown orders where the provider is not established in the same Member State as the national authority issuing the order. The Regulation entered into force on 7 June 2022.<sup>45</sup>

The purpose of this section was to answer the second research question: "*What is the content of specific instruments applied at EU level?*" After the 9/11 attacks in the US, the EU has created a legal framework to combat terrorism. It started with the September 2001 Resolution and Action Plan, followed by EU Council Common Position 2001/930/CFSP and 2001/931/CFSP. Framework Decision 2002/475/JHA was later replaced by Directive 2017/541 on combating terrorism. This Directive expands the offences related to terrorism and introduces new rules for the commission of these offences. Countries should set up joint investigation teams and share

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<sup>42</sup> Directive 2005/60/EU of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing.

<sup>43</sup> Directive 2015/849/EU of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purpose of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC.

<sup>44</sup> Directive 2018/1673/EU of the European Parliament and of the Council of 23 October 2018 on combating money laundering by criminal law.

<sup>45</sup> Regulation (EU) 2021/784 of the European Parliament and of the Council of 29 April 2021 on addressing the dissemination of terrorist content online .

information on terrorist acts in accordance with the EU legal framework. The Council Recommendation focuses on the sharing of experiences in the field of terrorist kidnapping and formats for information transfer. EU Directive 2017/541 highlights the importance of information sharing between Member States and changes the approach to disclosure. Directives 2005/60/EC and 2015/849 address measures against money laundering and terrorist financing, with an emphasis on client identification and cooperation between financial units. Directive 2018/1673 complements and strengthens the measures of Directive 2015/849, focusing on police and judicial cooperation and the criminalisation of money laundering. EU Regulation 2021/784 targets the fight against the spread of terrorist content online, requires the swift removal of content and includes cross-border procedures. The following chapter will already focus on specific countries to map their experiences with terrorism.



## 2. Selected countries' experiences with terrorism

The chapter "Experience of selected countries with terrorism" deals with three countries, Austria, the Czech Republic and Germany. It includes the specification and number of terrorist attacks in each country that took place in the period under study. Finally, the chapter is devoted to the reactions and measures taken by governments in the wake of the attacks.

### 3.1. Austria

Austria is a country with a relatively low level of terrorist threat compared to other European countries, but this danger has not been completely eradicated. In 2008, Dr Raphael Perl, former head of the counter-terrorism department of the Organisation for Security and Cooperation in Europe (OSCE)<sup>46</sup>, warned of the increasingly unpredictable threat of terrorism. In his speech, Perl highlighted Austria's capacity for international cooperation. At the same time, he drew attention to the importance of Vienna, which can be seen as an attractive target for terrorists as it is home to the headquarters of international organisations that represent the world order.<sup>47</sup> The University of Maryland's National Consortium for the Study of Terrorism and Responses to Terrorism, which publishes data on terrorist attacks, has charted the evolution of terrorist attacks in Austria. According to this data, the highest number of attacks took place in 2008, mainly attacks on infrastructure. The second most frequent type was armed attacks, of which there were seven between 2008 and 2020.<sup>48</sup> In 2015, the Austrian government faced a massive wave of migration, which brought with it the threat of radical Islamic extremism. In the wake of radical Islamism, there was a terrorist attack in 2020, after which Austria stepped up its security measures and cooperation with other European states in the fight against terrorism. As part of international cooperation, German authorities warned Austrian authorities of the perpetrator's links to militant Salafists in Germany. Slovakia was the next state to inform the Federal Office for the Protection of the Constitution and the Fight against Terrorism (BVT)<sup>49</sup> of the man's dangerous activities, and his information was directed to the Federal Office for the Protection of the Constitution and the Fight against Terrorism (BVT)<sup>50</sup>. Former Chancellor

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<sup>46</sup> An international security organisation of mainly European states. The organisation focuses on conflict prevention, crisis management and post-conflict rehabilitation. (mver.cz)

<sup>47</sup> PERL, R. Be alert not alarmed - keeping the terrorist threat to Austria in perspective. *osce.org* [online]. 31 May 2008 [viewed 7 January 2024]. Available from: <https://www.osce.org/files/f/documents/e/2/32146.pdf>.

<sup>48</sup> University of Maryland: National Consortium for the Study of Terrorism and Responses to Terrorism. *Country: Austria*. *start.umd.edu* [online]. [accessed 13 September 2023]. Available from: <https://www.start.umd.edu/gtd/search/Results.aspx?country=75>.

<sup>49</sup> A body of the Austrian Security Agency established in 2002, which was dissolved in 2021 as part of the reforms. The authority's powers were transferred to the Directorate of State Security and Intelligence.

<sup>50</sup> A special unit under the Vienna State Police Directorate that is used for operations with an increased level of danger.

Sebastian Kurz responded to the incident, which is being described as the worst terrorist attack in Austrian history since the 1980s, by calling for reforms within the BVT.

In response to the incident, the Czech Police introduced preventive random checks of vehicles and passengers at border crossings with Austria. Politicians at the time, such as Italian Prime Minister Giuseppe Conte, French President Emmanuel Macron, British Prime Minister Boris Johnson, Dutch Prime Minister Mark Rutte and top EU officials, did not go unchallenged and "strongly condemned" the attack.<sup>51</sup> However, the Austrian government is active in protecting itself from the terrorist threat. The country continues to monitor the situation and is taking measures to minimise the risk of terrorist attacks on its territory. In this context, the state is working to improve information sharing, increase attention to monitoring extremist groups and individuals, strengthen police and military presence and prevent radicalisation.<sup>52</sup>

### 3.2. Czech Republic

The Czech Republic has rarely faced terrorist threats, most of which have been low-level. According to data from the University of Maryland, the highest number of terrorist attacks took place in the state in 2014, which was also the highest number of attacks since the establishment of the independent state. As in Austria, attacks were most often on infrastructure and facilities (facilities), but bombings or explosions were the second most common type. The perpetrators of attacks in the Czech Republic usually do not belong to the same interest group. The data show a predominantly unidentified group under which the attackers are classified. The most visible group in terms of frequency of attacks was the Revolutionary Cell Network (RCN), a group of anarchists.<sup>53</sup> In the media, the most well-known terrorist attacks were the passenger train collisions, which were characterised by anti-immigration extremism. The intention of the acts was to create fear of the migratory wave, specifically of people professing the Islamic religion. The act was recorded as the first case of a convicted terrorist attack in the Czech

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<sup>51</sup> Al Jazeera and news agencies. Austria police launch manhunt after 'terror' attack in Vienna. *aljazeera.com* [online]. 3 November 2020 [viewed 15 September 2023]. Available from: <https://www.aljazeera.com/news/2020/11/2/injuries-reported-after-shooting-incident-in-vienna-police>.

<sup>52</sup> KUBÁTOVÁ, E. On the Trail of Terror in Vienna. What do we know about the attacker, why he became radicalised and how the attack will change Austria? *irozhlas.cz* [online]. 7 November 2020 [viewed 15 September 2023]. Available from: [https://www.irozhlas.cz/zpravy-svet/rakousko-viden-teroristicky-utok-kujtim-fejzulai-policie-nemecko-radikalove\\_2011070600\\_eku](https://www.irozhlas.cz/zpravy-svet/rakousko-viden-teroristicky-utok-kujtim-fejzulai-policie-nemecko-radikalove_2011070600_eku).

SAAL, J. LIPPE, F. The Network of the November 2020 Vienna Attacker and the Jihadi Threat to Austria. *CTCSENTINEL*, 2021, 14(2).

<sup>53</sup> University of Maryland: National Consortium for the Study of Terrorism and Responses to Terrorism. *Country: Germany*. *start.umd.edu* [online]. [accessed 13 September 2023]. Available from: <https://www.start.umd.edu/gtd/search/Results.aspx?country=75>.

Republic. Due to its anti-immigration policy, the Czech Republic has not been involved in accepting immigrants from the Middle East or North Africa, unlike Germany or Austria. This fact, among other things, has an impact on the absence of terrorist crimes linked to jihadism.<sup>54</sup>

In order to increase the security situation on the territory of the Czech Republic, measures have been introduced at strategic locations such as airports, train stations and public places due to concerns about terrorism.

### 3.3. Germany

Between 2001 and 2021, states faced a large number of terrorist threats and sought to strengthen their fight against them. Within the selected countries, Germany has the richest experience of terrorism and is second only to France in the number of attacks in recent years among EU Member States. There were three terrorist attacks in the country in 2021, only two fewer than the number recorded in France.<sup>55</sup> During the period under review, the most terrorist attacks in Germany occurred in consecutive years 2015, 2016 and 2017, with 2015 being the most serious year with 65 attacks.<sup>56</sup> Jihadist terrorism is a very numerous sector, now mainly carried out by Turkish and Kurdish Islamist groups whose leadership moved to Germany in 2000.<sup>57</sup> In general, there are a number of groups committing terrorism in Germany, but apart from jihadists, the most prominent are: left-wing extremists, neo-Nazi extremists, anti-immigration extremists, anti-Semitic extremists. Their targets are mainly objects and infrastructure, as well as armed attacks and, in lower numbers, bombings or explosions. The most tragic attack in terms of deaths and injuries took place in the capital during the traditional Advent markets. The

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<sup>54</sup> CTK. A court has upheld the senior citizen's four-year sentence for the terrorist attack on trains in the Mladá Boleslav region. *Region.rozhlas.cz* [online]. 16 April 2019 [viewed 12 July 2023]. Available from: <https://region.rozhlas.cz/soud-potvrdil-seniorovi-ctyri-roky-za-teroristicky-utok-na-vlaky-na-7896090>.

JADRNÝ, P. I'm willing to go after migrants like one goes after rats, says senior man accused of terrorism on record. *irozhlas.cz* [online]. 8 January 2019 [viewed 12 July 2023]. Available from: [https://www.irozhlas.cz/zpravy-domov/jaromir-balda-terorismus-migranti\\_1901081952\\_pj](https://www.irozhlas.cz/zpravy-domov/jaromir-balda-terorismus-migranti_1901081952_pj).

<sup>55</sup> Statista Research Department. Number of completed, foiled and failed terrorist attacks in the European Union in 2021, by member state. *www.statista.com* [online]. 28 February 2023 [viewed 12 July 2023]. Available from: <https://www.statista.com/statistics/746674/number-of-terrorist-attacks-in-the-european-union-eu/>.

<sup>56</sup> Statista Research Department. Number of terrorist attacks in Germany 1970-2021. *www.statista.com* [online]. 28 February 2023 [viewed 12 July 2023]. Available from: <https://www.statista.com/statistics/541198/incidences-of-terrorism-germany/>.

<sup>57</sup> STEINBERG, G. *German Jihad: On the Internationalization of Islamist Terrorism*. New York: Columbia University Press, 2013. ISBN 9780231500531.

perpetrator drove a lorry loaded with steel into the area of the market where the crowds were. The German Federal Police were alerted to the dangerous man by Moroccan police.<sup>58</sup>

Germany responded to the attack by tightening security rules at public events. Events such as Christmas markets are protected by roadblocks or reinforced police patrols in major cities such as Nuremberg, Dresden and Cologne.<sup>59</sup>

Austria, the Czech Republic and Germany have faced different types of terrorist attacks with varying frequency. In Austria, attacks on infrastructure were the most frequent. The Czech Republic recorded the highest number of attacks in 2014, with attacks on infrastructure and bombings or explosions being the most common types. Germany experienced the most terrorist attacks between 2015 and 2017, with jihadist terrorism and attacks on infrastructure being the most common forms. These countries responded to terrorist threats by strengthening security measures and cooperating with international partners. Security measures, as legislation that has been transposed into national laws, are addressed in the following chapter.

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<sup>58</sup> CT24. Police tried to hide what they knew about the Berlin bomber before the attack, DPA reports. *ct24.ceskatelevize.cz* [online]. 18 May 2017 [viewed 5 June 2023]. Available from: <https://ct24.ceskatelevize.cz/clanek/svet/policie-se-snazila-tajit-co-o-berlinskem-atentatnikov-vedela-uz-pred-utokem-pise-dpa-98435>.

<sup>59</sup> CT24. German Christmas markets to be protected by roadblocks and increased police patrols. *ct24.ceskatelevize.cz* [online]. 29 November 2017 [viewed 5 June 2023]. Available from: <https://ct24.ceskatelevize.cz/clanek/svet/nemecke-vanocni-trhy-budou-chronit-zatarasy-i-posilene-policejni-hlidky-89196>.

## 4. Implementation of directives, involvement of selected countries in the EU agenda, comparison

The last chapter of this thesis is devoted to the implementation of the directives, the involvement of selected countries in the EU agenda and finally their comparison. For each country, the implementation of the three directives, which have been incorporated into national law under Article 288 TFEU (formerly Article 249 EC), is described<sup>60</sup>. The intention of including this chapter is to answer the research question *"To what extent is the Europeanisation of the fight against terrorism taking place at the level of the three selected countries?"*

### 4.1. Austria

Austria has extensive anti-terrorism legislation. In 2002, the definition of a terrorist offence appeared for the first time in Austrian law, as set out in Law 134/2002.<sup>61</sup> Following the 2020 terrorist attack, the number of staff was increased along with financial resources and legal instruments. The State is part of the Eurojust register containing current terrorism investigations in the Member States.<sup>62</sup> In the same year, Austria adopted an anti-terrorism law (TeBG) on a ministerial proposal, which mainly included intensifying the monitoring of perpetrators' behaviour, improving the fight against radicalisation, adopting measures in relation to the fight against terrorist financing and combating religiously motivated extremism.<sup>63</sup> In 2022, the country adopted a second "counter-terrorism package" of measures that targets cooperation between authorities. The new document refers to the condemnation of leaders, members of a terrorist organization, as well as the request or approval of terrorist crimes. The package of laws also includes an addition to the law on association, which targets the notification of the establishment of associations for the purpose of holding religious services.

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<sup>60</sup> Consolidated version of the Treaty on the Functioning of the European Union  
PART SIX - INSTITUTIONAL AND FINANCIAL PROVISIONS  
TITLE I - INSTITUTIONAL PROVISIONS  
CHAPTER 2 - LEGAL ACTS OF THE UNION, ADOPTION PROCEDURES AND OTHER PROVISIONS  
SECTION 1 - THE LEGAL ACTS OF THE UNION  
Article 288 (ex Article 249 TEC).

<sup>61</sup> Steering Committee of Experts on Terrorism (CDCT). *Austria. Profiles on Counter-Terrorism Capacity*. April 2021.

<sup>62</sup> Bureau of Counterterrorism. *Country Reports on Terrorism 2021: Austria*. *state.gov* [online]. [viewed 8 January 2024]. Available from: <https://www.state.gov/reports/country-reports-on-terrorism-2021/austria>.

<sup>63</sup> ZADIĆ, A. *Terror-Bekämpfungs-Gesetz - TeBG (83/ME)*. *www.parlament.gv.at* [online]. 22 December 2020 [viewed 18 December 2023]. Available from: <https://www.parlament.gv.at/gegenstand/XXVII/ME/83>.

The Austrian Parliament is heavily involved in EU rule-making, making Austria the country with the strongest formal position in EU affairs. This influences the rule-making process, where a decision to maintain the status quo cannot be made without breaching EU obligations. EU directives are implemented by constitutional laws, statutes or government regulations, depending on the case. Since 2003, the Federal Chancellery has been responsible for coordinating the implementation of EU directives and reporting on implementation measures.

#### *To Directive 2017/541/EU*

Austria has taken 15 measures to implement Directive (EU) 2017/541 of the European Parliament and of the Council on combating terrorism<sup>65</sup>. The measures included the adoption of two federal laws amending the Criminal Procedure Code and the 1975 Criminal Code.

With the adoption of Directive 2017/541, the obligation to extend the catalogue of offences in relation to the circumstances set out in Articles 3 to 12 and 14 of the Counter-Terrorism Directive 2017/541<sup>66</sup>. Article 3 of the Directive imposes an obligation on the State to take the necessary measures against acts that are newly considered terrorist offences. These are intentional acts to be defined as criminal offences under national law. Offences related to terrorist activities are covered by Articles 5 to 12. In order to comply with its obligations, Austria has adopted amendments to Federal Act No 60/1974 of the Criminal Code. In order to implement Article 3 of the Directive, the wording of Section 64(1) of the Federal Law was amended in paragraph 9. According to section 64(1)(9) StGB, Austrian criminal law gives equal weight to the offences of terrorist organisation (section 278b StGB); terrorist offences (section 278c StGB), related theft under sections 128 to 131 StGB. extortion (§§ 144 and 145 StGB); forgery of documents (§ 223 StGB); forgery of specially protected documents (§ 224 StGB); financing of terrorism (§ 278d StGB); training for terrorist purposes (§ 278e StGB); instruction to commit a terrorist offence (§ 278f StGB); travel for terrorist purposes (§ 278g) and offences committed in connection therewith pursuant to § 223 and § 224; incitement to terrorist offences

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<sup>64</sup> JENNY, M. MÜLLER, W. C. From The Europeanization of Lawmaking to the Europeanization of National Legal Orders: the Case of Austrian *Public Administration*, 2010: 88, issue 1, pp. 36-56. ISSN 1467-9299.

<sup>65</sup> Directive 2017/541/EU 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.

<sup>66</sup> the offence was committed wholly or partly within its territory; the offence was committed on board a ship flying the flag of a Member State or an aircraft registered in that Member State; the offender is a national or resident of a Member State; the offence was committed for the benefit of a legal person established in its territory; the offence was committed against its institutions or population or against an institution, body, office or agency of the Union established in a Member State

and approval of terrorist offences (§ 282a) abroad, irrespective of the Criminal Code at the place of the offence.<sup>67</sup>

Part of the Directive is devoted to the Provisions on the Protection, Support and Rights of Victims of Terrorism, specifically Articles 24 to 26. The wording of these articles can be summarised in 7 main points on which the Directive focuses: independent investigation and prosecution, the establishment of support for victims of terrorism, emergency response mechanisms to activate victim support services, access to medical care in the immediate aftermath of an attack, access to legal aid in accordance with EU law, protection of victims of terrorism and their family members, access to information and support. Under Austrian law, the level of victim protection (§65(1) StPO) in criminal proceedings was already high, so the rights of individual victims were only extended and introduced in the Criminal Procedure Code in §66(2) and §70(1) StPO. 631/1975 on the rights of victims provides for the right to legal assistance through a lawyer if this is necessary for the fair pursuit of their claims and at the same time to avoid subsequent civil proceedings and they are unable to meet the costs of their legal representation without their living needs being affected. Psychosocial and legal procedural support must be provided in accordance with section 66(2) of the Code of Criminal Procedure. Section 70(1) includes the right of the victim to be informed of the requirements for support in court proceedings. This includes informing<sup>68</sup> about:

1. release of the accused (§ 172(4), § 177(5))
2. escape from custody and recapture of the accused (§ 181a)
3. the escape and recapture of a refugee (§ 106 (4) StVG), as well as
4. the first unguarded departure from the institution or the imminent or successful release of the prisoner (§ 149 (5) StVG)<sup>69</sup>

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<sup>67</sup> Federal Law Gazette No. 60/1974 last amended by Federal Law Gazette I No. 70/2018.

Federal law amending the Criminal Code - ministerial draft from 17 November 2022.

<sup>68</sup> At the latest on questioning, immediately upon request

<sup>69</sup> Federal law amending the Criminal Code - ministerial draft from 17 November 2022

*To Directive 2015/849/EU*

With 69 measures, the Republic of Austria complies with the Directive<sup>70</sup> on the prevention of the use of the financial system for money laundering or terrorist financing.

In Austria, money laundering and terrorist financing is implemented in the form of the Money Laundering Act (FM-GwG). This law applies to institutions active in the field of credit and financial services, providers of services related to virtual currencies. An integral part of it is the rules for the Coordination Committee, whose task is to develop strategies and measures to prevent money laundering and terrorist financing. Furthermore, according to the law, the committee determines the procedures for national risk analysis and the duties related to carrying out statistical and analytical tasks in this area. The text does not include branches or representative offices of credit and financial institutions located in other Member States.

The National Risk Analysis targets:

1. Developing and improving measures to combat money laundering and terrorist financing, focusing in particular on identifying areas where enhanced measures need to be put in place and on formulating recommendations for appropriate countermeasures.
2. Assessment of sectors or areas with different levels of risk in the area of money laundering and terrorist financing.
3. Analysing the risks associated with money laundering and terrorist financing in relation to the development of new products and business practices, including new distribution methods and the use of new technologies for existing and new products.
4. Prioritisation and effective allocation of resources for combating money laundering and terrorist financing.
5. Ensuring that appropriate legislation is in place for each sector or area to address money laundering and terrorist financing risks.
6. Immediate provision of relevant information to obliged entities to facilitate their own assessment of money laundering and terrorist financing risks.
7. A detailed description of the institutional structure and main characteristics of the AML/CFT systems in Austria, including the mechanisms for reporting money laundering, supervisory authorities, registration authorities and authorities and

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<sup>70</sup> Directive 2015/849/EU of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purpose of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC.



authorities responsible for criminal proceedings, together with information on the human and financial resources available in this area.

8. A description of national efforts and resources, including personnel and funding, available to combat money laundering and terrorist financing.

Preparation and comprehensive statistics precede the national risk analysis. These statistics must include:

- I. Information on the scope and importance of each sector covered by Directive (EU) 2015/849, including the number of individuals and entities and the economic importance of each sector.
- II. Statistics on the filing of suspected money laundering and terrorist financing (SARs), investigations and prosecutions under the national AML/CFT system, including the number of SARs filed by the Money Laundering Reporting Office, the action taken on them and annual statistics on cases investigated, persons charged and convicted under criminal law, types of suspected offences and the value in euro of assets frozen, seized or confiscated.
- III. Where available, information on the number and proportion of SARs that have led to further investigations, together with an annual report to the obliged entities explaining the significance of their submissions and the action taken in response.
- IV. Data on the number of cross-border requests for information made, received, refused or partially or fully answered by the FIU, broken down by requesting Member State or third country.
- V. Staff assigned by the supervisory authorities to the fight against money laundering and terrorist financing, including staff assigned by the Money Laundering Reporting Office to carry out its tasks.
- VI. The number of measures taken by the supervisory authorities both on and off site, the number of infringements detected as a result of actions by the supervisory authorities and the registration authority and the number of infringements of sanctions or administrative measures applied by the supervisory authorities.

The Coordination Committee is composed of representatives of a number of institutions<sup>71</sup>, whose chairman is appointed by the Federal Minister of Finance. The Coordination Committee

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<sup>71</sup> The Federal Ministers for the Constitution, Reform, Deregulation and Justice, for the Interior, for Digitalisation and Economic /Location, for Europe, Integration and Foreign Affairs, the FMA and the Austrian National Bank.

shall be convened at least twice a calendar year, and its members shall have the power to request a meeting for serious reasons.<sup>72</sup>

*To Directive 2018/1673/EU*

In connection with the adoption of Directive<sup>73</sup> on the taking up, pursuit and prudential supervision of the business of electronic money institutions, Austria has adopted a total of 7 measures. The Sixth Anti-Money Laundering Directive aimed at strengthening cross-border cooperation and expanding the legal framework in this area. In Section 165 of the Criminal Code, the concept of criminal activity was redefined into a more comprehensive form than before, yet the penalty period of more than one year imprisonment was retained. The amended law increased the penalties for money laundering to up to 5 years imprisonment. The directive also addresses crimes committed abroad, with terrorism among the predicate offences. It is not necessary to prove all the elements of the facts or all the circumstances in order to confirm a foreign predicate offence; it depends on the individual assessment of the prosecutor or judge, which can be very subjective and vary from person to person. The main consequence for the accused in this context is legal uncertainty. It is important to note that the "burden of proof" on the issue of guilt does not shift in favour of the accused in the case of a foreign predicate offence. On the issue of money laundering, cryptocurrencies as components of assets are not omitted from section 165 StGB.<sup>74</sup>

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<sup>72</sup> Federal law consolidated: Entire legal provision for the Financial Markets Anti-Money Laundering Act, version dated March 18, 2024.

Federal Ministry of Finance. Geldwäscherei und Terrorismusfinanzierung. *bmf.gv.at* [online]. 1 January 2020 [viewed 15 February 2024]. Available from: <https://www.bmf.gv.at/themen/finanzmarkt/geldwaescherei-terrorismusfinanzierung.html>.

Corporate Service Portal. Geldwäscherei und Terrorismusfinanzierung. *usp.gov.at* [online]. 12 January 2024 [accessed 15 February 2024]. Available from: <https://www.usp.gv.at/steuern-finanzen/geldwaesche.html>.

<sup>73</sup> Directive 2018/1673/EU of the European Parliament and of the Council of 23 October 2018 on combating money laundering by criminal law.

<sup>74</sup> DORDA. Die wichtigsten Eckpunkte zur neuen Geldwäschebestimmung: Die Novelle bringt höhere Strafen und einen neuen Erschwerungsgrund mit sich. *dorda.at* [online]. 20 December 2021 [viewed 15 February 2024]. Available from: <https://www.dorda.at/de/news/die-wichtigsten-eckpunkte-zur-neuen-geldwaeschebestimmung-die-novelle-bringt-hoehere-strafen>.

Federal law amending the Criminal Code to implement the Directive on the Criminal Prevention of Money Laundering from 25 September 2020.

## 4.2. Czech Republic

The development of counter-terrorism strategies and action plans was in the context of the terrorist attacks of 11 September 2001. Since that event, the Czech Republic has been adopting National Action Plans to combat terrorism. The title and form of these action plans have been slightly modified over the years to include expanded content. Currently, there is the Action Plan for Combating Terrorism and Prejudicial Hatred 2023-2024. This plan includes, for example, methodological support for the Police of the Czech Republic and prosecutors in the area of hate crimes, providing assistance to victims of hate crimes, and maintaining international police and judicial cooperation in the area of extremism and terrorism.<sup>75</sup> The body responsible for coordinating the Czech Republic's anti-terrorism policy is the Ministry of the Interior. According to a 2013 document of the Department of Security Policy<sup>76</sup>, the Czech Republic is a state where there are no overt manifestations of domestic or international terrorism.

The text of the National Action Plan for Combating Terrorism 2005-2007, the first action plan created after the country's accession to the EU, listed the implementation of the relevant EU legislative and political acts in the area of combating terrorism as a key priority.<sup>77</sup> The Czech Republic actively participates in the EU working groups (Terrorism Working Group, COTER) in the field of the counter-terrorism agenda. Systemic preventive measures are adopted in accordance with the EU Counter-Terrorism Strategy.<sup>78</sup> At the same time, the country monitors legislative and other changes adopted by other countries and examines the possibilities of applying foreign experience to the conditions in the Czech Republic. However, not all outcomes are applicable to the Czech Republic. In a 2013 document, the country commented on its efforts to "actively combat radicalisation", raising concerns about blind acceptance of insufficiently

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<sup>75</sup>Ministry of the Interior of the Czech Republic: Department of Security Policy. Action Plan to Combat Extremism and Prejudicial Hatred 2023 - 2024. Prague, February 2023.

<sup>76</sup>Ministry of the Interior of the Czech Republic: Department of Security Policy. Strategy of the Czech Republic for Combating Terrorism since 2013. Prague, 2013.

<sup>77</sup> Committee of Experts on Terrorism (CODEXTER). *Czech Republic. National Legislation*. April 2007.

Committee of Experts on Terrorism (CODEXTER). *Czech Republic. Profiles on Counter-Terrorist Capacity*. September 2012.

<sup>78</sup> Ministry of the Interior of the Czech Republic: Department of Security Policy. Strategy of the Czech Republic for Combating Terrorism since 2013. Prague, 2013.

discussed measures in advance, the application of double standards and the search for religious or cultural motivation among immigrant communities.<sup>79</sup>

*To Directive 2017/541/EU*

The Czech Republic has adopted 37 national regulations to meet the objectives of Directive (EU) 2017/541 of the European Parliament and of the Council on combating terrorism<sup>80</sup>.

On 15 November 2018, the Czech Republic adopted Act No. 287/2018 amending Act No. 40/2009 Coll., the Criminal Code, as amended, and certain other acts. The EU Directive has been fully transposed into the Czech Republic's implementing legislation. The definition of the offence of terrorist attack (§311) has been expanded by its adoption. The definition is supplemented with the phrase "*with the intent to harm*", thus including the same approach to the commission of a terrorist attack as to an act tending to commit or to promote it. At the same time, §311 on the offence of terrorist attack is supplemented with the statement "*Preparation is punishable.*"<sup>81</sup> Amendments have also been made to §312e(3) on travel for terrorism. Emphasis is placed on the need to prove intent to travel, including exceptions for legitimate travel, e.g., in the case of humanitarian aid. The aim is to criminalize travel with specific terrorist intent (including preparation) to the Member State in question. Section 312e(2)(b) and (c) criminalizes travel for the purpose of undergoing or providing training for terrorism, thus transposing the wording of Article 9 Travel for Terrorist Purposes of the corresponding EU regulation.<sup>82</sup>

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<sup>79</sup> Ibid.

SVOBODA, I. HRBATA, M. Extremism and terrorism as destabilizing elements of society. *Vojenské rozhledy*, 2014, 23 (55), No. 1, pp. 33-41, ISSN 1210-3292.

<sup>80</sup> Directive 2017/541/EU 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.

<sup>81</sup> CHRÁSTKOVÁ, M. Comparative table for the assessment of the implementation of the EU regulation. *fau.gov.cz* [online]. 15 January 2020 [viewed 10 September 2023]. Available from: <https://fau.gov.cz/files/srovnavaci-tabulka-k-implementaci-tzv-5-aml-smernice-k-c-j-fau-10562-2021-031.pdf>.

<sup>82</sup> FOREJTOVÁ, M., On the latest EU directive on terrorism. In: VOŠTRÁ, Z. (ed). *Constitutional, European and International Perspective*. 1st ed. Plzeň: University of West Bohemia in Pilsen, 2021. ISBN 978-80-261-0922-8.

Chamber of Deputies of the Parliament of the Czech Republic. Draft Act amending Act No. 40/2009 Coll., the Criminal Code, as amended, and certain other acts. *psp.cz* [online]. [viewed 19 October 2023]. Available from: <https://www.psp.cz/sqw/text/orig2.sqw?idd=133548>.

Act No. 287/2018, Coll., amending Act No. 40/2009 Coll., the Criminal Code, as amended, and certain other acts.

### *To Directive 2015/849/EU*

With regard to the Directive<sup>83</sup> on the prevention of the use of the financial system for the purpose of money laundering or terrorist financing, 97 measures have been included in the national legal system.

This directive was transposed into Czech law in the form of Act No. 253/2008 Coll., on certain regulatory measures (known as the "AML Act"). The Act introduces the obligation to identify and control the client in order to ensure transparency and security of financial transactions, e.g. in the case of suspicious transactions or transactions exceeding a certain value. The method of identification takes place depending on whether the client is an individual, a legal entity or a trust fund. Enhanced identification is applied in the case of transactions with persons from high-risk countries or politically exposed persons. In order to meet the objectives of the Directive, the law established an administrative office with the function of a financial intelligence unit, which is subordinate to the Ministry of Finance. The work of the Office is to decide on the opening and closing of investigations, to process and share information, and to carry out any inspections. During the assessment, the risks related to money laundering and terrorist financing in the territory of the Czech Republic are assessed. The Office receives information provided by international institutions and shares the results of the processes with relevant European bodies in order to prevent crime.<sup>84</sup>

### *To Directive 2018/1673/EU*

In connection with the adoption of Directive<sup>85</sup> on the access to, exercise of, and prudential supervision of the activities of electronic money institutions, the Czech Republic adopted a total of 54 measures. In order to implement Directive 2018/1673, Act No. 333/2020 Coll. was adopted in the Czech Republic, which, among other things, amends Act No. 104/2013 Coll. on International Judicial Cooperation in Criminal Matters, as amended. The change was made in

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<sup>83</sup> Directive 2015/849/EU of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purpose of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC.

<sup>84</sup> Act No. 368/2016, Coll., amending Act No. 253/2008 Coll., on certain measures against the legalisation of the proceeds of crime and the financing of terrorism, as amended, and other related acts.

Act No. 41/2011, Coll., amending certain laws in connection with the establishment of capital requirements and supervisory procedures for banks, credit unions and securities dealers.

<sup>85</sup> Directive 2018/1673/EU of the European Parliament and of the Council of 23 October 2018 on combating money laundering by criminal law.

the sharing of forfeited or confiscated property section 140(1), in which part of the sentence "*on the basis of which the property was forfeited or confiscated*" was deleted.

The original wording of the law § 140 (1):

*"In the case of the sharing of property which has been forfeited or seized in a foreign state at the request of the Czech Republic, the procedure shall be similar to that provided for in the first and second sentences of Section 135(1); a proposal for the conclusion of an agreement on the sharing of property may be submitted to the Ministry of Finance by the court which decided the case in the first instance or by the Ministry. The court or the Ministry shall provide the Ministry of Finance, at its request, with the necessary assistance for the purpose of concluding the agreement."*

Paragraph 7 of section 268 was adopted, which states that where another Member State allows the conversion of an unexecuted monetary sentence into a custodial sentence, the judge shall determine the number of daily rates so that twice that number corresponds to the amount of the custodial sentence specified in the certificate; however, that number may not exceed the maximum number of daily rates provided for in the criminal law. The amendment to section 271 on the information obligation was made in paragraph 1(d), under which the single judge is responsible for notifying the competent authority of another Member State of the conversion of a financial penalty into a custodial sentence order. The previous wording of this part of the Act provided only for the ordering of a substitute custodial sentence without mentioning the conversion of the sentence.<sup>86</sup> The most recent amendment to this Act was made to section 314 on securing the enforcement of an order imposing an unconditional custodial sentence or a protective measure involving deprivation of liberty in another State, paragraph 1(a), which replaced the wording. The new wording introduces the possibility of converting an unexecuted sentence of house arrest, a fine or a sentence of community service into a custodial sentence. The amendment to the Czech Criminal Code introduced a new provision, which is Section 217a of the Criminal Code regulating criminal activities:

*"For the purposes of Sections 216 and 217, an act committed abroad which fulfils the elements of a criminal offence under the law of the Czech Republic shall be deemed to be a criminal*

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<sup>86</sup> Act No. 104/2013, Coll., on International Judicial Cooperation in Criminal Matters, as amended.

*offence committed abroad, irrespective of whether it is also punishable under the law of the State in whose territory it was committed.*"<sup>87</sup>

### 4.3. Germany

In the immediate aftermath of the 2001 attacks in the US, German laws were scrutinised for any shortcomings. The result was the adoption of anti-terrorism packages of laws. The first anti-terrorism package was adopted shortly after the attacks, already on 19 September 2001. This first package focused on punitive measures, while the second package was aimed at preventing terrorism.<sup>88</sup> However, changes to the law were not the only measures adopted by Germany. In 2004, the Joint Counter-Terrorism Centre (GTAZ) was established to ensure the exchange, analysis and evaluation of information from security authorities at federal and state level. Forty police and intelligence agencies are involved. It includes the Federal Office for the Protection of the Constitution or the Deputy Federal Attorney General. However, this office focuses on only one sector of counter-terrorism, which is Islamist-motivated terrorism.<sup>89</sup> The Federal Office for Migration and Refugees (BAMF) established a central Counter-Radicalisation Advisory Service in 2012. In 2015, the Federal Ministry for the Family funded projects against "Right-wing extremism, violence and acts against humanity", but only a portion was allocated to "prevention of radicalisation" and "radical forms of Islam that contradict democracy, hence the rule of law". In the area of prevention, a 'Prevention Network against Salafism' was also set up for cooperation between the police and the intelligence services.<sup>90</sup> An example of Germany's success in the fight against terrorism can be seen in data from 2022, in which no terrorist offences occurred, but approximately 256 new terrorism investigations were opened by the federal prosecutor's office.<sup>91</sup>

Furthermore, Germany has agreed with the EU and NATO to create a common database to fight terrorism more effectively. In this context, the powers of plainclothes police officers have been

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<sup>87</sup> Act No. 333/2020, Coll., amending Act No. 40/2009 Coll., the Criminal Code, as amended, Act No 141/1961 Coll., on Criminal Procedure (Criminal Procedure Code), as amended, and certain other acts.

<sup>88</sup> LEPSIUS, O. Liberty, Security, and Terrorism: The Legal Position in Germany. *German Law Journal*, 2004. 5(5), pp. 435-460.

<sup>89</sup> Bundeskriminalamt. Gemeinsames Terrorismusabwehrzentrum (GTAZ). *bka.de* [online]. [viewed 8 January 2024]. Available from: [https://www.bka.de/DE/UnsereAufgaben/Kooperationen/GTAZ/gtaz\\_node.html](https://www.bka.de/DE/UnsereAufgaben/Kooperationen/GTAZ/gtaz_node.html).

<sup>90</sup> Man in Need. Terrorism and Islamism in Germany. *clovekvtsni.cz* [online]. 29 December 2016 [viewed 5 November 2023]. Available from: <https://www.clovekvtsni.cz/terorismus-a-islamismus-v-nemecku-3805gp>.

<sup>91</sup> Bureau of Counterterrorism. Country Reports on Terrorism 2022: Germany. *state.gov* [online]. [viewed 8 January 2024]. Available from: [https://www.state.gov/wp-content/uploads/2023/11/Country\\_Reports\\_on\\_Terrorism\\_2022-v3.pdf](https://www.state.gov/wp-content/uploads/2023/11/Country_Reports_on_Terrorism_2022-v3.pdf).

extended to include the possibility of using false identities to infiltrate organisations.<sup>92</sup> Germany is actively involved in the fight against terrorism within the EU. An example is the joint statement by EU Justice and Home Affairs Ministers and representatives of EU institutions following the terrorist attacks in Brussels in 2016.<sup>93</sup>

#### *To Directive 2017/541/EU*

Germany has taken 12 measures to implement Directive (EU) 2017/541 of the European Parliament and of the Council on combating terrorism.<sup>94</sup>

With its adoption, Germany made changes to the Criminal Code concerning §89a on the preparation of a terrorist offence involving threats and attempts to incite a terrorist offence and §89c on the financing of terrorism. § Section 89a(1) of the StGB defines the concept of terrorist offences and the Directive also extends the catalogue of offences.

Terrorist crimes are:

1. Murder (Art. 211), manslaughter (Art. 212), genocide (Art. 6 of the Crimes against International Law Code), crimes against humanity (Art. 7 of the Crimes against International Law Code), war crime (Art. 8, 9, 10, 11 or 12 of the International Criminal Code),
2. Bodily injury (§ 224), bodily injury causing serious bodily or mental harm to another (§ 226)
3. Extortion (§239a) and hostage taking (§239b),
4. Offences under sections 303b, 305, 305a and public danger offences in the cases of sections 306 to 306c and 307(1) to (5) , 308(1) to (4), 309(1) to (5), 313, 314 and 315(1), (3) and (4), 316(1) and (3) and 316c(1) to (3) and 317(1),
5. Criminal offences against the environment in the cases of § 330a (1) to (3)
6. Offences under Sections 19(1) to (3), 20(1) and (2), 20a(1) to (3), 19(2), second sentence and (3), second sentence, 20(1) and (2) and 20a(1) to (3), in each case in conjunction with Section 21, and Section 22a(1) to (3) of the Arms Industry Control Act,

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<sup>92</sup> CT24. Germany to create database of potential terrorists in cooperation with EU and NATO countries. *ct24.ceskatelevize.cz* [online]. 1 June 2016 [viewed 5 November 2023]. Available from: <https://ct24.ceskatelevize.cz/clanek/svet/nemecko-vytvori-ve-spolupraci-se-staty-eu-a-nato-databazi-moznych-teroristu-114274>.

<sup>93</sup> Committee of Experts on Terrorism (CODEXTER). *Germany. Profiles on Counter-Terrorist Capacity*. September 2016.

<sup>94</sup> Directive 2017/541/EU 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.



7. Offences under Sections 51(1) to (3) and 52(1), (3), (5) and (6) of the Weapons Act,
8. Offences under section 310(1) and (2) with section 328(1) and (2),
9. Threatening to commit an offence referred to in paragraphs 1 to 8, if the act is aimed at significantly intimidating the population, at unlawfully coercing an organ or an international organization by force or threat of force, or at eliminating or significantly disrupting the fundamental political, constitutional, economic or social structures of a State or an international organization, and by the nature of its commission or its consequences is likely to cause significant damage to the State or an international organization.

The German Penal Code previously used the term serious violent crime threatening the state, which was defined as a crime against life in cases of murder (§ 211) or manslaughter (§ 212) or against personal liberty in cases of extortionate kidnapping (§ 239a) or hostage-taking (§ 239b). Following the implementation of the Directive, a more comprehensive recasting has taken place. Paragraph 2 of the StGB is supplemented by the addition of an offence in connection with terrorist activities, while paragraphs 2(4) and 2(5) of the StGB regulate the liability of travelling from/to the Federal Republic of Germany for the purpose of committing an act or participating as a member of an organisation or supporting an organisation, including instructing persons in the preparation of the offender. Paragraph 2b StGB regulates attempted incitement to commit a terrorist act in accordance with the requirements of the Directive. Paragraph 8 of the StGB has been newly created, which regulates criminal liability for threatening to commit a terrorist offence. Section 89c of the Criminal Code has expanded the list of acts whose financing is now considered terrorist financing. § Section 89c(8) StGB introduces experimental criminal liability.<sup>95</sup>

*To Directive 2015/849/EU*

With 4 measures, the Republic of Austria ensures compliance with the Directive<sup>96</sup> on the prevention of the use of the financial system for money laundering or terrorist financing. Germany has chosen to implement Directive 2015/849 by adopting the Money Laundering Act

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<sup>95</sup> Amendments by the RefE to implement the Directive Combating terrorism from 6 November 2023.

Act transposing Directive (EU) 2017/541 on combating terrorism from 22 November 2023.

<sup>96</sup> Directive 2015/849/EU of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purpose of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC.

(GwG), which includes information on transfers of funds and the reorganisation of the FIU. This revised the existing Money Laundering Act, amended other laws and established the Central Financial Investigation Unit (FIU). In this context, administrative sanctions and measures, their disclosure and the designation of authorities responsible for monitoring and complying with the provisions of the Money Transfers Regulation were also regulated.<sup>97</sup> The FIU receives information on suspicious transactions related to money laundering and terrorist financing, while facing an increasing number of such reports. Therefore, in 2023, a proposed amendment to the Act was made to speed up the processes in analysing and transmitting reports. The change should also bring clarification of the tasks and working methods of the central office, automation of procedures and other changes.<sup>98</sup>

#### *To Directive 2018/1673/EU*

In connection with the adoption of Directive<sup>99</sup> on the taking up, pursuit and prudential supervision of the business of electronic money institutions, Germany has adopted a total of 1 measure. This Directive became the sixth Anti-Money Laundering Directive and Germany adopted the Law on the Improvement of Criminal Law in the Field of Anti-Money Laundering on the basis of its wording. As part of its adoption, the scope of laundering from criminal activities (Section 261 of the Criminal Code) was extended. Money laundering was previously linked to only certain predicate offences, but now any offence can be committed in this context, including theft or fraud. The amendment brought stricter reporting obligations for real estate agents, notaries, cryptocurrency service providers and other entities. Greater data access privileges were granted to the Federal Financial Intelligence Unit (FIU), and the public was also granted access to the transparency registry, subject to registration, notification and maintenance of registration.<sup>100</sup>

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<sup>97</sup> Act on the Implementation of the Fourth EU Anti-Money Laundering Directive, on the Implementation of the EU Funds Transfer Regulation and on the Reorganisation of the Central Unit for Financial Transaction Investigations from 26 June 2017.

<sup>98</sup> Government draft law to strengthen the risk-based functioning of the Central Office for Financial Transaction Investigations from 4 July 2023.

Act on the Implementation of the Fourth EU Anti-Money Laundering Directive, on the Implementation of the EU Funds Transfer Regulation and on the Reorganisation of the Central Unit for Financial Transaction Investigations from 26 June 2017.

<sup>99</sup> Directive 2018/1673/EU of the European Parliament and of the Council of 23 October 2018 on combating money laundering by criminal law.

<sup>100</sup> HEINZELMANN, R. 6. EU-Geldwäscherichtlinie. *haufe.de* [online]. 1 April 2022 [viewed 18 March 2024]. Available from: [https://www.haufe.de/compliance/recht-politik/geldwaescherichtlinie\\_230132\\_468208.html](https://www.haufe.de/compliance/recht-politik/geldwaescherichtlinie_230132_468208.html).

## 4.4. Compare

The aim of the chapter was to provide an answer to the research question: *"To what extent is the Europeanisation of the fight against terrorism taking place at the level of the three selected countries?"* (VO3)

When comparing the current level of Europeanisation of the fight against terrorism in the Czech Republic, Germany and Austria, it can be established that there are differences in several key respects. If we focus on the common elements, we find them in the approach to counter-terrorism, including engaging in international cooperation (especially with Europol), strengthening the protection of critical infrastructure, and taking other measures resulting from the commitment to EU membership. Focusing specifically on the implementation of the three directives, the Czech Republic has adopted more than twice the number of national measures compared to Germany and Austria. It can therefore be concluded that the Czech Republic is the most subject to the Europeanisation process in the areas of counter-terrorism covered by these three directives. However, it is necessary to put the justification into context. Both Austria and Germany have faced the threat of terrorist attacks more frequently than the Czech Republic and, for this reason, their national legal systems have laws that were adopted before the creation of this legislation at EU level. This brings me to the differences in the legal framework and measures in these countries. From the above implementation and description of the fight against terrorism in the selected countries, the Czech Republic directs its attention to strengthening legislation and increasing the capacity of security forces, while Germany emphasises improving coordination between law enforcement agencies and strengthening and streamlining the exchange of information between security agencies. Lastly, there is Austria, for which the prevention of radicalisation and cooperation with civil society play the most important role. In terms of comparing the results and effectiveness of measures, there are also differences between countries. Several attacks have been recorded in the Czech Republic, which shows that, despite the measures taken, the situation is not entirely stable. However, the country still has the ability to detect and neutralise terrorist attacks thanks to the work of the Czech intelligence service. Germany has an extensive legal framework and a successful counter-terrorism system, together with cooperation with international partners and efficiency in the use of legal instruments, and

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KIRSCHHÖFER, M. Geldwäschetatbestand wird neu gefasst. *fch-gruppe.de* [online]. 16 September 2020 [viewed 15 February 2024]. Available from: <https://www.fch-gruppe.de/Beitrag.aspx?ID=10734>.

Austria, in addition to the aforementioned prevention, is committed to detecting terrorist activities through the coordination of security authorities.

## Conclusion

The thesis focused on mapping this different experience of terrorism, engagement with the EU agenda and comparing the implementation of EU legislation. The aim was to answer three set research questions, which were:

1. *"What is Europeanisation in the field of law?"*
2. *"What is the content of the specific instruments applied at EU level?"*
3. *"To what extent is the Europeanisation of the fight against terrorism taking place at the level of the three selected countries?"*

On the question of the first, more unfamiliar definition of Europeanisation in the field of law is by Claudio M Radaelli, who describes this process as the formation, expansion and institutionalisation of EU rules, procedures, policy paradigms and norms, which are then translated into domestic policy. Another author, Cristina Ferreira, distinguishes three perspectives on the Europeanisation of law. Miloš Večera and Tatiana Machalová identify the process as governance through negotiation, governance through hierarchy, positive integration, negative integration and facilitated coordination. Michal Bobek characterizes Europeanization as a process seeking to create a common legal space and identity, with the process itself being part of the broader task of legal scholarship.

On the second issue, following the 9/11 attacks in the US, the EU created a legal framework for counter-terrorism, which began with the September 2001 Resolution and Action Plan, followed by EU Council Common Positions 2001/930/CFSP and 2001/931/CFSP. Framework Decision 2002/475/JHA was later replaced by Directive 2017/541 on combating terrorism. The Council Recommendation focuses on the sharing of experiences in the area of terrorist kidnapping and information transfer formats. EU Directive 2017/541 emphasises the importance of information sharing between Member States and changes the approach to disclosure. Directives 2005/60/EC and 2015/849 address measures against money laundering and terrorist financing, with an emphasis on client identification and cooperation between financial units. Directive 2018/1673 complements and strengthens the measures of Directive 2015/849, focusing on police and judicial cooperation and the criminalisation of money laundering. EU Regulation 2021/784 targets the fight against the spread of terrorist content online, requires the swift removal of content and includes cross-border procedures.

On the third question, when comparing the current level of Europeanisation of the fight against terrorism in the Czech Republic, Germany and Austria, it can be established that there are differences in several key respects. The Czech Republic is focusing its attention on strengthening legislation and increasing the capacity of security forces, while Germany is emphasising improving coordination between law enforcement agencies and strengthening and streamlining the exchange of information between security authorities. Lastly, there is Austria, for which the prevention of radicalisation and cooperation with civil society play the most important role. Germany has an extensive legal framework, a successful counter-terrorism system together with cooperation with international partners and efficiency in the use of legal instruments. In addition to the aforementioned prevention, Austria is committed to detecting terrorist activities through the coordination of security authorities.

Due to the limitations imposed by the maximum word count allowed, the thesis only covers the topic in some depth. Therefore, the author believes that it would be beneficial to elaborate the topic of implementation of the selected directives within the selected countries in more detail, with emphasis on the wording of the definitions in the national legal systems.

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## **Summary**

Master thesis Europeanisation of the fight against terrorism: A Comparative Analysis of the Czech Republic, Germany and Austria focuses on mapping this divergent experience of terrorism, engagement with the EU agenda and comparing the implementation of EU legislation. By its nature, it offers a very close link between the field of EU policy and European law. The aim of the thesis is to define Europeanisation in the field of law, to enumerate the content of specific instruments applied at the EU level and to assess the extent to which Europeanisation of the fight against terrorism is taking place at the level of the three selected states. The work is based on European Union and national legislation.

Keywords: europeanisation, implementation, fight against terrorism, European Union, security

## **Abstrakt**

Diplomová práce Evropeizace boje proti terorismu: Komparativní analýza České republiky, Německa a Rakouska se zaměřuje na zmapování této rozdílné zkušenosti s terorismem, zapojení k agendě EU a komparaci implementace právních předpisů EU. Svým charakterem nabízí velice úzké propojení oblasti politiky EU a evropského práva. Cílem práce je definovat evropeizaci v oblasti práva, vyčíst obsah konkrétních nástrojů aplikovaných na úrovni EU a zhodnotit, co jaké míry probíhá evropeizace boje proti terorismu na úrovni vybraných třech států. Práce je založena na právních předpisech Evropské unie a vnitrostátních právních předpisech.

Klíčová slova: evropeizace, implementace, boj proti terorismu, Evropská unie, bezpečnost