

# SUSPICION, DISCRIMINATION AND SURVEILLANCE:

The impact of counter-terrorism law and policy  
on racialised groups at risk of racism in Europe



european network against racism



**Since 2001, the European Union has adopted over 200 counter-terrorism measures. Such measures pose significant risks to fundamental rights and the rule of law particularly for members of racialised groups.**

The 2017 EU Directive on Combatting Terrorism (DCT) requires the European Commission to submit a report by September 2021 on the DCT's impact 'on fundamental rights and freedoms, including on non-discrimination, and the rule of law'.<sup>1</sup> In anticipation of this forthcoming review, we undertook research to examine the experiences of counter-terrorism and counter-radicalisation measures by members of groups that are at heightened risk of facing discrimination and racism in [France, Germany, Hungary, Poland and Spain](#). There is a particular focus in the research on Muslims, reflecting the reality that, as the European Commission against Racism and Intolerance (ECRI) has observed, there is 'a dangerous "normalisation" of Islamophobic prejudice' as 'Islam and Muslims continue to be associated with radicalization, violence and terrorism'.<sup>2</sup>

This report draws on desk research and data from individual and focus group interviews involving 211 research participants in five states. Data was collected in the two years to October 2020. Our analysis of how state policies are experienced and their impact on the exercise of fundamental rights and freedoms provides the basis for the policy recommendations at the end of the executive summary.

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1 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 [2017] OJ L88/6, Article 29(2).

2 European Commission against Racism and Intolerance, 'Annual Report on ECRI's Activities Covering the Period from 1 January to 31 December 2018' (Strasbourg, Council of Europe, 2019), 10

# Part I - Legal and policy context

## 1. TERRORISM AND COUNTER-TERRORISM IN THE EUROPEAN UNION

Between 1970-2016 there were 15,484 terrorist attacks in Europe, 83 percent of these occurred before 2001.<sup>3</sup> Between 2006-2019, 70 percent of terrorist attacks were planned or carried out by ethno-nationalist and separatist groups.<sup>4</sup> Since 2001, ISIS or Al-Qaeda related attacks account for the majority of fatalities from terrorism and have driven the intensified development of EU laws and policies on counter-terrorism and counter-radicalisation.

EU laws and policies have contributed to embedding and sustaining two important innovations in the response to terrorism across Member States. First expanding the scope of criminal law to include 'pre-emptive' offences; second, focusing interventions on preventing radicalisation to violent extremism.

After 11 September 2001, the EU moved swiftly to mobilize its powers and resources to fight against terrorism. Among the measures to have the most significant, far-reaching and direct impacts on groups at risk of discrimination in Europe is the adoption of a Framework Decision on Combatting Terrorism (FDCT) in 2002,<sup>5</sup> updated and revised in 2008, reaffirmed and extended by the DCT. Together they inscribe permanent changes to the criminal law of Member States. They establish a common European definition of terrorism, and require states to ensure their national laws criminalise nine specific terrorist acts, as well as offences related, or linked to terrorism.

The FDCT and DCT's definition of terrorism is broad. It leaves significant discretion to states in identifying which of the many acts that can fall within the scope of the definition are then treated as terrorism. The criminalisation of 'threats' of terrorist action and the creation of 'offences related to terrorist activities', signal a shift in the focus of European counter-terrorism law from the punishment of activities that directly harm or attempt to harm others to state action against individuals to pre-empt the possibility of any harm.

The DCT has required the expansion of Member State's criminal law to cover those who support, provoke or encourage others to terrorism. It also calls on States to criminalise activities that do not harm others, such as travelling or training, where these actions are 'related to' terrorist activities. However, there is no requirement for a concrete terrorist offence to be planned nor is there a need, in most cases, to establish a link to a particular terrorist offence in the DCT. In criminalising actions that do not involve direct harm to others, prosecutions place increased reliance on the implied 'dangerousness' of an individual to link their non-harmful actions to the potential for terrorism in the future. The evidence of dangerousness can involve invoking racialised stereotypes and tropes that link Islam and Muslims to violence.

Alongside the expansion of the criminal law, the EU has also adopted strategies on combating radicalisation that aim to influence and shape national policies by establishing platforms, creating networks, exchanging best practice, and funding research.<sup>6</sup> The DCT reinforces this by calling on Member States to support professionals with 'training and awareness-raising measures aimed at enabling them to identify and address signs of radicalisation'.<sup>7</sup>

The latter task presumes the existence of reliable 'signs of radicalisation'. The role and utility of radicalisation as a concept, and the validity of indicators, remain deeply contested. The emphasis in radicalisation theories on individual psychology is criticised for shifting focus from the wider societal and political context and the role of state actions and policies that contribute to generating political violence. A persistent challenge for European governments, policymakers and security practitioners is the lack of predictive power in the models of radicalisation. The indicators used in practice, include personal trauma, experiences of discrimination, the search of identity and political and religious beliefs. While the quotidian banality of many indicators *could* apply to anyone, at their inception European counter-radicalisation policies explicitly targeted Muslims, and in doing so, embedded and legitimised institutional racialised suspicion of Muslims.

3 Mirja Gutheil and others, EU Member States' policies and laws on persons suspected of terrorism related crimes, (Study for the LIBE Committee, European Parliament, 2017), 27.

4 Data from TE-SAT reports 2007-2019 show that there were 3663 failed, foiled or successful terrorist attacks across the EU, 2613 were from separatist and nationalists groups.

5 Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism [2002] OJ L164/3, amended by Council Framework Decision 2008/919/JHA of 28 November 2008 amending Framework Decision 2002/475/JHA on combating terrorism [2008] OJ L330/21.

6 Council of the European Union, 'The European Union Strategy for Combating Radicalisation and Recruitment to Terrorism' 14781/1/05 REV 1, 24 November 2005; Council of the European Union, 'Revised EU Strategy for Combating Radicalisation and Recruitment to Terrorism' 15178/08, 14 November 2008; Council of the European Union, 'Revised EU Strategy for Combating Radicalisation and Recruitment to Terrorism' 9956/14, 19 May 2014. (The EU Counter-radicalisation Strategy)

7 DCT, Recital 33, emphasis added.

## 2. RACIALISATION, ISLAMOPHOBIA AND DISCRIMINATION

The 2005 EU Strategy on Combatting Radicalisation, emphasised that neither radicalisation nor recruitment to terrorism are 'confined to one belief system or political persuasion', and called for care to avoid 'linking Islam to terrorism'.<sup>8</sup> Yet, key elements of the 2005 Strategy constructed, sustained, and reinforced the perception of Muslims as a potential security threat. By stressing the need to engage in dialogue with Muslims and identifying 'Muslim communities' as the target for enhanced efforts to change perceptions of European and Western foreign policies,<sup>9</sup> it strengthened the implicit construction of Muslims as a potential terrorist threat.<sup>10</sup>

The strategy was later revised to cover all forms of extremism and identified 'radical Islamists' rather than Muslims or Islam as its target, thereby allowing policymakers to argue that they are focusing on a political ideology and not a religion. Despite the changes in the language, in practice Muslim communities continue to be seen as natural and proper subjects of counter-radicalisation prevention policies and, by extension, counter-terrorism policing.

The EU strategy encourages Member States to work with trusted Muslims to 'ensure that voices of mainstream opinion prevail over those of extremism' and to 'empower moderate voices by engaging with Muslim organisations and faith groups that reject the distorted version of Islam put forward by Al-Qaeda'.<sup>11</sup> By drawing a distinction between 'moderate' and 'extremist' Muslims, policing and policy hoped to be able to focus on extremists without being seen to openly profile Muslims on the grounds of their religion. In fact, this approach reinforces a binary view of Muslims and makes Islam both the 'cure and cause of radicalisation'.<sup>12</sup>

The concept of 'racialisation' captures the way cultural traits, such as clothing and religion, are ascribed as inherent to members of a group and are used to signal innate difference and inferiority to Whites. Islamophobia is racialised when negative characteristics (violence misogyny, political allegiance/disloyalty, incompatibility with Western values, etc.) are viewed as innate to Muslims.<sup>13</sup> Counter-terrorism policies and practices intensify and extend existing Orientalist tropes and stereotypes of Muslim men and Islam as innately violent

Islamophobia is a specific form of racism that refers to acts of violence and discrimination, as well as racist speech, fuelled by historical abuses and negative stereotyping and leading to exclusion and dehumanisation of Muslims, and all those perceived as such. It is a form of racism in the sense that it is the result of the social construction of a group as a race and to which specificities and stereotypes are attributed, in this case real or perceived religious belonging being used as a proxy for race. Consequently, even those who choose not to practice Islam - but who are perceived as Muslim because of their ethnicity, migration background or the wearing of other religious symbols - are subjected to discrimination. Furthermore, it is explicitly acknowledged that referring to Islamophobia is different from censorship and that critical discussions on religion and religious practices should still be possible.

and aggressive. Such tropes persist, reconfigured and re-presented in claims that the 'new terrorism' of Al-Qaeda and ISIS, driven by 'religious fanaticism', decoupled from wider geopolitical conflicts, differs qualitatively from other forms of terrorism and therefore justifies the expanded criminalisation of pre-emptive offences.<sup>14</sup>

Counter-terrorism policing and counter-radicalisation policies contribute to processes of racialisation by creating indicators of the 'extremist' and by implication its antonym the 'moderate'. Thus, both the 'moderate' and 'extremist' Muslim are produced through counter-terrorism policies, practices and discourses. By the repeated and continuous exercise of state power counter-terrorism policing normalises its use and focus on those deemed the natural subjects of suspicion.<sup>15</sup> Even policies supporting participation and engagement with Muslim communities, while fine-tuning the identification of suspect groups in the population, are not race neutral. This is because

**'counter-terrorism law and policing, in their different modes bring into existence policed subjects who are the objects of counter-terrorism: the extremist and the moderate Muslims'**<sup>16</sup>

8 Council of the European Union, 'The European Union Strategy for Combating Radicalisation and Recruitment to Terrorism' 14781/1/05 REV 1 Brussels 24 November 2005, 4.

9 *ibid.*

10 Christopher Baker-Beall, *The European Union's Fight Against Terrorism: Discourse, Policies and Identity* (Manchester University Press, 2016),

11 Council of the European Union, 'The European Union Strategy for Combating Radicalisation' (n8), 4.

12 Katherine E Brown, 'Introduction: Radicalisation and Securitisation of Muslims in Europe' (2018) 7 *Journal of Muslims in Europe* 139.

13 See Steve Garner and Saher Selod, 'The Racialisation of Muslims: Empirical Studies in Islamophobia' (2015) 41 *Critical Sociology* 9.

14 Walter Laqueur, *The New Terrorism: Fanaticism and the Arms of Mass Destruction* (Oxford, Oxford University Press, 1999).

15 Victoria Sentas, *Traces of Terror: Counter-Terrorism Law, Policing and Race* (Oxford University Press, 2014), chapter 2.

16 *ibid.* 22.

While identification of a person as ‘moderate’ is clearly not criminalisation, it nevertheless involves a ‘racialized process of being made a *policed subject*’ (emphasis added).<sup>17</sup>

The collective call on Muslims to engage with counter-terrorism, combined with the constant suspicion of Muslims as radicalisation risks, contributes to the stigmatisation and the experience of collective blame for terrorism that Muslims frequently face. The surge in Islamophobic violent assaults and incidents in the aftermath of terrorist attacks shows the consequences of holding Muslims accountable for the actions of terrorists. EU security policies that maintain fear of Muslims as a security threat contribute to growing anti-Muslim sentiment. European survey data show endemic and persistent levels of discrimination against Muslims. This not only violates the EU’s commitment to principles of equality, and harms social inclusion and integration, it also undermines the goals of engagement in the EU’s counter-terrorism strategies. **There is now robust research showing how experiences and perceptions of discrimination and unfair treatment by the state erodes the perceived legitimacy of security policies and policing efforts and in doing so damages efforts at developing cooperation.** Importantly, individuals react not only to how they are treated but also to the treatment of individuals belonging to a group with which they identify. When they witness unfair treatment by the authorities in decision-making concerning members of a social group they identify with, it influences their willingness to cooperate with those authorities.

### 3. HUMAN RIGHTS AND THE RULE OF LAW

**Human rights and the rule of law provide a valuable and crucial framework for ensuring fair treatment, yet EU security and counter-terrorism policies have paid insufficient attention to protecting human rights and upholding the rule of law. In the DCT, safeguards for human rights and rule of law are elaborated in non-binding recitals<sup>18</sup> while the binding text is limited to restating the standard phrase that the Directive ‘shall not have the effect of modifying the obligations to respect fundamental rights and fundamental legal principles’<sup>19</sup>**

There has been insufficient human rights and rule of law impact analysis in the development of EU counter-terrorism measures. Since 2001, less than three per cent of counter-terrorism legislative measures have been subject to public consultations and three-quarters of counter-terrorism measures were adopted without any impact assessment.<sup>20</sup> Even though the EU Counter-terrorism Coordinator noted the need to

understand the impact of counter-terrorism measures on minority groups in 2010, and the Commission committed to carrying out an impact assessment in 2015 ahead of updating the 2008 FDCT,<sup>21</sup> the EU adopted the DCT without any ex ante impact assessment.<sup>22</sup> This marginalisation of human rights impact assessments was compounded by the speed with which the EU adopted the DCT, leaving limited time for the engagement of civil society and human rights experts and thus curtailing public participation and accountability.<sup>23</sup>

Inattention to human rights impacts before adoption has been matched by a lack of scrutiny on human rights and rule of law impacts in ex-post evaluations. The Commission’s implementation evaluation of the 2002 FDCT glanced only cursorily at the safeguarding of individual rights.<sup>24</sup> **The lack of attention to potential human rights harms is evidenced by recent European Court of Justice cases in which EU measures attempting to enable broad and enhanced data collection and data sharing were ruled to violate individual rights.**<sup>25</sup> While these decisions are welcome, reliance on protecting fundamental rights through judicial oversight in individual cases is constrained by judicial deference to governments on issues of national security.<sup>26</sup> In this context the review of the human rights impact explicitly mandated in the DCT is a development in the right direction. However, fundamental features embedded in legal and policy frameworks that erode human rights and the rule of law need to be addressed through broader democratic political and policy processes.

17 *ibid* 177.

18 DCT, Recital 22, 35, 36 and 39.

19 DCT, Art 23.

20 Wim Wenisk and others, ‘The European Union’s Policies on Counter-Terrorism: Relevance, Coherence and Effectiveness’ (Brussels, European Union, 2017), 17.

21 European Commission, ‘Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - The European Agenda on Security’ COM (2015) 185 final, 28 April 2015, 14.

22 Council of the European Union, ‘EU Counter-Terrorism Strategy – Discussion Paper’ Note 15894/1/10 Rev 1, 29 November 2010, 10-11.

23 See for example, ‘Rush to “fight terrorism” threatens our fundamental rights and security’ *European Digital Rights* (4 July 2016), <<https://edri.org/our-work/rush-fight-terrorism-threatens-our-fundamental-rights-security/>> accessed 1 February 2021.

24 Cian Murphy, *EU Counter-Terrorism Law: Pre-emption and the Rule of Law*, (Hart Publishing, 2012), 79.

25 *Digital Rights Ireland and Seitlinger and Others* (C-293/12 and C-594/12) [2014] E.C.R. I-238 and ECJ, Opinion 1/15 (Grand Chamber) – Draft agreement between Canada and the European Union, 26 July 2017.

26 Didier Bigo and others *National Security and Secret Evidence in Legislation and before the Courts: Exploring the Challenges*. (Centre for European Policy Studies, Brussels 2015).

## Part II - Findings from Qualitative Data

### 1. SUSPICION OF MUSLIM IDENTITY AND RELIGIOUS PRACTICES

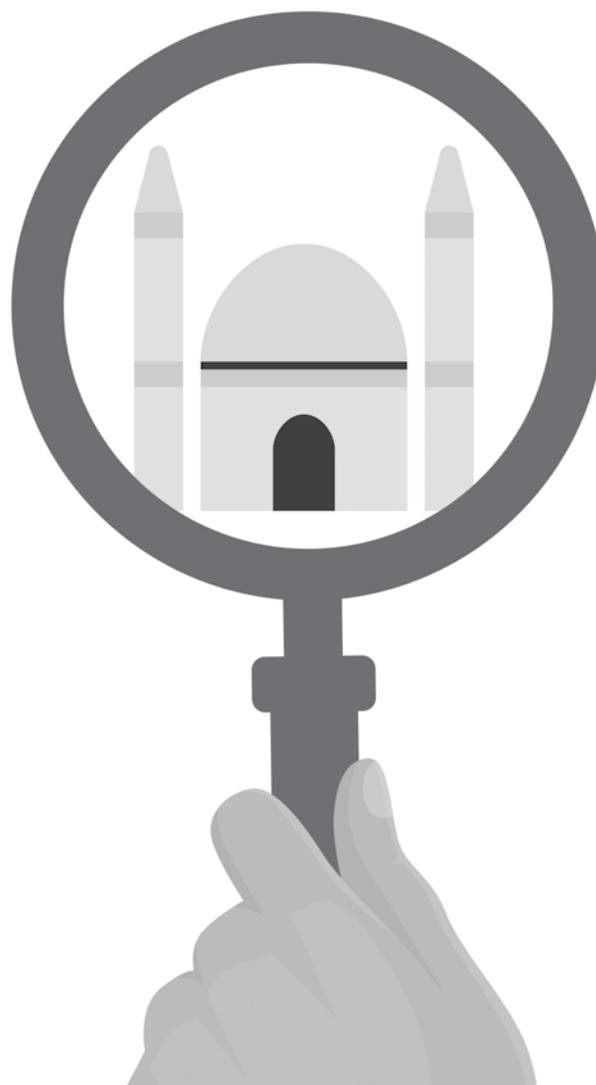
At its inception, the EU's counter-radicalisation policies focused exclusively and explicitly on Muslims and Islam. In placing suspicion and scrutiny on Muslim identities and religious practices it enabled discrimination. As Member States adopted, developed, and implemented their counter-radicalisation policies and action plans, supported by EU coordination and sharing of best practice, they replicated and reinforced a focus on Muslim religious identities and practices. At the same time, the development of pre-emptive offences that criminalise actions that occur before there is any plan to commit an act of terrorism underpins and legitimises prosecutions that rely heavily on evidence of associations and identities that are deemed dangerous. The data from our research suggests that these developments have contributed to a securitised suspicion of Muslim religious practices and expressions of religious identity, making them a source of fear and anxiety, that trigger further investigation by police or other state officials. This suspicion extends to mosques, Islamic classes, the act of prayer, and even to Arabic language classes.

Legislation rarely explicitly targets specific ethnic or religious groups. This research only found one instance of an explicit targeting of Islam and Muslims. This was in the draft regulations for Poland's Anti-Terrorism Act 2016, which included explicit reference to 'Islamic universities', 'Islamic clerics' and 'Islamic institutions' among the 'catalogue of terrorist incidents', in the list of activities that should be treated as 'terrorist related'. These discriminatory provisions were replaced by references to 'religious groups' and 'international extremism' in the regulations that were eventually adopted.<sup>27</sup> The changes, while reflecting an attempt to dilute the stigmatisation of Muslims through more careful use of language, also reveal how these policies in their inception targeted Muslims and focused on Islam.

More frequently, policies and practitioners drew on a moderate/extremist and Islam/Islamism dichotomy in identifying their targets. This approach still left many Muslims feeling vulnerable and exposed as the objects of evaluation by security actors. This is often exacerbated by the lack of transparency regarding the criteria, processes and evidence by which

judgements are made. For some civil society actors who organise around their Muslim identity, the social and political stigma and consequences of being labelled by the state as an Islamist or 'extremist' left them feeling helpless. The elasticity and lack of clear definitions of the terms 'Islamist' and 'extremist' made it difficult to rebut or challenge what were often unfounded accusations. The consequences for individuals and organisations were devastating, even where individuals or organisations were eventually successful in challenging claims that they are Islamists or extremists. The research found that suspicion and fear of any civic activism or mobilisation around Muslim religious identities curtailed an individual's ability to participate in public life in ways that are meaningful to them. For example, the Muslim founder of a charitable non-profit NGO concerned with environmental protection and sustainability recalled how, since 2001, he felt his activism was always under suspicion and required explanation.

Research participants also cited frequent and numerous examples in which religious practices, beliefs and views of



<sup>27</sup> 'Rozporządzenie Ministra Spraw Wewnętrznych i Administracji z dnia 22 lipca 2016 r. w sprawie katalogu incydentów o charakterze terrorystycznym' [Regulation of the Minister of the Interior and Administration of July 22, 2016 on the catalog of incidents of a terrorist nature] <<http://prawo.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20160001092>> accessed 01 February 2021

Muslims drew the attention of security actors and prompted further investigation and questioning. The indicators of vulnerability outlined through counter-radicalisation training served to make Muslim beliefs and practices 'hyper-visible'. In Spain interviewees with first-hand experience of this training, reported that the indicators included changes in religious practice, changes in appearance such as growing a beard, participation in 'radical' demonstrations, listening to 'radical' music, holding 'extremist' views, and participation in combat sports or survival training.

A number of the interviews reveal the ways in which the racial and religious identity of Muslims appears to inform the concerns that take shape in the imagination of state actors, and the possible explanations that they imagine in interpreting and understanding the views, comments or actions of Muslims. For example, the ambition of a Muslim student studying nursing to pursue a career helping wounded people in conflict zones was taken as an indication of a possible desire to travel to Syria. As a result, the counter-radicalisation procedure was activated and the student and her family were placed under covert surveillance that included the monitoring of their telephone calls for six months.

The research also found that policies and public statements identifying mosques as objects of suspicion, seeped into a wider societal suspicion of mosques, prayer rooms and the act of praying. Focus group participants in Germany gave details of a university where the administration closed communal rooms (often designated as quiet rooms or contemplation rooms) used by Muslim students for prayers. In closing the room, the administration cited fears that such spaces could be used to radicalise people. When students started to pray in quiet niches in the library or deserted corridors, the university instructed their security personnel to patrol such locations. Students found praying faced interrogation and questioning by the university's security guards and had their details taken to be passed to the university administration.

Institutional racism has been used to describe not only explicit manifestations of racism at direction and policy level, but also the unwitting discrimination at the organisation level. Indirect, institutional racism is more subtle, hidden but equally pervasive and damaging in nature. It is seen in "processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping which disadvantages minority ethnic people.

Parents in **Spain** reported that their children's attendance at mosque for religious education attracted questioning, echoing suspicion of mosques and the linking of Islamic education with risks of radicalisation:



"They are obsessed in knowing what is going on inside the mosques [...] they are not calm [...] They are obsessed with that "security", whether Muslims "plot things" in their mosques or if they are organizing crimes in their mosques"  
*Focus group Spain*

Many imams and mosque managers, as leaders of key community institutions which are seen as sites of suspicion, found themselves under intense scrutiny from the state. This was manifested through informal questioning and visits by police and security officials. State security activities disrupted the associational life of the community that organised around a mosque. Muslim community organisations reported that visits by security officials are now a normalised part of life in a mosque. Many believed that the police or security officials used informal visits and conversations to gather information and intelligence about their congregation. However, interviewees were also aware that the failure to participate in informal conversations and answer informal questions generated suspicion. **Some mosques, aware that they do not benefit from a presumption of innocence, collect the evidence needed to prove their good citizenship and loyalty.** According to interviewees, mosques in Catalonia routinely and regularly record sermons and make these available to the police.

Discrimination can be direct, indirect or through harassment. EU law provides that direct discrimination occurs 'where one person is treated less favourably than another is, has been or would be treated in a comparable situation, on' protected grounds such as race, ethnicity or religion. Indirect discrimination occurs 'where an apparently neutral provision, criterion or practice would put persons having' a particular protected characteristic is put 'at a particular disadvantage compared with other persons unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary'. Harassment is deemed to be a form of discrimination in EU anti-discrimination and is defined as 'unwanted conduct' related to protected ground that has 'the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment'.

## 2. DISCRIMINATION, HARASSMENT AND ABUSE

**Across all five EU Member States there was a widespread perception among participants that Muslims are profiled and selected for questioning by police and security officials on the grounds of their perceived race, ethnicity and religion.**

**There were also concerns that broad and vaguely-drafted terrorist offences left significant space for arbitrary or discriminatory decisions when it came to charging people for terrorism. In Spain there was particular concern that laws criminalising viewing ideological materials placed young people at risk of criminalisation for online browsing.**

Many respondents felt that the state's suspicion of Muslims permitted ordinary citizens to be wary of them and emboldened discrimination, harassment and abuse. The association of Islam with violence and suspicion of Muslims as incipient extremists and potential terrorists left many feeling forever fearful of encountering discrimination and abuse. They recalled instances where carrying everyday items, such as shopping bags, led to verbal abuse in public spaces:

**"Two Polish men entering the bus, on the seats facing me. Then they look at my face and the two plastic bags. One of them started talking. At the beginning, their way of looking at me was not positive. And, one of them asked me, 'Are you sure there is no bomb in your plastic bag?'"**  
*Focus group, Poland*

Consistent with other evidence on Islamophobia in Europe, research for this report found that Muslim women, whose religious identity becomes hyper-visible when they wear the hijab, face constant and continuous discrimination including verbal and in some instances physical abuse in everyday encounters in the street<sup>28</sup> The clear picture of discrimination and abuse that emerges from the testimony in focus groups across all five states is, for many Muslim women, a normalized part of their daily life. **The consequence of such hostility is that some Muslim women are forced to think twice before they wear a hijab to reduce their risk of exposure to violence and abuse.**

Fear of discrimination, harassment and abuse is leading many Muslims to increasingly censor their use of Islamic and religious expressions. In **Warsaw** a student from East Africa explained how while riding on a bus with fellow Muslims, they felt that the atmosphere created by their presence on the bus, was 'so tense' that they waited until they got off the bus to greet one another with '*salamu alaykum*'. Another person mentioned needing to mute his smartphone application for the *adhan* (a call to prayer), as the opening words, '*Allahu akbar*', an Islamic phrase used in daily prayer, have become synonymous with terrorism.

There were differences in positions on reporting abuse and discrimination to the police. **While some respondents reported discrimination and abuse to the police or other authorities, many were reluctant to do so.** In many cases, where verbal abuse took place in the street and the perpetrator was not known to the victim, reporting to the authorities was seen as ineffective and unlikely to result in any action. Negative public and political discourse relating to Islam and Muslims led some to feel that their experience would not be viewed

<sup>28</sup> According to the EU FRA, 'Muslim women who wear headscarves (or the very few who wear niqabs) in public are more likely to experience bias-motivated harassment than those who do not – 31% compared with 23%' See European Union Agency for Fundamental Rights, *Second European Union Minorities and Fundamental Rights Survey: Muslims Selected Findings*, (Publications Office of the European Union, Luxembourg, 2017).



by public authorities as harassment. Official state policies seen as unfairly targeting and discriminating against Muslims contributed to some interviewees' reluctance to seek protection from unlawful discrimination and harassment from public institutions. **A French Muslim woman who was assaulted in a library, explained that she did not report this incident to the police, as she feared that she would not be taken seriously and would in fact be blamed for provoking the attack because she was wearing the veil.** In **Hungary**, interviews with civil society organisations and comments in focus groups suggest that Muslims were reluctant to report hate crime and abuse because they connected the rise of Islamophobia to the actions of the government and ruling party politicians.

### 3. SURVEILLANCE AND SUSPICION

Research participants experienced being under surveillance, for signs of radicalisation or activities suggesting they supported terrorism, from public officials (state surveillance), fellow citizens (social surveillance) and other Muslims (community surveillance). The testimony of the focus group participants highlights two responses to state and social surveillance generated to placate fears and suspicion: the public performance of 'safe' identities, used to show others that they are 'moderate' Muslims that condemn terrorism, and connected to this, always being careful when expressing their thoughts and ideas in case these are misinterpreted or misunderstood as signs of extremism or support for terrorism. **The research also found that a key impact on a community under surveillance is fear of expressing solidarity with those who are deemed suspect by the state.**

The most direct experience of state surveillance, for young Muslim men in particular, was police and security-led checks

and stops in the street. Such encounters left them 'feeling under constant guard'. There were also concerns about covert state surveillance and the lack of judicial checks and oversight of the increased executive power to monitor communications.

However, the greatest impact came from states adopting counter-radicalisation and counter-terrorism polices that call on everyone in society to be involved in looking out for signs of radicalisation and danger. The conscription of all citizens to reporting signs of radicalisation left Muslims feeling vulnerable and under continuous surveillance by the state, their neighbours and their colleagues.

The testimony of respondents showed Muslims felt unsafe and insecure in their homes and found themselves having to be alert to their neighbours' potential misreading or misunderstanding of everyday activities, particularly expressing any aspect of their religious identity that could be misread as a sign of extremism and lead to being reported to security officials, triggering further surveillance, investigation, and questioning. **Such fears also applied to online digital spaces. Having to weigh up the risk of comments being misconstrued was an additional constraint that circumscribed Muslims' freedom to express their ideas and opinions.**

The gaze of suspicion led Muslims to feel pressure to always demonstrate to colleagues, acquaintances and strangers that they condemned terrorism and violence. Many respondents reported feeling worn down and exhausted from living under such suspicion, having to prove their loyalty and belonging, even having to show they were 'normal'.

Comments revealed how some Muslims internalised the need for the surveillance of their actions. In **Germany**, young Muslim men spoke proudly of their participation in Muslim-led demonstrations against radicalisation and terrorism. While feeling that it was unfair that the level of police presence and surveillance at these demonstrations was much greater than at demonstrations about other issues or by other groups, they nevertheless argued that the demonstrations provided a chance to show the police that they were 'good' people.

"Of course it gives us an insecure feeling, but [...] it can also lead [the state] to see us as we are and change their mind about what they thought before and have a good view of organisations like ours."

*Focus group, Germany*

"Actually, now if I think they are watching us it doesn't matter. They can observe us. If they observe us then they can see that we are not in favour of radicalisation and terrorism. If they don't watch us, nobody will know."  
*Focus group, Germany*

The suspicion that any individual could be an informant hindered collective action in Muslim communities. Awareness of being under surveillance curtailed some Muslims expressing solidarity towards groups under particular suspicion by the state, such as new migrants or young Arab men. The fear of coming under suspicion also prevented Muslims from providing support to individuals, or families that were under investigation; such individuals and families found themselves ostracised and isolated. Some saw this as an intentional part of the state's counter-terrorism strategy; creating a hostile environment, driving a wedge between those who are 'at risk' of radicalisation from those deemed dangerous. Those who are ostracised in effect lose their right to the presumption of innocence. Members of the wider community fear coming under state suspicion and so feel compelled to prove their own innocence by actively distancing themselves from those already under suspicion.

#### 4. CONCLUSIONS AND RECOMMENDATIONS

The research finds that counter-terrorism and counter-radicalisation policies and practices supported and developed by the EU have eroded the rule of law and infringed on the enjoyment of fundamental freedoms of religion and belief, association and expression, and rights to liberty, fair trial and non-discrimination. While recognising that local social, political, economic and cultural contexts generate counter-terrorism policies, practice and discourses, there are ways in which the EU can bolster the protection of human rights and ensure adherence to the rule of law.

There should be more detailed consideration of equality, human rights and rule of law in the processes for formulating legislation and policy on counter-terrorism and counter-radicalisation. Furthermore, an informed public debate and assessment of the proportionality and necessity of security measures requires information on the nature of the threat of terrorism in Europe, as well as data on the use of counter-terrorism and counter-radicalisation laws and policies. Equality data is vital to monitoring the impact of counter-terrorism and counter-radicalisation measures on different groups.

The protection of human rights, non-discrimination and the rule of law must be more clearly and effectively embedded into EU counter-terrorism strategies, normative frameworks and policies. One example of how this can be achieved is the UN Global Counter-Terrorism Strategy, in which 'measures to ensure respect for human rights' account for one of the strategy's four pillars.<sup>29</sup> This ensures attention, action and resources on human rights and the rule of law.

Civil society plays a critical role in empowering communities, enhancing resilience, and supporting accountability and transparency. Yet, counter-terrorism and counter-radicalisation measures have been used to limit civic space; the broad definition of terrorism and vague concept of violent extremism has allowed States to label and stigmatise critics in civil society as "terrorists", "violent extremists" or "threats to national security". Meaningful consultation and dialogue with CSOs, particularly those that have direct understanding and experience of the groups impacted by counter-terrorism and counter-radicalisation measures would enable greater understanding how they affect fundamental rights and freedoms.

While the research for this report was completed by October 2020, the trends that we identify in this research - intensified suspicion, discrimination and surveillance of Muslims - persist in the response of Member States and the EU to the terrorist attacks in **France** and Austria in October and November 2020. In **France**, this included government closure of the leading anti-racism organisation, the Collective Against Islamophobia in **France** (CCIF)<sup>30</sup>. In Austria, armed police raided the home of Dr Farid Hafeez, one of Europe's foremost academic experts on Islamophobia.<sup>31</sup> The European Commission's a new Counter-Terrorism Agenda, published in December, proposes worrying measures for further surveillance through data-sharing, and misses an opportunity to more fully and effectively address concerns about discrimination, human rights and the rule of law.<sup>32</sup> **The following recommendations, addressing the findings from the research in the report, are important steps towards ensuring the EU and Member State are able to counter-terrorism while ensuring respect for human rights, equality and the rule of law.**

29 UNGA Res 60/288 (20 September 2006) UN Doc A/RES/20/288.

30 Amnesty International, 'France: shutting down anti-racist organisations risks freedoms' 20 November 2020. <<https://www.amnesty.org/en/latest/news/2020/11/france-shutting-down-antiracist-organisation-risks-freedoms/>> (accessed 14 March 2021)

31 'Austria: Outrage after authorities target academic as part of 'terrorism' crackdown' *Middle East Eye* (2 March 2021), <<https://www.middleeasteye.net/news/austria-farid-hafez-academic-targeted-terrorism-crackdown-outrage>> accessed 14 March 2021).

32 European Commission, 'A Counter-Terrorism Agenda for the EU: Anticipate, Prevent, Protect and Respond' COM(2020) 795 final, 9 December 2020.

# RECOMMENDATIONS

1. EU counter-terrorism and security strategies should emphasise and detail measures, actions and activities to support and promote the protection of human rights, equality and the rule of law.
2. The EU should reject the development of any new 'pre-emptive' criminal law offences and should review the DCT, to ensure that its pre-emptive offences are only retained to the extent they are strictly required by UN Security Council Resolutions.
3. All EU counter-terrorism legislation should contain a sunset clause (that is, they should be temporary and automatically expire after a fixed time unless explicitly renewed) and should require national implementation measures to also have a sunset clause.
4. Counter-terrorism legislation, strategy and policy documents should draw on and explicitly reference the international standards, principles and guidelines on human rights, non-discrimination and the rule of law that should inform and shape the implementation of counter-terrorism and counter-radicalisation measures.
5. Europol's annual EU Terrorism and Situation Trends Report (TeSAT) should provide more comprehensive and detailed data. In particular, it should separate data on convictions from data on acquittals. It should also present full data on arrests, charges and convictions or acquittals for different types of offence, allowing clearer understanding of the role of pre-emptive, membership and propaganda offences as well as offences involving violence or direct harm to others.
6. All EU counter-terrorism measures should be subject to effective ex ante human rights, equality and rule of law impact assessment. This could be conducted by the European Commission and European Parliament with the support of the EU Fundamental Rights Agency.
7. There should be greater role for national parliaments and national human rights bodies in commenting on counter-terrorism proposals.
8. Member states' human rights and equality bodies should have the power, mandate and resources to conduct regular assessments of the impact of counter-terrorism legislation and policies on equality, human rights and the rule of law.
9. EU institutions should regularly and proactively engage with civil society organisations on counter-terrorism and counter-radicalisation measures to understand their efficacy and impact on human rights, equality and the rule of law.
10. EU institutions should provide funding to support civil society organisation to monitor, document and assess the impact of counter-terrorism and counter-radicalisation measures on human rights, equality and the rule of law.
11. EU institutions should publicly condemn Member States' abuse of counter-terrorism and counter-radicalisation measures against civil society.
12. The EU should refrain from using vague and general labels such as Jihadism, Islamism, and political Islam. They should recognise that any analytical value of these terms is outweighed by their stigmatising impact. The term ISIS-inspired terrorism and Al-Qaeda-inspired terrorism should be used where appropriate.
13. Individuals and organisations that are the target of false denunciation should be recognised as victims so that they can have access to legal, financial and psychological support.
14. Member States must ensure there are accessible, confidential and independent complaint mechanisms for individuals disproportionately affected by security and counter-terrorism measures.
15. The EU should adopt the draft 'horizontal equality' directive to ensure more comprehensive protection against discrimination on the grounds of religion and belief.
16. The EU and Member States should adopt and implement an EU/national action plan against racism ensuring the mainstreaming of racial equality in counter-terrorism and counter-radicalisation policies.
17. The EU and Member States should collect equality data on the implementation of counter-terrorism and counter-radicalisation policies.



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