Lack of competence, lack of action? The European Union legal framework on deradicalisation and its limits

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Abstract: Over the last twenty years, deradicalisation has become key in the fight against violent extremism and terrorism. This article aims to clarify what the European Union has done to foster deradicalisation. It is clarified what deradicalisation means under EU law and an account of the relevant legally and non-legally binding acts promoting deradicalisation is provided. As the legally binding acts adopted so far tackle issues that may be related to deradicalisation but none of them is specifically devoted to this topic, the question is raised as to the possibility of adopting a legally binding act addressing deradicalisation. The limits to this kind of approach are identified in the EU's system of competences and the principles of subsidiarity and proportionality.

Keywords: European Union; Deradicalisation; Fight against terrorism.

1. Introduction

Over time, many European States have been confronted with radicalisation as a phenomenon preceding and leading to violent extremism and terrorism.[1] Focusing on recent years, there were 436 terrorist attacks in Europe between 2017 and 2019 and 63% of these were attributed to separatist and ethno-nationalist groups, 18% to jihadist groups, 16% to anarchist and left-wing groups, and 2.8% to right-wing groups. Between 2014 and 2017, 895 terrorist attacks were committed in Europe.[2] In 2020 and 2021, 72 terrorist attacks were committed in Europe[3].

The explanations offered as to why people choose the path of violence and, therefore, why radicalisation takes place have been manifold. The approach according to which terrorists are affected by mental problems has gradually been abandoned,[4] and the reasons behind radicalisation have been identified, for example, in socio-economic factors such as poverty and lack of

[1] For a historical overview see W. Laquer, *A History of Terrorism*, New Brunswick, 2001 and E. Bekker, *Terrorism and Counterterrorism Studies: Comparing Theory and Practice*, Leiden, 2015, 47 ff.

[2] For these data see www.agensir.it/europa/2021/02/25/react2021-report-data-on-terrorism-in-europe/.

[3] See www.consilium.europa.eu/en/infographics/terrorism-eu-facts-figures/#:~:text=2018%3A%20129%20terrorist%20attacks,2021%3A%2015%20terrorist%20attacks. The figures for 2020 and 2021 do not include the United Kingdom.

[4] For an introduction see J. Horgan, *The Psychology of Terrorism*, London, 2005.

education,[5] feelings of frustration arising from the gap between individual aspirations and legitimate means to achieve them,[6] the ethnic and religious diversity of the contexts taken into consideration, the repressive action of the state, and existing political structures.[7]

The topic is widely discussed in the relevant literature. Notwithstanding that more than one factor may lead to radicalisation, radicalisation can be undeniably regarded as the outcome of a (real or presumed) form of exclusion, which is followed by a search for identity. This situation of vulnerability can lead to adherence to radical ideologies and groups, which offer a sense of belonging and purpose to the individual, prompting them to carry out violent actions. Therefore, the need arises not only to repress such conduct once it has been committed, but also and above all to ensure that the vision propounded by those ideologies and groups does not spread. To this end, it is necessary both to prevent radicalisation from taking place and foster a process of deradicalisation that distances the individual from that vision.

Considering the above, this article aims to clarify what the European Union (EU) has done to foster deradicalisation. In this regard, it is clarified what deradicalisation means under EU law (section 2). Then, an account of the relevant measures taken through legally binding acts is provided, with an emphasis on the fact that none of those acts has been adopted specifically in order to tackle the topic here under discussion (section 3). Furthermore, non-legally binding acts are considered, which specifically deal with deradicalisation, although they do not place any obligations on the EU's Member States (section 4). Subsequently, the question is raised as to the possibility of adopting a legally binding act addressing the issue of deradicalisation. The limits to this kind of approach are identified in the EU's system of competences and the principles of subsidiarity and proportionality (section 5). The conclusions are devoted to a contextualisation of the EU's action on deradicalisation through references to initiatives taken by the United Nations and the Council of Europe (section 6).

2. Some explanations on the notion of deradicalisation under EU law

Firstly, one must clarify what deradicalisation is and, therefore, in what sense this concept is to be interpreted under EU law.

In at least two legally binding acts relating to the fight against terrorism, there are references to this concept. In the preamble to Directive 2017/541 on combating terrorism, it is stated that the fight against terrorism should combine measures in the area of criminal justice with policies in the areas of education, social inclusion and integration and with the provision of effective deradicalisation or disengagement and exit or

[5] C. Görzig, K. Al-Hashimi, *Radicalization in Western Europe Integration, Public Discourse and Loss of Identity among Muslim Communities*, London, 2016.

[6] A.B. Krueger, J. Malečková, *Education, Poverty and Terrorism: Is There a Causal Connection?*, in *Journal of Economics Perspectives*, 2003, 119 ff.

[7] As for these topics, see J.A. Piazza, *Rooted in Poverty? Terrorism, Poor Economic Development, and Social Cleavages*, in *Terrorism and Political Violence*, 2006, 159 ff.

rehabilitation programmes.[8] The preamble to Regulation 2021/784 on the dissemination of terrorist content online refers to regulatory measures aimed at countering the phenomenon, which should be complemented, *inter alia*, by deradicalisation initiatives and engagement with the affected communities, in order to achieve the sustained prevention of radicalisation in society.[9]

As for non-binding acts, in a 2013 communication, the European Commission identified a subtle, yet important, difference between disengagement from terrorist activities and deradicalisation. While the former refers to renouncing violence without giving up the underlying ideology, the latter entails the renunciation of both violence and the ideology that led to such violence.[10]

Thus, in the absence of further indications, this seems to be the best definition of the concept offered by EU law. However, one might try to proceed in the opposite direction and, therefore, starting from the notion of radicalisation, define deradicalisation. In this regard, it is interesting to note that the term radicalisation was not defined either in what could have been considered its natural home in the past, i.e. Framework Decision 2002/475 on combating terrorism,[11] or in what is now effectively its natural home, i.e. Directive 2017/541, which replaced the previous act.

As for the Framework Decision, the word "radicalisation" was never used there. However, the Directive has multiple references to radicalisation. It states, for instance, that 'prevention of radicalisation and recruitment to

[8] Recital No. 31 of 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. For a comment, see A. Caiola, *The European Parliament and the Directive on combating terrorism*, in *ERA Forum*, 2017, 409 ff.; J. Maliszewska-Nienartowicz, *A New Chapter in the EU Counterterrorism Policy? The Main Changes Introduced by the Directive 2017/541 on Combating Terrorism*, in *Polish Yearbook of International Law*, 2017, 185 ff.; S. Santini, *L'Unione europea compie un nuovo passo nel cammino della lotta al terrorismo: una prima lettura della direttiva 2017/541*, in *Diritto penale contemporaneo*, 4 July 2017; N. Paunović, *New EU Criminal Law Approach to Terrorist Offences*, in D. Duić, T. Petrašević (Eds), *EU Law in Context – Adjustment to Membership and Challenges of the Enlargement. Vol. 2*, Osijek, 2018, 530 ff.; G. Morgante, R. De Paolis, *Implementing the EU Directive 2017/541 on Combating Terrorism in a Sustainable Balance Between Efficiency, Security and Rights: The Case Study of the Participation to a Terrorist Group*, in *Global Jurist*, 31 May 2021.

[9] Regulation (EU) 2021/784 of the European Parliament and of the Council of 29 April 2021 on addressing the dissemination of terrorist content online. For a comment, see G. Robinson, *The European Commission's Proposal for a Regulation on Preventing the Dissemination of Terrorist Content Online*, in *Eucrim*, 2019, 234 ff.; V. Sachetti, *Il contrasto alla propaganda terroristica online nell'ambito dell'Unione europea: tutela attuale e prospettive future*, in *Eurojus.it*, 7 October 2019; V. Sachetti, *The EU Response to Terrorist Content Online: Too Little, (Maybe not) Too Late?*, in *European Papers*, 2021, 967 ff.

[10] Communication from the European Commission, *Preventing Radicalisation to Terrorism and Violent Extremism: Strengthening the EU's Response*, COM(2013) 941 final, 7.

[11] Council Framework Decision of 13 June 2002 on combating terrorism. For a comment, see E. Dumitriu, *The EU's Definition of Terrorism: The Council Framework Decision on Combating Terrorism*, in *German Law Journal*, 2004, 585 ff. and E. Symeonidou-Kastanidou, *Defining Terrorism*, in *European Journal of Crime, Criminal Law and Criminal Justice*, 2004, 14 ff.

terrorism, including radicalisation online, requires a long-term, proactive and comprehensive approach,'[12] and 'Member States should pursue their efforts to prevent and counter radicalisation leading to terrorism.'[13] Furthermore, Member States should 'provide support to professionals, including civil society partners likely to come in contact with persons vulnerable to radicalisation' and support measures 'may include, in particular, training and awareness-raising measures aimed at enabling them to identify and address signs of radicalisation.'[14] Notwithstanding all these references, the concept of radicalisation is not defined there, nor is it defined in the abovementioned Regulation 2021/784. References to radicalisation are also to be found in the preamble to this act, but without any clarification of its meaning.[15]

Much more useful is Regulation 2021/1149, by which the Internal Security Fund (ISF) was created to contribute to ensuring a high level of security in the EU, in particular by preventing and combating terrorism, radicalisation, serious crime, organised crime, and cybercrime, as well as by providing assistance and protection for victims of crime and addressing threats such as hybrid threats and chemical, biological, radiological, and nuclear threats.[16] Article 2 provides the definitions of some key concepts used in the Regulation and, at No. 14, it is stated that radicalisation is identified as a 'phased and complex process leading to violent extremism and terrorism and in which an individual or a group of individuals embraces a radical ideology or belief that accepts, uses or condones violence, including acts of terrorism, to reach a specific political, religious or ideological goal.'

Thus, EU law does provide a legally binding definition of the concept of radicalisation, albeit not where one might have expected. This is certainly interesting because of its novelty: Regulation 2021/1149 was passed on 7 July 2021. Previously, the meaning of such a key concept had not been clarified at the level of binding acts of EU law.

A similar approach, however, had already emerged in a number of non-binding acts adopted over time.[17] In a 2005 communication on recruitment for terrorist activities, the European Commission defined violent radicalisation as the phenomenon of people embracing opinions, views, and ideas that could lead to terrorist acts as defined – at that time – under Framework Decision 2002/475.[18] The annex to the communication identifies a series of push and pull factors that can lead to the radicalisation

[12] Recital No. 31.
[13] Recital No. 32.
[14] Recital No. 33.
[15] For instance, it is stated that 'the presence of terrorist content online has proven to be a catalyst for the radicalisation of individuals which can lead to terrorist acts' (recital No. 5).
[16] Regulation (EU) 2021/1149 of the European Parliament and of the Council of 7 July 2021 establishing the Internal Security Fund.
[17] As for the non-binding acts adopted by the EU on the matter, recourse to the term radicalisation has been seen since 2004, following the Madrid attacks (see *infra*).
[18] Communication from the European Commission, *Terrorist recruitment: addressing the factors contributing to violent radicalisation*, COM(2005) 313 final, 2. The choice to refer to violent radicalisation seems commendable insofar as it seems to admit the possibility that an individual, enjoying his freedom of manifestation of thought, may subscribe to a radical ideology without committing crimes inspired by the same ideology.

of an individual, such as the perception of real or supposed injustice, the misinterpretation of texts and ideologies, the lack of acceptance in a given social context, the feeling of being discriminated against, the search for a sense of belonging, and the embracing of certain political or religious ideologies.[19]

The same approach can be found in a 2016 communication aimed at supporting the prevention of radicalisation leading to violent extremism. Here too, it is stressed that radicalisation is not caused by a single trigger but is often the outcome of a combination of several factors. Such factors may include 'a strong sense of personal or cultural alienation, perceived injustice or humiliation reinforced by social marginalisation, xenophobia and discrimination, limited education or employment possibilities, criminality, political factors as well as an ideological and religious dimension, unstructured family ties, personal trauma and other psychological problems.'[20] The 2020 communication on the European Security Union Strategy also considers polarisation of society, real or perceived discrimination, and other psychological and sociological factors as elements that can make a person vulnerable to radicalisation.[21]

Finally, in a resolution on the prevention of radicalisation and recruitment of European citizens by terrorist organisations, adopted by the European Parliament in 2015, it is stated that radicalisation is a phenomenon of people embracing intolerant opinions, views and ideas which could lead to violent extremism.[22]

Therefore, having clarified that radicalisation takes the form of a gradual and complex process leading to violent extremism and terrorism on the basis of a radical ideology or belief,[23] deradicalisation can be identified as a process that goes in the opposite direction and which, therefore, aims to move a person away from violent extremism, terrorism, and the underlying conceptions by supporting values and ideas alternative to the use of

[19] *Ivi*, 11, 14.

[20] Communication from the European Commission, *Supporting the prevention of radicalisation leading to violent extremism*, COM(2016) 379 final, 3.

[21] Communication from the European Commission, *On the EU Security Union Strategy*, COM(2020) 605 final, 18.

[22] Recital B of European Parliament resolution of 25 November 2015 on the prevention of radicalisation and recruitment of European citizens by terrorist organisations (2015/2063(INI)).

[23] Although that is not the topic of this article, the definition provided above could be challenged by some sociologists, who believe that the indispensable connection between radicalism and terrorism can be questioned. Indeed, it has been argued that there is no evidence that a radicalised ideology is a prerequisite for embracing terrorism, as there are different pathways and mechanisms of involvement depending on the subjects and contexts. Having radical ideas and ideologically embracing a cause does not mean actually engaging in terrorist acts. As a consequence, it would not be necessary to refer to terrorism in order to define radicalisation (P. Laurano, G. Anzera, *L'analisi sociologica del nuovo terrorismo tra dinamiche di radicalizzazione e programmi di de-radicalizzazione*, in *Quaderni di sociologia*, 2017, 99 ff.). Therefore, rather than emphasising the relationship between radicalism and terrorism, one should instead regard the former as the process by which an individual or group adopts a violent form of action, directly linked to an extremist ideology with political, social or religious content that challenges the established political, social or cultural order (F. Khosrokhavar, *Radicalisation*, Paris, 2017, 8).

violence.[24]

3. Measures to promote deradicalisation: legally binding acts...

As regards the measures adopted by the EU to promote deradicalisation, a caveat must be given: there is no all-encompassing legally binding act devoted to this topic. As a matter of fact, the EU has no specific competence in this matter and, as clarified by the European Commission, the design and implementation of measures to counter radicalisation takes place mostly at the local, regional or national level, falling primarily within the competence of the Member States, while the EU is called upon to play a supporting role.[25]

Therefore, in the current state of development of EU law, there is no deradicalisation regulation or deradicalisation directive that lays down a comprehensive legal framework on this subject. However, this does not mean that further acts cannot be invoked, which, although aimed at tackling other issues, might be related to the promotion of deradicalisation.

Reference may be made to Framework Decision 2008/913 on combating racism and xenophobia by means of criminal law. In Article 1(1)(a) it provides that Member States must ensure that publicly inciting to violence or hatred directed against a group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin is made a punishable offence. To this end, as provided by Article 3, Member States must introduce effective, proportionate, and dissuasive criminal penalties, including imprisonment for a maximum term of at least between one and three years.[26] Furthermore, under Article 6 of Directive 2010/13, Member States must ensure, by appropriate measures, that audiovisual media services provided by media service providers under their jurisdiction do not contain any incitement to hatred based on race, sex, religion or nationality.[27]

[24] The Court of Justice of the European Union's caselaw has not been referred to for the simple reason that it does not provide relevant guidance on this point. A search through the Court's database shows that the term "radicalisation" occurs twice in General Court of the European Union, 13 December 2016, Case T-248/13, *Mohammed Al-Ghabra v Commission*, paras 6 and 14, to describe the conduct of a man whose assets had been affected by freezing measures because of his relations with Usama bin Laden, Al Qaeda, and the Taliban. In the judgment it is stated that the man allegedly played a key role in the radicalisation of young Muslims in the UK. Clarification as to the notion is not provided as it is irrelevant to the case. As for the term "deradicalisation", it has never been used by the Court of Justice of the European Union.

[25] Communication from the European Commission, *Supporting the prevention of radicalisation…*, 2.

[26] Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law. For a comment, C. Faleh Pérez, *La persecución penal de graves manifestaciones del racismo y la xenofobia en la Unión Europea: la Decisión Marco 2008/913/JAI del Consejo*, in *Revista General de Derecho Europeo*, 2009, 5 ff. and T.M. Moschetta, *La decisione quadro 2008/913/GAI contro il razzismo e la xenofobia: una «occasione persa» per l'Italia?*, in *Rivista di Diritto dell'Economia, dei Trasporti e dell'Ambiente*, 2014, 21 ff.

[27] Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or

Directive 2017/541 on combating terrorism requires Member States to criminalise a number of terrorist acts. These include, according to Article 5, public provocation to commit terrorist offences; this is defined as the distribution, or otherwise making available by any means, whether online or offline, of a message to the public with the intent to incite the commission of one of the terrorist offences set out in Article 3(1)(a) to (i) of the Directive, if such conduct, directly or indirectly, for example by glorifying terrorist acts, advocates the commission of terrorist offences, thereby causing a danger that one or more such offences may be committed. Article 21 adds that Member States are required to take the necessary measures to ensure the timely removal of online content hosted in their territory that constitutes public provocation to commit a terrorist offence or, where it is not possible to remove it, to block access to it by Internet users in their territory.

In this regard, it should be noted that the aforementioned Regulation 2021/784 on combating the dissemination of terrorist content online aims to establish uniform rules in order to address the misuse of hosting services for the purpose of disseminating terrorist content online to the public. Pursuant to Article 2(7)(a) to (c), terrorist content means material that incites the commission of terrorist offences or solicits a person or group of persons to commit or contribute to the commission of one of those offences or to participate in the activities of a terrorist group. As provided for by Article 3(1) and (3), the competent authorities of the Member States are empowered to issue a removal order requiring hosting service providers to take down or disable access to terrorist content in all Member States; service providers must do so as soon as possible and in any event within one hour of receipt of the order. In addition to this, under Article 5, service providers exposed to terrorist content must take specific measures to counter it. These measures may rely on appropriate technical and operational capacities, such as personnel or technical means to quickly detect and remove or disable access to terrorist content, easily accessible and user-friendly mechanisms to allow users to report or flag to the hosting service provider alleged terrorist content, other mechanisms to raise awareness of terrorist content in the services, and other actions deemed appropriate.

Finally, reference can be made to Regulation 2022/2065 on a single market for digital services (the so-called Digital Services Act), which defines the responsibilities and obligations of digital service providers, especially online platforms such as social media and online marketplaces.[28] Among other things, it provides for due diligence obligations, including notification and action procedures for illegal content, identified as any information that, in itself or by reference to an activity, is not in compliance with EU law or

administrative action in Member States concerning the provision of audiovisual media services.

[28] Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a single market for digital services and amending Directive 2000/31/EC (Digital Services Act). For a comment, see G. Caggiano, G. Contaldi, P. Manzini (eds.), *Verso una legislazione europea su mercati e servizi digitali*, Bari, 2021 and M.D. Cole, C. Etteldorf, C. Ullrich, *Updating the Rules for Online Content Dissemination Legislative Options of the European Union and the Digital Services Act Proposal*, Baden-Baden, 2021.

the law of a Member State, irrespective of the precise subject matter or nature of that law. Thus, reference may be made to content that aims to incite the commission of terrorist offences.

In more general terms, one may want to consider acts – or specific provisions within acts – through which the EU aims to promote the social rehabilitation of offenders. In this regard, Article 4(6) of Framework Decision 2002/584 on the European Arrest Warrant (EAW) includes, among the grounds for optional non-execution of an EAW, cases in which the EAW has been issued for the purposes of execution of a custodial sentence or detention order, where the requested person is staying in, or is a national or a resident of the executing Member State and that State undertakes to execute the sentence or detention order in accordance with its domestic law.[29] In this respect, the Court of Justice has made it clear that a person resides in the executing Member State if they have established their actual place of residence there and they are staying there when, following a stable period of presence in that State, they have acquired connections with that State which are of a similar degree to those resulting from residence.[30] In order to ascertain whether there are connections, it is necessary to make an overall assessment of various objective factors characterising the situation of that person, including, in particular, the length, nature, and conditions of their presence and the family and economic connections which that person has with the executing Member State.[31] Therefore, it can be stated that the rationale behind Article 4(6) is to be found in the desire not to remove the requested person from the social and cultural context to which they belong, by virtue of their rootedness in that context, given that this could have negative effects in terms of social rehabilitation.

Most of all, however, Framework Decision 2008/909 and Framework Decision 2008/947 must be considered. The former provides for a mechanism for the interstate transfer of sentenced persons in order to enable them to serve the remaining part of their sentence, imposed in one Member State, in another Member State with which they have significant family, linguistic, cultural, social, economic or other ties.[32] The latter Framework

[29] Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States - Statements made by certain Member States on the adoption of the Framework Decision. The body of scientific literature on this Framework Decision is incredibly vast. For some preliminary remarks, S. Alegre, M. Leaf, *Mutual Recognition in European Judicial Cooperation: A Step Too Far Too Soon? Case Study—the European Arrest Warrant*, in *European Law Journal*, 2004, 200 ff.; A. Damato, *Il mandato d'arresto europeo e la sua attuazione nel diritto italiano (I)*, in *Il Diritto dell'Unione europea*, 2005, 21 ff.; A. Damato, *Il mandato d'arresto europeo e la sua attuazione nel diritto italiano (II)*, in *Il Diritto dell'Unione europea*, 2005, 203 ff.; S. Bot, *Le mandat d'arrêt européen. Première réalisation concrète de l'espace pénal européen*, Paris, 2009; L. Klimek, *European Arrest Warrant*, Berlin, 2015.

[30] Court of Justice, 17 July 2008, C-66/08, *Kozlowski*, para. 46.

[31] *Ibidem*, paras 48-49.

[32] Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union. For an analysis, see A. Martufi, *Assessing the resilience of 'social rehabilitation' as a rationale for transfer: A commentary on the*

Decision establishes an instrument of judicial cooperation through which a Member State, other than the Member State in which the person was sentenced, recognises judgments and probation decisions and supervises probation measures and alternative sanctions.[33] Here too, the aim pursued is to facilitate the social rehabilitation of the offender by enabling them to maintain, in particular, meaningful family, linguistic and cultural ties.

Furthermore, a provision in Directive 2012/29 on the rights of victims of crime is relevant.[34] Article 12 sets guarantees that must be applied in the context of restorative justice services, i.e. procedures that allow the victim and offender to actively participate in the resolution of issues arising from the offence with the help of an impartial third party. Those include the offender's acknowledgement of the basic facts of the case. Thus, for that to happen, it is likely that the process of social rehabilitation has already begun.

Another interesting aspect related to the promotion of deradicalisation emerges from the regulations on EU direct and indirect funding programmes. As is well known, EU direct funding programmes are administered by the Commission – or, to be more precise, by the Commission's Directorates-General or EU agencies – without the involvement of Member States' authorities. Thus, programmes, calls for proposals, project selection, funding, and monitoring are carried out at EU level. The indirect funding programmes consist of the structural and investment funds and in these cases national authorities select projects and manage the budget provided by the EU.[35] Several of these programmes can finance projects in the area of deradicalisation.

As far as direct funding is concerned, something has already been said with regard to Regulation 2021/1149, establishing the ISF as a financial instrument through which a high level of security in the EU can be promoted and achieved, also with regard to preventing and combating terrorism and radicalisation. The fund, with an endowment of almost two billion euros for the period 2021-2027, complements the actions undertaken at national,

aims of Framework Decision 2008/909/JHA, in *New Journal of European Criminal Law*, 2018, 43 ff.; S. Montaldo (Ed.), *The Transfer of Prisoners in the European Union*, Turin, 2020; A. Rosanò, *I trasferimenti interstatali di detenuti nel diritto dell'Unione europea*, Bari, 2022.

[33] Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions. For an analysis, S. Neveu, *Probation Measures and Alternative Sanctions in Europe: From the 1964 Convention to the 2008 Framework Decision*, in *New Journal of European Criminal Law*, 2013, 134 ff. and A. Rosanò, *Tristes, Solitarias y Finales: la Convenzione di Strasburgo del 1964 e la decisione quadro 2008/947/GAI sulla sorveglianza all'estero delle misure di sospensione condizionale e delle sanzioni sostitutive*, in *Freedom, Security & Justice*, 2019, 139 ff.

[34] Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA. For a comment, see A. Klip, *On Victim's Rights and its Impact on the Rights of the Accused*, in *European Journal of Crime, Criminal Law and Criminal Justice*, 2015, 177 ff.

[35] On the EU funding programmes, L. Monti, *I fondi europei. Guida al Next Generation EU e al QFP – Quadro finanziario pluriennale 2021-2027*, Rome, 2021 and A. Marcozzi, G. Bartolomei, *I fondi europei 2021-2027 e Next Generation EU. Guida operativa per conoscere e utilizzare i fondi europei 2021-2027*, Rome, 2022.

regional, and local level by the Member States, supporting, *inter alia*, transnational or national projects that bring added value to the European Union. Pursuant to Article 3(2)(c), the ISF contributes, among other things, to supporting the strengthening of Member States' capabilities in relation to preventing and combating crime, terrorism, and radicalisation, as well as managing security-related incidents, risks, and crises, including through increased cooperation between public authorities, relevant Union bodies, offices or agencies, civil society, and private partners in different Member States. In this regard, Annex II identifies a number of measures to implement this objective, such as training, exercises and mutual learning, specialised exchange programmes and sharing of best practices in and between the Member States, and the establishment of specialised training facilities and other essential security-relevant infrastructure to increase preparedness, resilience, public awareness, and adequate response to security threats.

Express references to the fight against radicalisation and support for deradicalisation can be found in Regulation 2021/947, establishing the Neighbourhood, Development Cooperation and International Cooperation Instrument.[36] This mechanism finances projects in third countries in order, *inter alia*, to uphold and promote the EU's fundamental values, principles, and interests worldwide in pursuit of the objectives and principles of the EU's external action so as to consolidate, support, and promote democracy, the rule of law, and respect for human rights. Funding can be implemented through, among other things, geographic programmes, covering country and multi-country cooperation activities in the Neighbourhood,[37] sub-Saharan Africa, Asia and the Pacific, the Americas and the Caribbean. With regard to these programmes, a number of relevant areas of cooperation are identified in Annex II. Among those that may be considered from the point of view of promoting deradicalisation, one may include good governance, democracy, the rule of law and human rights, eradicating poverty, fighting against inequality and discrimination, promoting human development, and, above all, the areas relating to peace, stability, and conflict prevention. As for the latter, reference is made to preventing and countering radicalisation leading to violent extremism and terrorism, as well as protecting individuals from such threats, including by means of context-specific and conflict- and gender-sensitive actions.

[36] Regulation (EU) 2021/947 of the European Parliament and of the Council of 9 June 2021 establishing the Neighbourhood, Development and International Cooperation Instrument – Global Europe, amending and repealing Decision No. 466/2014/EU of the European Parliament and of the Council and repealing Regulation (EU) 2017/1601 of the European Parliament and of the Council and Council Regulation (EC, Euratom) No. 480/2009.

[37] The European Neighbourhood Policy covers Algeria, Armenia, Azerbaijan, Belarus, Egypt, Georgia, Israel, Jordan, Lebanon, Libya, Moldova, Morocco, Palestine, Syria, Tunisia, and Ukraine and is aimed at strengthening the prosperity, stability, and security of these countries. For an introduction, see J. Kelley, *New Wine in Old Wineskins: Promoting Political Reforms through the New European Neighbourhood Policy*, in *Journal of Common Market Studies*, 2006, 29 ff.; S. Lavenex, *A governance perspective on the European neighbourhood policy: integration beyond conditionality?*, in *Journal of European Public Policy*, 2008, 938 ff.; R.G. Whitman, S. Wolff (Eds), *The European Neighbourhood Policy in Perspective. Context, Implementation and Impact*, London, 2010.

Further, it is worth considering Regulation 2021/1529, establishing the Instrument for Pre-Accession assistance, which aims to support Albania, Bosnia and Herzegovina, Iceland, Kosovo, Montenegro, North Macedonia, Serbia, and Turkey in carrying out the political, institutional, legal, administrative, social, and economic reforms necessary for their accession to the EU.[38] Annex II to the regulation sets a number of thematic priorities. One of them relates to establishing and promoting from an early stage the proper functioning of the institutions necessary to secure the rule of law and further consolidating democratic institutions. Reference is also made to supporting engagement with the EU on counterterrorism and preventing radicalisation.

In addition, one may refer to Regulation 2021/692, establishing the Citizens, Equality, Rights and Values programme,[39] and Regulation 2021/693, establishing the Justice programme,[40] both of which contribute to spreading the EU's values and are therefore suitable for supporting projects aimed at countering radicalisation and promoting deradicalisation.

Furthermore, there is Regulation 2021/695, by which Horizon Europe was established as the EU's framework programme in the field of research and innovation.[41] As clarified in Annex II of the Regulation, under the second pillar of Horizon Europe, dedicated to global challenges and European industrial competitiveness, there are at least two areas in which projects related to the themes of countering radicalisation and supporting deradicalisation could be proposed. Indeed, the thematic cluster 'Culture, creativity and inclusive society' is aimed, among other things, at strengthening democratic values, including the rule of law and fundamental rights, and promoting socio-economic transformations that contribute to inclusion and growth, including migration management and integration of migrants. Moreover, the thematic cluster 'Civil Security for Society' is aimed at responding to the challenges posed by persistent security threats.

Similarly, Regulation 2021/817 on the Erasmus+ programme can be considered.[42] On a general level, it must be remembered that the programme aims to support not only the educational, professional, and personal development of people in the fields of education, training, youth, and sport, but also the strengthening of European identity and active citizenship. In this respect, it is interesting to note that Article 3(2), regarding the

[38] Regulation (EU) 2021/1529 of the European Parliament and of the Council of 15 September 2021 establishing the Instrument for Pre-Accession assistance (IPA III).
[39] Regulation (EU) 2021/692 of the European Parliament and of the Council of 28 April 2021 establishing the Citizens, Equality, Rights and Values Programme and repealing Regulation (EU) No. 1381/2013 of the European Parliament and of the Council and Council Regulation (EU) No. 390/2014.
[40] Regulation (EU) 2021/693 of the European Parliament and of the Council of 28 April 2021 establishing the Justice Programme and repealing Regulation (EU) No. 1382/2013.
[41] Regulation (EU) 2021/695 of the European Parliament and of the Council of 28 April 2021 establishing Horizon Europe – the Framework Programme for Research and Innovation, laying down its rules for participation and dissemination, and repealing Regulations (EU) No. 1290/2013 and (EU) No. 1291/2013.
[42] Regulation (EU) 2021/817 of the European Parliament and of the Council of 20 May 2021 establishing Erasmus+: the Union Programme for education and training, youth and sport and repealing Regulation (EU) No. 1288/2013.

programme's specific objectives, emphasises the need to promote inclusion and Chapter V of the regulation includes provisions to increase the participation rates of people with fewer opportunities.

As for indirect funding, Article 3(1)(e) of Regulation 2021/1058 on the European Regional Development Fund (ERDF) and the Cohesion Fund provides that the ERDF may be used for the implementation of the specific objective of bringing Europe closer to its citizens by fostering the sustainable and integrated development of all types of territories and local initiatives.[43] To this end, the ERDF supports initiatives to promote integrated and inclusive social, economic and environmental development, culture, natural heritage, sustainable tourism and security in urban and non-urban areas. Furthermore, recital No. 28 states that investments under the ERDF are also intended to contribute to a high level of security for EU citizens and to foster prevention of marginalisation and radicalisation.

The data of interest that emerge from the abovementioned acts are twofold. Firstly, it appears that the EU, although it does not have a specific competence concerning deradicalisation, has adopted numerous acts that can be exploited to this end through a teleologically oriented interpretation. Thus, the lack of express competence has not led to a legal vacuum.

Secondly, it should be considered that the acts adopted cover the subject of deradicalisation on a broad spectrum, thus affecting many important aspects. Drawing a distinction between them, it is possible to define three categories. One embraces acts that promote a preventive-repressive approach to deradicalisation, since their purpose is to prevent the spread of extremist ideas: that is the case with Framework Decision 2008/913, Directive 2010/13, Directive 2017/541, Regulation 2021/784, and Regulation 2022/2065. Then, there are acts that promote an integrative approach to deradicalisation, i.e. an approach that aims to reintegrate into society individuals who have already been radicalised: Framework Decision 2008/909, Framework Decision 2008/947, and Directive 2012/29 belong to this category. Finally, the acts EU's regulating the direct and indirect funding programmes can be considered as a separate category, as they do not seem to fit into either of two identified above. Indeed, the definition of the approach is to be traced back to the single projects financed through these programmes. Depending on the choices made by the project applicants, the approach may be preventive or integrative. Therefore, the acts governing direct or indirect funding programmes can be considered neutral in this respect.

4. … and non-legally binding acts

The EU's first non-binding act in which deradicalisation is alluded to – though not expressly mentioned – was the Declaration on Combating Terrorism, adopted on 25 March 2004 by the European Council following the terrorist attacks in Madrid on 11 March of that year.[44] The Declaration

[43] Regulation (EU) 2021/1058 of the European Parliament and of the Council of 24 June 2021 on the European Regional Development Fund and on the Cohesion Fund.
[44] On the morning of 11 March 2004, ten backpacks filled with explosives were detonated on four local trains in four Madrid stations, causing 191 deaths and 2057

identifies some areas of intervention such as, for example, international cooperation, border control, and the exchange of information between intelligence agencies, but what is important for the purposes of the present paper is that in Annex I, dedicated to the EU strategic objectives to combat terrorism, the sixth objective concerns the need to address the factors that contribute to support for, and recruitment into, terrorism. In this regard, emphasis is placed on the need to identify these factors, continue to investigate the links between extreme religious or political beliefs and support for terrorism, develop adequate forms of response, make better use of assistance programmes to third countries to address the factors, and develop and implement a strategy to promote cross-cultural and inter-religious understanding between Europe and the Islamic world.[45]

Subsequently, further acts highlighted the central role that deradicalisation plays in the fight against terrorism. The Hague Programme, adopted by the European Council on 4 and 5 November 2004 to identify priorities for strengthening the EU's area of freedom, security and justice over the next five years, emphasised the need to develop a long-term strategy to address the factors contributing to radicalisation,[46] and the same can be said of the Stockholm Programme, covering the five-year period 2010-2014.[47]

The most significant contributions have been made by the European Commission, which since 2005 has identified numerous areas for action such as broadcast media, the Internet, education and youth participation, employment, social exclusion and integration issues, equal opportunities, non-discrimination, and intercultural dialogue.[48]

As for the approach to follow in the case of a single person that has been radicalised, an exit strategy is recommended, based on individual mentoring and psychological support and counselling, which should be accompanied by social and economic support measures to facilitate reintegration. The exit strategy should be integrated into the social context through family and community involvement. The development and implementation of the strategy should be the responsibility of a range of public and private actors, such as police forces, prison administration staff, social service providers, and schools, according to a cross-sectoral approach.[49]

Similar guidance to address the root causes of radicalisation by promoting social cohesion was given by the European Commission in other communications in 2016 and 2020,[50] as well as by the Council of the EU,

injuries. Responsibility for the attacks was claimed by Al Qaeda. On this subject, F. Reinares, *Al-Qaeda's Revenge: The 2004 Madrid Train Bombings*, Columbia, 2017.

[45] www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/79637.pdf.

[46] The Hague Programme: strengthening freedom, security and justice in the European Union (2005/C 53/01).

[47] The Stockholm Programme — An open and secure Europe serving and protecting citizens (2010/C 115/01).

[48] Communication from the European Commission, *Terrorist recruitment…*, 3 ff.

[49] Communication from the European Commission, *Preventing Radicalisation to Terrorism and Violent Extremism…*, 7.

[50] See the abovementioned Communication from the European Commission, *Supporting the prevention of radicalisation…* and Communication from the European Commission, *On the EU Security Union Strategy*.

which emphasised the need to address the underlying conditions that lead to radicalisation and violent extremism through a comprehensive approach based on the involvement of the whole society. This should include raising awareness among vulnerable members of society, close cooperation with youth, children, women, civil society, human rights defenders, and victims of terrorism, countering extremist narratives, and promoting interreligious and intercultural dialogue.[51]

Finally, it may be recalled that in the past the EU could rely on a High-Level Commission Expert Group on Radicalisation which, at the end of its work, drew up a series of recommendations on the exchange of experiences and good practices between the Member States to prevent and counter radicalisation within prisons and facilitate the re-entry into society of radicalised persons, investments in research on radicalisation, the training of judges, prosecutors, and prison administration staff, and the use of alternative sanctions to imprisonment.[52]

Thus, the overview provided here confirms a trend to adopt both a preventive-repressive and an integrative approach to deradicalisation on the part of the EU.

5. A legally binding act on deradicalisation: feasible and necessary?

In light of the above, it is clear that EU law promotes deradicalisation. This is done indirectly through legally binding acts and directly through non-binding acts due to the division of competences between the EU and the Member States and the absence of an express competence attributed to the EU in this area, therefore, due to the principle of attribution.

However, one may wonder whether some competence attributed to the EU might be exploited by way of interpretation in order to identify a legal basis for the adoption of a binding act. On this point, it is worth considering first of all Article 83 of the Treaty on the Functioning of the EU (TFEU) which, in the system outlined by the Treaty of Lisbon, sees its *raison d'être* in the acquired awareness that intra-Community freedom of movement may favour the enlargement of the sphere of operation of organised crime and may correspondingly undermine the protection of EU citizens.[53] Therefore, it promotes the harmonisation of the Member States' criminal law in order

[51] Conclusions of the Council of the European Union and of the Member States meeting within the Council on enhancing the criminal justice response to radicalisation leading to terrorism and violent extremism, 20 November 2015.

[52] High-Level Commission Expert Group on Radicalisation (HLCEG-R), Final Report, 18 May 2018. The group was set up by a European Commission decision of 27 July 2017 and involved Member States, EU's institutions and agencies, and the Radicalisation Awareness Network (RAN, a platform that connects actors dealing in various capacities with the issue of radicalisation, in order that they may exchange information and good practices and develop appropriate response tools) to improve cooperation on preventing and countering radicalisation and assist the European Commission in this regard.

[53] A. Bernardi, *La competenza penale accessoria dell'Unione Europea: problemi e prospettive*, in *Diritto penale contemporaneo*, 2012, 43. For an introduction, G. Grasso, *Il Trattato di Lisbona e le nuove competenze penali dell'Unione*, in *Studi in onore di Mario Romano*, Naples, 2011, 2326 ff. and C. Amalfitano, *Art. 83 TFUE*, in A. Tizzano (Ed.), *Trattati dell'Unione europea*, Milan, 2014, 897 ff.

to avoid forum shopping and thus seeks to prevent differences as regards the penalties applicable in the different Member States for the same offences.[54] According to Article 83(1), this action takes the form of directives adopted by the European Parliament and the Council following the ordinary legislative procedure, which may establish minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with a cross-border dimension resulting from the nature or impact of such offences or from a special need to combat them on a common basis. The areas of particularly serious crime include terrorism, to which the issue of deradicalisation undoubtedly relates. However, it must be considered that paragraph 1 limits the scope of intervention to the definition of offences and sanctions. In this regard, the European Commission has clarified that the definition of offences always includes the intentional conduct, but it may also extend to seriously negligent conduct, culpable conduct, and subsidiary conduct such as instigation, aiding and abetting, and attempt. In addition, rules on jurisdiction may be included. Regarding penalties, minimum rules may concern the requirements of certain sanction types (such as fines and imprisonment) and levels, and the definition of aggravating and mitigating circumstances.[55]

Therefore, it does not seem possible to include the matter of deradicalisation in the definition of either offences or sanctions, as it concerns a process that may take place after a penalty has been imposed. For the same reason, it does not seem possible to make use of Article 83(2) TFEU, which provides that where the approximation of criminal laws and regulations of the Member States proves essential to ensure the effective implementation of a Union policy in an area which has been subject to harmonisation measures, minimum rules concerning the definition of criminal offences and sanctions in the area concerned may be laid down by means of directives.

At first glance, some interest may be aroused by Article 84 TFEU, under which the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may establish measures to promote and support the action of Member States in the field of crime prevention, excluding any harmonisation of the laws and regulations of the Member States. This is a specific provision that is linked to the general provisions whereby the EU must offer its citizens an area of freedom, security and justice without internal borders, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to, *inter alia*, prevention of crime (Article 3(2) TEU) and must endeavour to ensure a high level of security through, among other things, measures to prevent crime (Article 67(3) TFEU). However, the scope of the provision should not be overestimated. The wording is in fact clear in deferring the primary responsibility for crime prevention to the Member States, giving the EU an additional and residual role in this respect. More specifically, the EU could

[54] P. De Pasquale, C. Pesce, *Article 83 TFEU*, in H.J. Blanke, S. Mangiameli (Eds), *Treaty on the Functioning of the European Union – A Commentary Volume I: Preamble, Articles 1-89*, Cham, 2021, 1582, 1585.

[55] Communication from the European Commission, *Towards an EU Criminal Policy: Ensuring the effective implementation of EU policies through criminal law*, COM(2011) 573 final, 9 ff.

only intervene in the event that the Member States do not have the political or economic capacity to implement effective measures in this regard,[56] and in any case without being able to promote the harmonisation of the relevant legal framework, thus without being able to bring about an approximation of national legislations. It is no coincidence, therefore, that Article 84 has been used as a legal basis for regulations establishing funding programmes administered by the EU. This was the case for Regulation 1382/2013, establishing the Justice Programme for the period 2014-2020,[57] Regulation 513/2014, establishing the instrument for financial support for police cooperation, preventing and combating crime, and crisis management,[58] and Regulation 514/2014, laying down general provisions on the aforementioned instrument.[59] Therefore, the wording of Article 84 TFEU and the relevant practice confirm that it cannot be used as a suitable legal basis for adopting a legally binding act requiring Member States to introduce rules on deradicalisation.

However, even if a suitable legal basis could be found, further questions would arise as to the appropriateness of EU normative harmonisation/unification. One issue concerns the compliance with the principle of subsidiarity, according to which in areas which do not fall within its exclusive competence, the Union may act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level (Article 5(3) TEU).[60] The European Commission seems to be fully aware of this, having emphasised – as mentioned above – that the development and implementation of measures to counter radicalisation mostly takes place at local, regional or national level, falling primarily within the competence of the Member States, while the EU is

[56] P. De Pasquale, C. Pesce, *Article 84 TFEU*, in H.-J. Blanke, S. Mangiameli (Eds), cit., 1597-1598.

[57] Regulation (EU) No. 1382/2013 of the European Parliament and of the Council of 17 December 2013 establishing a Justice Programme for the period 2014 to 2020. This Regulation was repealed by Regulation (EU) 2021/693 of the European Parliament and of the Council of 28 April 2021 establishing the Justice Programme and repealing Regulation (EU) No. 1382/2013, which does not refer to Article 84 TFEU as a relevant legal basis.

[58] Regulation (EU) No. 513/2014 of the European Parliament and of the Council of 16 April 2014 establishing, as part of the Internal Security Fund, the instrument for financial support for police cooperation, preventing and combating crime, and crisis management and repealing Council Decision 2007/125/JHA.

[59] Regulation (EU) No. 514/2014 of the European Parliament and of the Council of 16 April 2014 laying down general provisions on the Asylum, Migration and Integration Fund and on the instrument for financial support for police cooperation, preventing and combating crime, and crisis management.

[60] For some preliminary remarks on the principle of subsidiarity, P. De Pasquale, *Il principio di sussidiarietà nella Comunità europea*, Naples, 2000; C. Favilli, *Il principio di sussidiarietà nel diritto dell'Unione europea*, in *Archivio Giuridico Filippo Serafini*, 2011, 257 ff.; G.A. Moens, J. Trone, E. Calzolaio, *The legislative principle of subsidiarity: a meaningful restriction upon the legislative power of the European Union*, in *Diritto pubblico comparato ed europeo*, 2014, 563 ff.; S. Marino, *Dieci anni di controllo politico del principio di sussidiarietà: quale ruolo hanno giocato i Parlamenti nazionali?*, in *Temi e questioni di diritto dell'Unione europea. Scritti offerti a Chiara Morviducci*, Bari, 2019, 43 ff.

called upon to play a supporting role.

Here it is worth adding some thoughts regarding the principle of proportionality, which requires that the content and form of EU action does not exceed what is necessary to achieve the objectives of the Treaties (Article 5(4) TEU). As is well known, the principle of proportionality is a general principle of EU law, according to which the measures set by a provision of EU law must be suitable for achieving the legitimate objectives pursued by the relevant legislation without going beyond what is necessary.[61] Furthermore, where it is possible to choose between several appropriate measures, the least restrictive one should be opted for, and the disadvantages caused should not be disproportionate to the aims pursued.[62] An assessment in this respect must be carried out on three levels, i.e. it is necessary to determine whether the measures are appropriate with respect to the objective pursued, whether they are necessary with respect to equally effective and practicable alternatives, and whether they are proportionate with respect to the consequences they generate for the persons concerned.[63] The third profile is particularly interesting if one considers that Article 5 of Protocol No. 2 to the Lisbon Treaty on the application of the principles of subsidiarity and proportionality provides that draft legislative acts must take into account the need for any burden, whether financial or administrative, falling upon the EU, national governments, regional or local authorities, economic operators, and citizens, to be minimised and commensurate with the objective to be achieved. In addition, the Court of Justice has made it clear that it may find fault with the EU's legislative choice if it appears manifestly incorrect or if the resultant disadvantages for certain economic operators are wholly disproportionate to the advantages otherwise offered.[64] Therefore, in assessing the burdens associated with various possible measures, the EU must examine whether the objectives pursued by the measure chosen are such as also to justify substantial negative economic consequences for certain operators.[65]

These points become important if one considers that many EU Member States are not affected by terrorism. According to the Global Terrorism Index 2023, such is the case with Bulgaria, Croatia, Czech Republic, Estonia, Finland, Hungary, Latvia, Poland, Portugal, and Slovenia. Taking into account the Member States in which terrorism is of

[61] *Ex multis*, Court of Justice, 8 June 2010, C-58/08, *Vodafone and Others*, para. 51 and 6 December 2005, C-453/03, C-11/04, C-12/04 and C-194/04, *ABNA and Others*, para. 68.

[62] *Ex multis*, Court of Justice, 4 May 2016, C-358/14, *Poland v Parliament and Council*, para. 78 and 6 September 2017, C-643/15 and C-647/15, *Slovakia v Council*, para. 206.

[63] See P. Craig, *EU Administrative Law*, Oxford, 2006, 656 and T. Tridimas, *General Principles of EU Law*, Oxford, 2006, 139. More generally, M.C. Ciciriello, *Il principio di proporzionalità nel diritto comunitario*, Naples, 1999; T.-I. Harbo, *The Function of the Proportionality Principle in EU Law*, in *European Law Journal*, 2010, 158 ff.; W. Sauter, *Proportionality in EU Law: A Balancing Act?*, in *Cambridge Yearbook of European Legal Studies*, 2013, 439 ff.; V. Kosta, *The Principle of Proportionality in EU Law: An Interest-based Taxonomy*, in J. Mendes (Ed.), *EU Executive Discretion and the Limits of Law*, Oxford, 2019, 198 ff.

[64] Court of Justice, 13 May 1997, C-233/94, *Germany v Parliament and Council*, para. 56.

[65] Court of Justice, 12 May 2011, C-176/09, *Luxembourg v Parliament and Council*, para. 63.

extremely limited significance, one could also add Cyprus, Denmark, Ireland, Lithuania, and Romania.[66] Thus, in more than half of the EU Member States, no problem of such intensity justifies the adoption of specific legislation on deradicalisation. An EU act imposing the harmonisation or the unification of legislation on this point would then entail an effort (in legislative, administrative, and/or economic terms) disproportionate to the objective pursued. Therefore, at the present stage, it is considered preferable to leave it to the Member States to assess whether and how to intervene in this respect.

6. Conclusion

It follows from the above analysis that for the EU the issue of deradicalisation is of key importance in the fight against terrorism. There is no legally binding act expressly devoted to this topic and, in the current state of development of EU law, the EU does not have the competence to adopt such an act. Furthermore, such an act would not be fully consistent with the principles of subsidiarity and proportionality. However, when looking at legally binding acts tackling other problems, several elements can be found and emphasised with a view to deradicalisation, whereas, when referring to non-binding acts, it can undoubtedly be said that there has been no lack of action on the part of the EU. Whether or not the Member States intend to comply with these suggestions is, of course, left to the discretion of the national legislators and governments.

That being said, there is a tendency in EU law to approach the fight against terrorism from a perspective that is not only punitive, which is confirmed by the actions also taken by other international organisations over the last twenty years.

Considering for instance the United Nations, the Security Council has long advocated the need for States to pursue dialogue in order to avoid discrimination against certain religions and cultures and prevent the subversion of educational, religious, and cultural institutions by terrorists and their supporters,[67] involve local communities and non-governmental organisations in the development of strategies to counter narratives that incite the commission of acts of terrorism, address the causes of violent extremism by supporting young people, women, families, and religious leaders,[68] and promote credible alternative narratives.[69] In addition, the United Nations Office on Drugs and Crime (UNODC) has prepared a set of guidelines for dealing with violent extremism and radicalisation in the prison context, particularly emphasising the importance of interventions in the field of education and vocational training.[70]

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[66] Institute for Economics & Peace, *Global Terrorism Index 2023. Measuring the impact of terrorism*, Sidney, March 2023, 8-9.

[67] United Nations Security Council, Resolution 1624(2005), 14 September 2005 (S/RES/1624/2005).

[68] United Nations Security Council, Resolution 2178(2014), 24 September 2014 (S/RES/2178/2014).

[69] United Nations Security Council, Resolution 2354(2017), 24 May 2017 (S/RES/2354/2017).

[70] UNODC, *Handbook on the Management of Violent Extremist Prisoners and the Prevention*

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Reference can also be made to the Council of Europe (CoE). In 2015, the CoE's Committee of Ministers adopted an Action Plan on *The fight against violent extremism and radicalisation leading to terrorism*, in which it emphasised the need to focus States' efforts in three areas, namely schools, prisons, and the Internet, as these are the ones in which radicalisation is most likely to occur.[71] With specific regard to prisons, in 2016 the Committee of Ministers set out guidelines stressing that initiatives aimed at fostering deradicalisation should be consistent with the protection of human rights and, in particular, with respect for personal data and privacy, and that they should be conducted in the context of proper management of prison facilities. To this end, it is necessary to select staff with relevant linguistic abilities and cultural sensitivity, to foster intercultural and multifaith awareness training for staff, and to provide educational activities for prisoners.[72]

Therefore, it is undeniable that there is an awareness on the part of international organisations of the need to foster deradicalisation to effectively counter terrorism. However, the measures adopted in this regard are usually non-binding in nature. Thus, it remains for States, more aware of their social, economic, and cultural context, to choose to make these suggestions their own and implement them or, if they so wish, to find alternative solutions.

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of Radicalization to Violence in Prisons, Vienna, October 2016. It must be underlined however that the UNODC approach seems to be directed towards disengagement rather than deradicalisation: 'Perhaps most important is defining from the outset whether the goal of the intervention is to change the views, values and attitudes (deradicalization) or the behaviour of the violent extremist prisoner (disengagement from violence). Interventions that aim for the latter are likely to be more successful in achieving their goals. They do not attempt to change a prisoner's radical or extremist beliefs and views but instead seek to get a prisoner renounce the use of violence to achieve their objectives' (p. 71).

[71] Committee of Ministers, *The fight against violent extremism and radicalisation leading to terrorism* – Action Plan, CM(2015)74-addfinal, 19 May 2015.

[72] Committee of Ministers, *Guidelines for prison and probation services regarding radicalisation and violent extremism*, 2-3 March 2016.

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