

FRA Press Release

Vienna, 18 November 2021

Counter terrorism but respect fundamental rights

Acts of terrorism represent a serious threat to the lives and safety of people, and a profound security challenge for states. At the same time, laws and policies to counter the threat of terrorism can entail, directly or indirectly, serious limitations to fundamental rights and freedoms, finds a new report from the EU Agency for Fundamental Rights (FRA). Drawn from expert insight, it suggests how counter terrorism work can benefit from greater legal clarity, practical guidance and stronger safeguards.

"When terrorism strikes, its immediate destructive impact is painfully evident. But the fear and distrust it instils have profound and corrosive long-term effects on society. The need to protect people against such attacks is clear," says FRA Director [Michael O'Flaherty](#). *"Yet while doing so, we must carefully consider the impact of counter-terrorism measures. This report will support EU and national policymakers in ensuring legal compliance of such measures."*

The report examines the EU's main criminal law instrument in the field of counter-terrorism, Directive (EU) 2017/541. It looks into [the directive's impact on fundamental rights and freedoms](#). It also provides insights into the experiences of practitioners, and other experts with in-depth knowledge in this field, with the practical application of the directive's provisions.

The directive aims to help countries address the threat of terrorism. But counter-terrorism laws, policies and measures often have a bearing on fundamental rights, affecting individuals, groups and society as a whole.

As one judge told FRA: "If I am always waiting for the bomb to explode, people will say the judiciary isn't working well and is not protecting other fundamental rights; if I step in very soon, critics will ask: 'Are you still a democratic country?' Finding that balance is very hard."

The report provides evidence-based advice to encourage policymakers across the EU to apply the directive's provisions in full compliance with fundamental rights:

- **Clarify what terrorism means in criminal law:** broad definitions of what is a terrorist offence leaves such crime open to interpretation. Greater legal clarity would ensure countries apply counter-terrorism laws consistently across the EU.
- **Avoid calling lawful activities as terrorism:** the directive criminalises some activities as precursors to terrorism, such as publicly expressing radical views, training, or travelling to conflict zones. This increases the risk that authorities mistakenly view freedom of expression, information, and movement carried out by, for example, journalists, humanitarian organisations, researchers, or artists as terrorism. This calls for guidance and training for terrorism investigators so they can clearly differentiate between lawful acts and terrorism.
- **Provide effective safeguards during investigations:** to prevent terrorism, investigators often have broad powers of investigation, including surveillance and intelligence gathering. This can affect data protection, privacy, and access to justice rights. Countries need to provide adequate safeguards and clear authorisation rules and supervision to ensure investigations are targeted and justified.

- **Avoid discrimination against specific groups:** religious followers, particularly Muslims, can be more prone to criminal investigations. Some religious practices can also be misinterpreted as signs of radicalisation. This calls for guidance and training to avoid such bias and misunderstanding as well as data collection to assess the impact on different groups.
- **Ensure access to justice beyond criminal law:** Some countries also apply non-criminal law measures like house arrests, travel bans and monitoring of suspects, those guilty, or even sometimes acquitted, of crime. Such administrative measures are subject to less constraints than criminal law and granted more widely, often based on information from intelligence services. This makes it harder to seek justice. Countries need to use clear rules and conditions when applying such measures. They should also allow people to effectively challenge measures imposed on them. Here, oversight bodies should have the mandate and powers to assist in complaints against non-criminal law measures.

The report will assist EU and national policymakers to effectively combat terrorism and uphold fundamental rights.

The European Commission asked FRA to assist them in assessing the directive's impact and support their own evaluation, [also out today](#).

The findings draw on desk research plus interviews with practitioners and experts in seven EU countries: Belgium, France, Germany, Greece, Hungary, Spain, and Sweden. FRA interviewed judges, lawyers, public prosecutors, law enforcement officers, civil society, oversight experts and academics.

For more, please contact: media@fra.europa.eu / Tel.: +43 1 580 30 642