

When the EU adopts anti-terrorism measures is it trying to combat terrorism or crime?

- **UK parliamentary committee says the supposed link between terrorism and organised crime in the Commission Communication is based: "more on assertion than on evidence"**
 - **Commission proposal on exchange of information on terrorism could lead to hundreds of innocent people being put on "watch-lists" for each anti-terrorist investigation**
 - **Companies, charities and all bank accounts to be targeted**
 - **European Criminal Registry to be set up including data on all those charged - whether found guilty or not**
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At the EU Summit meeting (the 25 Prime Ministers) in Brussels on 17-18 June 2004 will adopt a new Action Plan on terrorism and a series of reports in the wake of 11 March 2004 (Madrid), see: [Summit documents](#)

On 24 March Statewatch published a detailed analysis of the 57 measures being put forward following 11 March 2004 (Madrid) by the Council of the European Union (the 15 EU governments) and the European Commission. The analysis found that 27 of the measures had little or nothing to do with tackling terrorism including measures to do with crime in general and the surveillance of telecommunications (phone-calls, e-mails, faxes, internet usage) and of movement. This strategy begs the question whether there is, at the highest level, a confusion of aims and effort.

The Action Plans for the Summit (from the Council of the Europe Union and the European Commission) are peppered with references to a Commission Communication dated 29 March 2004 (COM 221), which is a classic demonstration of confused aims. This contains a proposal for a Council Decision on exchanging "information and cooperation concerning terrorists offences" (see below) and a "wish-list" on criminal matters. The logic is to bring together the:

"Union's arsenal of weapons against terrorism. Many of these are not specifically anti-terrorism but range wider while including terrorism [and] a link should be established between terrorism and other forms of crime" [even though these are] not always immediately obvious..if the fight against terrorism is to be totally effective, it must be handled in conjunction with the fight against other forms of crime."

It argues that the connection is, in part, through the use of "similar" methods and proposes everybody's (convicted criminal or not) bank accounts should be "registered" and "be

accessible to law enforcement agencies". Companies and charitable organisations too are to be targeted because they could be "infiltrated" by terrorists. Everyone, across whole spheres of everyday life, are to be registered and recorded to try and track down terrorist "suspects" - of course, the same information - once collected and accessible to a host of state agencies - could equally be used for other purposes which have nothing to do with terrorism.

The big project is the proposed creation of a "European Criminal Record" to be held on a "European Criminal Registry" - which according to a Commission spokesperson would contain not only all convictions and disqualifications but also *all charges* brought (even of those found innocent at trial) from the whole of the EU - in *"the fight against crime, and in particular terrorism"*.

The simplistic notion in the Commission Communication is that there is an intrinsic link between terrorism and organised crime and indeed all crime - an argument which, if turned around, implies that all crime is linked to terrorism.

Framework Decision: exchanging information

The specific proposal in the Communication is a draft Council Decision on "the exchange of information and cooperation concerning terrorist offences". This envisages in Article 2 the exchange of "information" during investigations and prosecutions concerning terrorist offences as set out in Article 1 to 3 of the 2002 Framework Decision on combating terrorism (see: **Critique**). The "information" is to be communicated to Europol and Eurojust (EU prosecutors) and made *"available immediately to the authorities of other interested Member States"*.

It is sensible that such information should be made available. However, the proposal contains no provision for the "information" to be removed/deleted should a person be found innocent. There is no provision for the "information" passed over on those caught up in a "criminal investigation" but never charged or convicted to be removed/deleted. This is especially worrying as an "investigation" into a suspected terrorist offence would embrace not just the subject but their family, friends and work associates to see if there were any links to the suspected offence. A typical investigation could involve 20-40 other people who are found to be quite innocent but "information" on them could be *"immediately"* transmitted to dozens of agencies across the 25 EU member states.

In April ten Muslim "suspects" were arrested in the north of England but never charged - this could have led to several hundred names and personal details being put into EU-wide circulation with no obligation for this data to be deleted. If there is no obligation to delete the names and details of innocent people they could find themselves on "watch-lists" for years to come.

There is another problem with the draft Decision. The intention is to widen the scope from those persons, groups and entities placed on updated lists of terrorist groups on formally adopted EU lists (see: **Lists**) to *all* those investigated under Articles 1 to 3 of the controversial Framework Decision on combating terrorism (2002) which, despite some amendment, is still ambiguous as to where the line is drawn between terrorism and large-scale protests. It covers, for example, those acting with the aim of:

unduly compelling a Government or international organisation to perform or abstain from performing any act (Art 1.ii)

To broaden the scope of cooperation on terrorism to this much broader definition open the way for abuse and its application to non-terrorist offences.

The UK House of Commons Select Committee has issued a scrutiny report (17.6.04) which raises a number of similar issues. These include the Committee' view that the link between terrorism and crime in the Commission's Communication:

"rests more on assertion than on evidence"

On the idea of a European criminal record the Committee says:

"In our view, it is not the business of the European Union to determine the composition or content of national criminal records. Such a matter bears directly on the rights of the individual, and is a matter for national parliaments."

The Committee has asked for an assessment of "disclosing personal information to third parties" in relation to Article 8 of the ECHR and whether it would require amendments to the Human Rights Act 1998 or the Data Protection Act 1998.

The UK Select Committee on the European Union commented:

"We are not convinced that the establishment of a European Criminal Record is necessary. In our scrutiny of the Commission Communication, we expressed concerns regarding the proliferation of databases at EU level, noting that "the feasibility and added value of these databases are questionable and their impact on privacy and the protection of personal data may be considerable".¹³⁸ Before a database was established it would be necessary to establish whether links between national databases could not achieve the same objective. We have particular concerns regarding proposals to create databases which would extend beyond convictions, including data on investigations. Dr Xanthaki and Dr Stefanou stressed the fact that this would be unconstitutional in a number of EU Member States.¹³⁹ It would

certainly challenge the fundamental principle of the presumption of innocence. However, if a European Criminal Record were eventually established, we would endorse safeguards on the lines of those proposed by Dr Xanthaki and Dr Stefanou. It is essential that the content, access and use of any such database are clearly defined." [para: 102 - Eurojust report, HL Paper 138]

Tony Bunyan, Statewatch editor, comments:

"The increasing tendency to stress the "anti-terrorist" benefits of crime control and wholesale surveillance measures shows a confusion of aims which detracts from the clear need to protect people from terrorist attacks.

This has to be one of the most confused and illogical Commission Communications ever produced. It should be withdrawn and be re-presented and deal only with investigations into terrorist offences - and include absolute safeguards for those innocently caught up in them."

1. Communication from the Commission on measures to be taken to combat terrorism and other forms of serious crime, in particular to improve exchanges of information: [COM 221 full-text](#) (pdf)
2. UK Select Committee on European Scrutiny: [Report](#) (link)
3. [Statewatch "Scoreboard" on post-Madrid counter-terrorism plans](#)

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