



## Statewatch “Scoreboard” on post-Madrid counter-terrorism plans

### Summary

1. The tragedy in Madrid on 11 March 2004 requires a response from the EU to review and reinforce counter-terrorist measures. An analysis of the 57 proposals on the table at the EU Summit on 25-26 March in Brussels shows that 30 of these are relevant to this need.

2. However, the analysis also shows that 27 of the proposals have little or nothing to do with tackling terrorism - they deal with crime in general and surveillance.

3. A number of the proposals would introduce the wholesale surveillance of everyone in Europe and could potentially be used for social and political control:

a) through logging all telecommunications (e-mails, phone-calls, mobile-calls, faxes and internet usage;

b) tracking all air travel in and out and within the EU (effectively an EU version of the USA’s controversial PNR, CAPPs II and US-VISIT plans);

c) the fingerprinting of nearly everyone in the EU by the introduction of biometric passports and ID cards for citizens and the same for resident third country nationals.

4. The dreadful loss of life and injuries in Madrid requires a response that will unite the people of Europe rather than divide them.

If in defending democracy measures are introduced that fundamentally undermine civil liberties and peoples’ right to privacy, it has to be asked what are we defending?

Tony Bunyan, Statewatch editor, comments:

*“Under the guise of tackling terrorism the EU is planning to bring in a swathe of measures to do with crime and the surveillance of the whole population. After the dreadful loss of life and injuries in Madrid we need a response that unites Europe rather than divides it”*

## Commentary

The EU summit on 25-26 March 2004 will agree upon a set of counter-terrorism measures following the appalling events in Madrid on 11 March. On the basis of a European Commission Action Plan on terrorism (MEMO/04/66, dated 18 March 2004) and the latest draft of an EU Declaration on combating terrorism prepared for the summit (7468/4/04 REV 4, 22 March 2004) there are at least 57 specific measures on the table. This report, the *Statewatch* "scoreboard" on post-Madrid counter-terrorism plans, is a systematic review of the justification, content and legitimacy of these measures (the concept of a "scoreboard" is borrowed from the European Commission's bi-annual "scoreboard on the development of the Area of security, freedom and justice").

We have grouped the proposals in five categories and given each measure one or two scores out of 5. The first score is a measure of the relevance of the proposals to countering terrorism. This scoring system reflects our serious concern that time and resources spent on issues not sufficiently related to terrorism are time and resources that could be better spent making the EU more secure from terrorism if the action were more focussed. A high score demonstrates proposals relevant and limited to counter-terrorism, implying legitimacy. Those proposals that are "severable" - allowing the EU Council to go ahead and adopt special rules to deal with the terrorist threat without applying those rules (at least for now or in the same way) to other crimes - get a medium score. Measures entirely unrelated to terrorism score "0".

The second score is a measure of our concern that data protection, human rights law, and frameworks for regulation and accountability are being ignored by EU governments. We have given a score only where the terrorism relevance is high to reflect our concern for civil liberties and the desirability of the measures in their current or suggested form (a low score here demonstrates serious concern).

Thus, a measure with two high scores, may be deemed both proportionate and consistent with standards for the protection of human rights and civil liberties.

A full list of the measures is provided after this summary of our concerns. The 34pp *Statewatch* scoreboard, providing detailed analysis of each proposal, is on: <http://www.statewatch.org/news/2004/mar/swscoreboard.pdf>

### Proposals not limited to combating terrorism

Of the 57 proposals under consideration that we were able to identify, almost half bear little or no relation tackling terrorist attacks like the those in Spain - 27/57 score 2 or lower out of 5 on our relevance scale. Rather, these proposals concern existing EU mechanisms or initiatives on general matters relating to police, judicial cooperation or immigration control. It is

hard to avoid the conclusion that the EU plans on the table are trying to exploit the recent tragedy to push through controversial and unwarranted measures.

The plans also call on the member states to expedite agreement on a number of complex measures on the implementation of the principle of “mutual recognition” in EU judicial cooperation on matters. None are limited to terrorism and are only theoretically relevant if one member state *refuses* to cooperate with another. Given the unequivocal commitment from all member states to cooperate fully in the investigation and prosecution of terrorist offences, the premise that these measures must be swiftly agreed to counter-terrorism is misguided. It is also unacceptable in the light of the hurried and flawed agreement on the European Arrest Warrant and the absence of harmonised procedural safeguards for suspects and defendants as promised in the EU’s mutual recognition programme. The harmonisation of EU criminal law is a delicate and complex process that must not be rushed on the basis of a false pretext.

### **Disproportionate surveillance powers**

The proposals on the surveillance of telecommunications through the mandatory retention of all traffic data, on the surveillance of movement through the construction of files on air passengers and on the use of biometrics in travel documents would place the majority of people in the EU under surveillance. It will also mean most people have to give their fingerprints for inclusion in one of several potentially linked EU databases. This will be of marginal use in preventing the terrorist attacks we are told are inevitable. The fact that Spain has compulsory national identity cards made no difference on 11 March.

No-one is disputing the need for targeted and sustained surveillance of certain individuals or groups. These proposals would instead give intrusive powers to a range of law enforcement agencies for “general” purposes. Moreover, as the drafters of the EU plans clearly recognise, as long as they cooperate effectively EU police forces and judicial authorities have today sufficient powers to place known and suspected “al-Qaeda” terrorists anywhere in the EU under systematic and sustained surveillance.

The wholesale and mandatory surveillance that is proposed is entirely incompatible with the “balance” sought by the rule of law and Article 8 of the European Convention of Human Rights to respect the individual right to privacy on the one hand and the legitimate need for state agencies to conduct intrusive surveillance *in specified and sanctioned circumstances* on the other.

The Irish Justice Minister has called these concerns “naïve”, suggesting that it is a “false dichotomy” to claim these measures will undermine civil liberties. In doing so, the Irish presidency is seeking to create its own false dichotomy by suggesting the only alternatives are “surveillance on everyone” or “surveillance on no-one”.

## **The EU is exceeding its mandate**

Taken together, the EU “Homeland Security” and surveillance proposals exceed the degree of intrusion deemed proportionate in the “war on terror” by any single EU member-state and, for that matter, the United States. Endorsement of these proposals would therefore see the EU exceeding its mandate and powers.

Human intelligence is the key to effective counter-terrorism. It is not produced by surveillance of the entire population, electronic fishing expeditions or a misguided belief in the superiority of technology. The EU should concentrate its efforts on the crucial task of removing the cultural and political barriers to European police and intelligence cooperation and the effective implementation of existing measures in solidarity with the Spanish people.

In exceeding its mandate in such an authoritarian manner and disregarding fundamental rights, the EU risks alienating the population of Europe and undermining the important role of improving security for all.

## **Solidarity clause and “operational cooperation”**

The implementation of the solidarity clause in the draft EU constitutional treaty genuinely reflects the people of Europe’s solidarity with the people of Spain. The victims and the authorities should be afforded every assistance in coping with the atrocities and apprehending the perpetrators.

We are concerned, however, that the solidarity clause may be used to bring in to early effect Article 162 of the draft EU constitutional treaty. This would create the permanent committee in the EU to oversee *all* operational matters relating to EU “internal security” policy. “Internal security” is a much wider remit than justice and home affairs as it includes not just policing, immigration and judicial cooperation but extends to customs, the role of the military inside the EU and the maintenance of public order.

There are already questions as to whether the proposed degree of regulation and accountability of this body is sufficient and it should not be created in advance of the provisions on the draft treaty to improve democratic control and judicial supervision.

The EU has already agreed upon a host of operational bodies, databases and cooperation mechanisms, none of which are limited in scope to terrorism. Any objective assessment suggests that as long as they are used effectively national police forces and judicial authorities, assisted by EU bodies, have today sufficient powers to undertake joint actions to improve security and investigate, arrest and prosecute suspected terrorists anywhere in the EU. Justice and home affairs policy has been about developing such measures for more than a decade - the two and a half years since 11 September has already seen them reviewed at length and extended where necessary.

## **Qualified majority voting on EU terrorist lists**

The procedure for deciding who is to be included on the “terrorist lists” is arbitrary and unaccountable. This has allowed the EU to criminalise certain groups and individuals on ideological and political grounds rather than any objective security threat to the EU.

It is unacceptable that these lists are agreed by “written procedure” and on occasions without debate (they have simply been faxed round to the fifteen foreign ministries and adopted if there are no objections). There is thus a complete lack of political accountability over how the list is drafted, the grounds for inclusion, which officials in which member states are proposing amendments and why and the extent of consultations, if any. The failure to require as much as a preliminary investigation demonstrating a connection to terrorism before individuals or organisations can be included on the list or have their assets frozen and the failure to provide adequate mechanisms for appeal or judicial review is a spectacular breach of the fundamental rights of those affected.

The proposal to allow amendments to this list by qualified majority voting in the EU Council would exacerbate these problems and further politicise rather than rationalise the decision-making process.

## **An unbalanced and undemocratic plan**

The second scoring system we have used, where measures are limited or powers restricted to terrorism, highlights serious concerns in two thirds of the proposals over compliance with EU human rights or data protection law or frameworks for regulation and accountability (18 out of the 27 measures scored two or less out of five).

Development of the EU’s counter-terrorism policy, like all its decision-making, should be open and democratic process involving European and national parliaments and the people of Europe. Quite the opposite has been the case to date.

Agreement upon sweeping law enforcement powers at the EU level is easier than ensuring effective cooperation between national police, security and intelligence agencies in Europe.

The EU would be showing the victims of 11 March the ultimate disrespect by using the solidarity and support it claims in the name of the people of Europe to undermine civil liberties and democratic standards.

**Ben Hayes, Steve Peers and Tony Bunyan, 23 March 2004**

## The 57 measures on the table

| For full analysis of proposals and explanation our scoring , see:<br>“Statewatch scoreboard on EU counter-terrorism plans”<br><a href="http://www.statewatch.org/news/2004/mar/swscoreboard.pdf">http://www.statewatch.org/news/2004/mar/swscoreboard.pdf</a> | Counter-terrorism relevance | Respect for civil liberties & democratic standards |
|---|-----------------------------|--|
| 1. Appointment of an EU “security coordinator”  | 4                           | 2  |
| 2. The creation of an EU intelligence agency  | 4                           | 2  |
| 3. Creation of a European Registry for issued travel documents [possibly limited to lost or stolen documents]   | 1                           |  |
| 4. Agreement on Guidelines for Common Approach to the Fight Against Terrorism   | 5                           | 2  |
| 5. Declaration of solidarity  | 5                           | 2  |
| 6. Creation of a database of persons, groups and entities subject to restrictive measures or criminal proceedings for terrorist offences  | 5                           | 2  |
| 7. The lists of terrorist Organisations to become operational and reactive on a “real time” basis   | 5                           | 2  |
| 8. European information policy for law enforcement purposes   | 1                           |  |
| 9. Commission & Member States should monitor all legislative machinery so as to have it subject to “ex ante” terrorism proofing   | 5                           | 1  |
| 10. EU-wide criminalisation of stolen mobile communications equipment   | 2                           |  |
| 11. Directorates General JAI and RELEX should be in charge of better internal coordination of all aspects of the institution’s activities that touch upon terrorism   | 5                           | 2  |
| 12. Legislation on cross-border hot Pursuit   | 2                           |  |
| 13. European Programme for the protection of witnesses  | 4                           | 3  |
| 14. Exchange of personal information (DNA, fingerprints and visa data)  | 4                           | 2  |
| 15. Database of forensic material   | 2                           |  |
| 16. Enhance the efficiency and effectiveness of the EU’s mechanisms for the freezing of terrorist assets  | 5                           | 2  |
| 17. Improve cooperation and exchange of information on terrorist financing  | 5                           | 3  |
| 18. Legislative proposal for the creation of a network for exchange of information on terrorist financing   | 4                           | 2  |
| 19. Regulation and transparency of legal entities, including charities and alternative remittance systems   | 4                           | 2  |
| 20. Electronic database of all targeted persons and entities  | 4                           | 0  |
| 21. Exchanges of information on convictions   | 5                           | 4  |
| 22. Creation of a European Register of convictions and disqualifications  | 2                           |  |
| 23. Mandatory systems for identifying and investigating bank accounts   | 2                           |  |
| 24. Improve mechanisms for cooperation between police and security services and intelligence services between Member States   | 4                           | 3  |
| 25. Revise and review action plan on terrorism  | 4                           | 1  |
| 26. Strengthen role of Europol  | 5                           | 3  |
| 27. Ratification of three protocols amending the Europol Convention   | 2                           |  |
| 28. Strengthen role of Task Force of EU Police Chiefs   | 4                           | 1  |
| 29. Strengthen role of Eurojust (possibly including extended powers over national authorities)  | 4                           | 4  |
| 30. Supply of all relevant information on terrorist cases to Europol and Eurojust   | 5                           | 4  |
| 31. European Arrest Warrant   | 1                           |  |
| 32. Framework Decision on the fight against terrorism   | 5                           | 3  |
| 33. Framework Decision on money laundering, the identification,   | 1                           |  |

|  |   |   |
|--|---|---|
| tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime   |   |   |
| 34. Framework Decision on joint investigation teams  | 3 |   |
| 35. Framework Decision on the execution in the European Union of orders freezing property or evidence  | 1 |   |
| 36. The 2000 EU Convention on Mutual Assistance in Criminal Matters and its 2001 Protocol  | 1 |   |
| 37. Ensure greater security of firearms, explosives, bomb-making equipment, and the technologies used in terrorist attacks                         | 5 |   |
| 38. New functions for the Schengen Information System (SIS)  | 2 |   |
| 39. Development of SIS II  | 1 |   |
| 40. Development of Visa Information System   | 2 |   |
| 41. Comprehensive and interoperable European Information Systems   | 0 |   |
| 42. National law enforcement agencies access to SIS, VIS and Eurodac   | 0 |   |
| 43. Draft Framework Decision on the confiscation of crime-related proceeds, instrumentalities and property   | 1 |   |
| 44. Draft Framework Decision on attacks against information systems  | 1 |   |
| 45. Draft Framework Decision on Mutual recognition of Confiscation Orders  | 1 |   |
| 46. Draft Framework Decision on the European Evidence Warrant  | 0 |   |
| 47. Draft Regulation on creation of European Border Agency   | 1 |   |
| 48. Use of travellers' data for border and aviation security and other law enforcement purposes  | 1 |   |
| 49. Proposals on inclusion of biometrics in all EU passports and visas   | 1 |   |
| 50. EU-wide mandatory retention of communications  | 0 |   |
| 51. Customs controls on cash movements at the external frontier & agreement on Draft Strategy for Customs Cooperation                              | 1 |   |
| 52. EC and MS ratification of Protocol to UN Organised Crime Convention on trafficking of illegal firearms   | 2 |   |
| 53. Draft Council Directive on compensation for victims of crime   | 5 | 5 |
| 54. Agreement on draft UN Convention on Terrorism  | 5 | 2 |
| 55. Anti-terrorism clauses in agreements with third countries to be followed up with technical assistance; sanctions for non-cooperating countries | 5 | 2 |
| 56. Co-operation with the United Nations Counter Terrorism Committee (CTC) and other relevant international and regional organisations             | 5 | 2 |
| 57. Cooperation with US and Partners   | 4 | 1 |

### List of EU proposals with little or no relevance to terrorism - primarily concerned with law enforcement and surveillance

- 3. Creation of a European Registry for issued travel documents [possibly limited to lost or stolen documents]
- 8. European information policy for law enforcement purposes
- 10. EU-wide criminalisation of stolen mobile communications equipment
- 12. Legislation on cross-border hot Pursuit
- 15. Database of forensic material
- 22. Creation of a European Register of convictions and disqualifications
- 23. Mandatory systems for identifying and investigating bank accounts
- 27. Ratification of three protocols amending the Europol Convention
- 31. European Arrest Warrant
- 33. Framework Decision on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime
- 35. Framework Decision on the execution in the European Union of orders freezing property or evidence

36. The 2000 EU Convention on Mutual Assistance in Criminal Matters and its 2001 Protocol
38. New functions for the Schengen Information System (SIS)
39. Development of SIS II
40. Development of Visa Information System
41. Comprehensive and interoperable European Information Systems
42. National law enforcement agencies access to SIS, VIS and Eurodac
43. Draft Framework Decision on the confiscation of crime-related proceeds, instrumentalities and property
44. Draft Framework Decision on attacks against information systems
45. Draft Framework Decision on Mutual recognition of Confiscation Orders
46. Draft Framework Decision on the European Evidence Warrant
47. Draft Regulation on creation of European Border Agency
48. Use of travellers' data for border and aviation security and other law enforcement purposes
49. Proposals on inclusion of biometrics in all EU passports and visas
50. EU-wide mandatory retention of communications
51. Customs controls on cash movements at the external frontier & agreement on Draft Strategy for Customs Cooperation
52. EC and MS ratification of Protocol to UN Organised Crime Convention on trafficking of illegal firearms

## **EU counter-terrorism proposals raising concerns over civil liberties and democratic standards**

1. Appointment of an EU "security coordinator"
2. The creation of an EU intelligence agency
4. Agreement on Guidelines for Common Approach to the Fight Against Terrorism
5. Declaration of solidarity
6. Creation of a database of persons, groups and entities subject to restrictive measures or criminal proceedings for terrorist offences
7. The lists of terrorist Organisations to become operational and reactive on a "real time" basis
9. Commission & Member States should monitor all legislative machinery so as to have it subject to "ex ante" terrorism proofing
11. Directorates General JAI and RELEX should be in charge of better internal coordination of all aspects of the institution's activities that touch upon terrorism
14. Exchange of personal information (DNA, fingerprints and visa data)
16. Enhance the efficiency and effectiveness of the EU's mechanisms for the freezing of terrorist assets
18. Legislative proposal for the creation of a network for exchange of information on terrorist financing
19. Regulation and transparency of legal entities, including charities and alternative remittance systems
25. Revise and review action plan on terrorism
28. Strengthen role of Task Force of EU Police Chiefs
54. Agreement on draft UN Convention on Terrorism
55. Anti-terrorism clauses in agreements with third countries to be followed up with technical assistance; sanctions for non-cooperating countries
56. Co-operation with the United Nations Counter Terrorism Committee (CTC) and other relevant international and regional organisations
57. Cooperation with US and Partners



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## “Scoreboard” on EU counter-terrorism plans

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### Introduction

This review examines the proposals for combating terrorism contained in a draft EU Declaration on combating terrorism to be adopted by the EU summit on 25-26 March 2004 (7468/4/04 REV 4, 22 March 2004). It also takes into account the proposals in the European Commission’s “Paper to the Council on Terrorising providing input” to that summit (MEMO/04/66, 18 March 2004).

These full-text of these documents are available on the Statewatch website:

- Draft EU Declaration: <http://www.statewatch.org/news/2004/mar/7486-rev4.pdf>;
- Commission paper: <http://www.statewatch.org/news/2004/mar/Comm-Action-Plan.pdf>.

This report, the *Statewatch* “scoreboard” on post-Madrid counter-terrorism plans, is a systematic review of the justification, content and legitimacy of the proposals . It was prepared by Ben Hayes, Steve Peers and Tony Bunyan.

Analysis of this document and a summary of our concerns is on:  
<http://www.statewatch.org/news/euplan.pdf>



## Statewatch “scoreboard” on EU counter-terrorism plans

| 1-15. New proposals                                   |  |  |  |   |                             |                        |
|---|--|--|--|---|-----------------------------|------------------------|
| Proposal  | From   | Justification  | Details  | Statewatch analysis & documentation   | Counter-terrorism relevance | Civil liberties etc. * |
| <b>1. Appointment of an EU “security coordinator”</b> | Council<br><br>[point 14, draft Declaration] | <i>“To enhance cooperation between EU bodies and third countries and streamline activities in the fight against terrorism”</i> | There is formal agreement on the establishment of a “Counter-Terrorism Co-ordinator” to “work within the Council Secretariat” and “co-ordinate the work of the Council in combating terrorism and, with due regard to the responsibilities of the Commission, maintain an overview of all the instruments at the Union’s disposal with a view to regular reporting to the Council and effective follow-up of Council decisions”.<br><br>Point 5(b) may also be | Would create an EU “Homeland Security” coordinator. Following the emergency JHA Council of 19.3.04 it has been suggested that this person would work under the auspices of Common Foreign and Security Policy (CFSP) chief Javier Solana.<br><br>While the improved coordination of security efforts in key areas is a welcome initiative, any new executive office must respect the EU’s constitutional and political framework. The proposals to appoint an individual under the CFSP present issues of legal competence and frameworks for accountability.<br><br>It is questionable whether it would be possible to give overall responsibility for security to a CFSP “tsar” or any new express powers over the “internal market” (the “first pillar” EC) or police and judicial cooperation (the “third pillar”). | 4/5                         | 2/5                    |

\* Scoring system: The first score is for relevance to countering-terrorism (the lower a measure’s score, the lower its relevance); the second score (given only where terrorism relevance is high) reflects our concern for civil liberties and democratic standards (a low score here demonstrates serious concern). © Statewatch 2004.

|  |  |   |  |   |     |     |
|--|--|---|--|---|-----|-----|
|  |  |   | relevant in instructing the Council to put in place new committee structures capable of ensuring greater operational cooperation on security and terrorism within the Union  |   |     |     |
| <b>2. The creation of an EU intelligence agency</b>  | Belgian prime minister to media                          | <i>“Would bring together member states’ police, intelligence and security agencies together with Europol”</i>                                     | Apparently rejected by the member states though could see development of existing proposals for an EU Intelligence Chief’s Task Force created after “11 September”.  | It is more likely that the Council will recommend the strengthening of Europol (see below) and that intelligence cooperation between MS will remain informal.<br><br><i>See: “Call for a new intelligence centre to be set up”, Statewatch news online, March 2004:</i> <a href="http://www.statewatch.org/news/2004/mar/10eu-intel-centre.htm">http://www.statewatch.org/news/2004/mar/10eu-intel-centre.htm</a>   | 4/5 | 2/5 |
| <b>3. Creation of a European Registry for issued travel documents</b><br><br><b>[possibly limited to lost or stolen documents]</b> | Commission & Council<br><br>[Point 7, draft declaration] | <i>“Extended use by different law enforcement and security authorities of data available in the visa consultation process should be foreseen”</i> | The Commission’s Action Plan had suggested a database holding the information collected in the issue of passports, residence permits and visas – all of which will contain biometric data (see 37-41 and 48, below).<br><br>Point 7 of the draft EU declaration on terrorism possibly limits this proposal to lost and stolen documents by referring only to “the creation by end 2005 of an integrated system for the exchange of information on stolen and lost passports having | There must be huge misgivings about any proposal to create what would effectively amount to a European population register. It would potentially hold extensive personal information creating a vast new database to which a host of law enforcement agencies could have access for a range of purposes. The creation of a such a database is likely to be ineffective in terms of <i>preventing</i> terrorism, clearly concerns “crime in general” and could be used for social and political control.<br><br>The idea of exchange of information on lost and stolen documents has been around for some time and is more acceptable in principle, though again of limited relevance.<br><br><i>See: “The road to “1984” Part 2: EU: Everyone will have to have a facial scan taken and give their fingerprints (“biometrics”) to get a passport”, Statewatch news online, February 2004:</i> <a href="http://www.statewatch.org/news/2004/mar/10eu-intel-centre.htm">http://www.statewatch.org/news/2004/mar/10eu-intel-centre.htm</a> | 2/5 |     |

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|  |  |  | recourse to the SIS and the Interpol database”.   |  |     |     |
| <b>4. Agreement on Guidelines for Common Approach to the Fight Against Terrorism</b> | Council & Commission<br><br>[Point 7, draft declaration]   | <i>“A speedy and final agreement on the draft Guidelines for a Common Approach to the Fight against Terrorism would demonstrate the commitment of the Union to prevent and suppress terrorism in a visible and coherent manner”</i>                      | Point 7 of the draft EU declaration on terrorism welcomes the guidelines, though it is unclear what they are.<br><br>The Draft declaration itself contains a “revised plan of action” in the form of seven “strategic objectives”   | “Visible and coherent” guidelines would be a welcome initiative on the part of the Council. To date, the EU’s counter-terrorism action plan has taken the form of the highly technical and complex “road-map”, comprehensible only to those with a working knowledge of the EU’s operational and political structures.<br><br>The elaboration of these guidelines should be open and democratic process involving European and national parliaments. This has not been the case with the elaboration of the EU’s counter-terrorism policy to date.<br><br><i>See: “European Union action plan to combat terrorism – Update of the roadmap”, EU Council doc. 13909/1/02, 14.11.02: <a href="http://www.statewatch.org/news/2002/nov/actpl13909-r1en2.pdf">http://www.statewatch.org/news/2002/nov/actpl13909-r1en2.pdf</a>; “Draft declaration on combating terrorism”, EU Council doc. 7486/2/04, 19.3.04: <a href="http://www.statewatch.org/news/2004/mar/7486-rev4.pdf">www.statewatch.org/news/2004/mar/7486-rev4.pdf</a>;</i> | 5/5 | 2/5 |
| <b>5. Declaration of solidarity</b>  | Commission & Council<br><br>[Draft declaration of solidarity against terrorism<br><br>Point 3 of the draft EU declaration on terrorism:<br><br><i>welcomes the political</i> | <i>“It is the duty of the Union, its institutions and all its Member States to act quickly and in a spirit of solidarity to provide all possible support and assistance to Spain in both investigating this outrage and bringing the perpetrators to</i> | The “Solidarity clause” in Article 42, draft EU constitutional treaty:<br><br><i>The Union and its Member States shall act jointly in a spirit of solidarity if a Member State is the victim of terrorist attack...</i><br><br><i>The Union shall mobilise all the instruments at its disposal, including the</i> | The implementation of the solidarity clause would genuinely reflect all Europe’s solidarity with the people of Spain. The victims and the authorities should be offered every assistance to help cope with the bombings and apprehend the perpetrators.<br><br>We are concerned, however, that EU may be tempted (or attempting) to give early effect implementation of Article 162 of the draft EU constitutional treaty. This would create the permanent committee in the EU to oversee all operational matters relating to internal security (see <i>Statewatch</i> analysis).<br><br>There are already question marks over the way in which the draft treaty provides for regulation and accountability of this body. Article 162 should not therefore be brought into effect in advance of the corresponding treaty provisions on democratic  | 5/5 | 2/5 |

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|--|--|---|---|---|--|--|
|  | <p><i>commitment of the MS and acceding States to implement, as of now, the provisions of the Solidarity Clause contained in Article 42 of the draft constitution for Europe”]</i></p> | <p><i>justice, and in preventing the terrorist threat to Spanish and other EU territory for the future”</i></p> | <p><i>military resources made available by the Member States....</i></p> <p>Here it refers to Article III – 231:</p> <p><i>1. Acting on a joint proposal by the Commission and the Union Minister for Foreign Affairs, the Council of Ministers shall adopt a European decision defining the arrangements for the implementation of the solidarity clause ...</i></p> <p><i>2. Should a Member State fall victim to a terrorist attack or a natural or man made disaster, the other Member States shall assist it ...</i></p> <p><i>3. For the purposes of this Article, the Council of Ministers shall be assisted by the Political and Security Committee [and] the common security and defence policy, and by the Committee provided for in Article III-162...</i></p> | <p>control and judicial supervision in the restructured JHA field.</p> <p>Although the draft declaration on the solidarity clause would not give a legal basis for implementing Article 162, we are concerned that Point 5(b) of the draft EU declaration instructs the Council to put in place new committee structures capable of ensuring greater operational cooperation on “security and terrorism” within the Union.</p> <p>See: “The creation of an EU Interior Ministry - for the maintenance of law and order, internal security and external borders”, Statewatch, April 2003:<br/> <a href="http://www.statewatch.org/news/2003/apr/TBART.pdf">http://www.statewatch.org/news/2003/apr/TBART.pdf</a></p> |  |  |
|--|--|---|---|---|--|--|

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|  |            |               |  |  |     |     |
|--|------------|---------------|--|--|-----|-----|
|  |            |               | <p><u>Article III 162:</u></p> <p><i>A standing committee shall be set up within the Council of Ministers in order to ensure that operational cooperation on internal security is promoted and strengthened ... it shall facilitate coordination of the action of Member States' competent authorities.</i></p>  |  |     |     |
| <p><b>6. Creation of a database of persons, groups and entities covered by restrictive measures for the fight against terrorism or under criminal proceedings for terrorist offences</b></p> | Commission | None given    | <p>The Commission's Action plan states that:</p> <p><i>Work is to be launched in the Forum on Organised Crime Prevention for the establishment of a database of persons, groups and entities covered by restrictive measures for the fight against terrorism or under criminal proceedings for terrorist offences.</i></p> <p><i>This work will be undertaken in partnership with the private sector and in liaison with Europol</i></p> | <p>Although there is no mention of this proposal in the draft EU declaration on combating terrorism we assume from the Commission that it is going ahead anyway. While the proposed database is ostensibly to be limited to terrorism its development under the EU Forum on Organised Crime suggests it may ultimately have a wider purpose. Any new databases must, of course, pay full regard to EU data protection rules.</p> <p>This database might also be related to the proposed creation of a European "central casebook" of investigations and prosecutions in the EU action plan on the implementation of the principle of mutual recognition in criminal matters of 2000.</p> | 5/5 | 2/5 |
| <p><b>7. The lists of</b></p>  | Commission | "Freezing the | Several legal instruments  | The procedure for deciding who is to be included on the  | 5/5 | 2/5 |

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| <p><b>terrorist Organisations to become operational and reactive on a “real time” basis</b></p> |  | <p><i>funds or other financial assets and economic resources of individuals, groups and entities involved in terrorism is a key tool to combat terrorism.</i></p> <p><i>“The lists of terrorist Organisations... urgently need to be streamlined...”</i></p> <p><i>“Allowing for modification of the lists under qualified majority voting is an option as is the replacement of the present three lists by only two, one on suspected cases/threats, the other one as a record of past terrorist activity. This last list, to be set up in a form of a court record, should cover not only decisions on the freezing of assets connected to terrorism but</i></p> | <p>have been adopted in the wake of September 11 events under the Title V of the TEU, which provide for the freezing of the funds and other financial assets or economic resources of persons, groups and entities involved in acts of terrorism.</p> <p>The EU’s “terrorist list” has now been updated seven times.</p> | <p>“terrorist lists” is arbitrary and unaccountable. This has allowed the EU to criminalise certain groups and individuals on ideological and political grounds rather than any objective security threat to the EU.</p> <p>It is unacceptable that these lists are agreed by “written procedure” and on occasions without debate (they have simply been faxed round to the fifteen foreign ministries and adopted if there are no objections). There is thus a complete lack of accountability over how the list is drafted, the grounds for inclusion, which officials in which member states are proposing amendments and why and the extent of consultations, if any. The failure to require as much as a preliminary investigation demonstrating a connection to terrorism before individuals or organisations can be included on the list or have their assets frozen and the failure to provide adequate mechanisms for appeal or judicial review is a spectacular breach of fundamental rights of those affected.</p> <p>Allowing amendments to this list by qualified majority voting in the Council would exacerbate these problems and further politicise rather than rationalise the decision-making process.</p> <p><i>See: “EU issues updated list of "terrorist organisations and persons”, Statewatch news online, January 2004: <a href="http://www.statewatch.org/news/2003/dec/19terrlists.htm">http://www.statewatch.org/news/2003/dec/19terrlists.htm</a>.</i></p> |  |  |
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|  |            | <i>also all condemnations for terrorist behaviour”</i>  |  |  |     |  |
| <b>8. European information policy for law enforcement purposes</b> | Commission | <p><i>“The exchange of information among and between national authorities and at EU level must be dramatically improved. A certain culture of secrecy, understandable only at first sight, has proven extremely counter-productive</i></p> <p><i>“Terrorism is first and foremost an internal security matter and therefore the mechanism we suggest to establish should exchange information mostly within a third pillar umbrella.”</i></p> | <p>The Commission Action plan proposes that:</p> <p><i>The Union should work towards the implementation of a European information policy for law enforcement purposes.</i></p> <p><i>Intelligence-led law enforcement and effective national criminal intelligence systems which are compatible at EU level and allow for the effective access, analysis, and use of data should be developed.</i></p> <p><i>Such an information policy should aim at facilitating the detection of threats to public order and security, to avert security risks, and to fight organised crime and terrorism throughout the Union, including through enhanced access to data not produced for law enforcement purposes.</i></p> | <p>There is no mention of data protection legislation. In respect to third pillar information systems access must be strictly regulated under EU rules. This proposal is clearly not limited to terrorism and references to “public order” are quite unacceptable.</p> <p>This proposal can hardly be justified just because the EU plans already contain a number of specific proposals relating to information exchange (see 6, 14, 17-22, 26, 29, 30, 38-42, 48-50 - given that many of these proposals are not restricted to terrorism it appears that the EU is pursuing such a policy anyway).</p> <p>Although there is no reference to this proposal in the draft EU declaration, it does include individual proposals to grant law enforcement agencies to the SIS, Eurodac and proposed VIS database (see 41, below).</p> | 1/5 |  |

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| <p><b>9. Commission &amp; Member States should monitor all legislative machinery so as to have it subject to “ex ante” terrorism proofing</b></p> | <p>Commission</p> | <p><i>“Terrorists are often more innovative in using legitimate goods for illegal purposes than we might imagine</i></p> <p><i>“No legislation should leave [the Commission] without first being submitted to a terrorism proofing scrutiny”</i></p> | <p>No specific reference to this proposal in draft EU declaration.</p>   | <p>Counter terrorism policy is already “contaminating” immigration and asylum policy, the wider JHA agenda, development and defence policies.</p> <p>Policies developed in the name of counter terrorism should state clearly their objective and justification. This is not the case with a number of EU “counter-terrorism” initiatives.</p> <p><i>See “Migration, development and the EU security agenda”, Ben Hayes and Tony Bunyan in 'Europe in the World' Essays on EU foreign, security and development policies, BOND, 2003: <a href="http://www.statewatch.org/news/2003/sep/17bhtb.htm">http://www.statewatch.org/news/2003/sep/17bhtb.htm</a></i></p> | <p>5/5</p> | <p>1/5</p> |
| <p><b>10. EU-wide criminalisation of stolen mobile communications equipment</b></p>   | <p>Commission</p> | <p><i>“It is important to take measures to avoid that mobile telephones are used as tool by terrorists and other criminal groups”</i></p>  | <p>In its Action plan the Commission proposes:</p> <p><i>Information campaigns should be launched to encourage the general public to ensure that lost and stolen mobile phones are reported so that they can be blocked and cannot become a resource to the use of these groups. Measures should be taken so that the sale of replacement SIM cards does not impede the efficient actions of law enforcement authorities”</i></p> <p>No specific reference to this proposal in draft EU declaration.</p> | <p>Clearly not restricted to terrorism.</p>   | <p>2/5</p> |            |

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| <p><b>11. Directorates General JAI and RELEX should be in charge of better internal coordination of all aspects of the institution's activities that touch upon terrorism</b></p> | <p>Commission</p>  | <p><i>“Internal coordination within the Commission needs to be fostered”</i></p>   | <p><i>“Counter-terrorism, besides its core JHA subject matters, covers matters as diverse as foreign relations, environment, health, internal market, industry, research, i.e. practically all areas of public policy dealt with by the Commission. Internal co-ordination has lacked and needs to be reinforced. The Commission likewise welcomes any move by Council to improve its own internal co-ordination”</i></p> | <p>May further the “contamination” of EU policy and compromise Commission’s “neutrality” and role as guardian of the EC Treaty objectives by placing security concerns ahead of other issues. This has already been suggested by opposition from the Commission DG for the Internal Market on certain JHA proposals (for example data retention and transfer of PNR data (see below)).</p> <p>Would complement any “security tsar” (see 1) the creation of the Standing Committee on operational cooperation in the Council framework (see 5)</p>   | <p>5/5</p> | <p>2/5</p> |
| <p><b>12. Legislation on cross-border hot Pursuit</b></p>   | <p>Council &amp; Commission<br/><br/>[Point 5(a), draft declaration]</p> | <p><i>“It is increasingly outdated to continue to work on a basis that national police forces can only act on limited circumstances beyond the borders of their Member States. There can be no explanation for allowing a terrorist atrocity to occur just because the police forces of a Member State had</i></p> | <p>Point 5a of the draft EU declaration on terrorism instructs the Council to examine measures on hot pursuit.</p>  | <p>It must be pointed out that there already exist provisions for “hot pursuit” in Article 41(4) of the Schengen Convention which may be invoked for investigations into murder, manslaughter, kidnapping and hostage taking, breach of the law on arms and explosives and wilful damage by means of explosives. This begs the question of whether any significant amendments are actually needed or whether the Council might better to try to ensure effective application of the existing provisions.</p> <p>Though the Commission apparently restricts the proposal to terrorism, the Council declaration does not.</p> | <p>2/5</p> |            |

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|   |  | <i>no possibility to cross an internal border”</i> |   |  |     |     |
| <b>13. European Programme for the protection of witnesses</b> | Council<br>[Point 5(a), draft declaration] |  | The JHA Council of 19 March 2004 invited the Commission to bring forward a proposal.<br><br>Point 5a of the draft EU declaration on terrorism invites Commission to bring forward a proposal aimed at the creation of a European Programme for the protection of witnesses in terrorist cases | Apparently restricted to terrorism. There is, however, an existing EU resolution on witness protection and the issue is also covered in the EU Framework Decision on victims of 2001. The Council might first return to these measures before embarking on such an ambitious proposal. | 4/5 | 3/5 |

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| <p><b>14. Exchange of personal information (DNA, fingerprints and visa data)</b></p> | <p>Council<br/>[Point 5(c), draft declaration]</p> |  | <p>Point 5(c) of the draft EU declaration on terrorism invites the Commission to bring forward proposals to the June European Council in relation to exchange of personal information (DNA, fingerprints and visa data) for the purpose of combating terrorism.</p> | <p>Apparently limited to terrorism. Has significant data protection implications though these are not mentioned in either the Commission or Council plans.</p> <p>An EU Resolution in 2001 agreed upon the use of standardised DNA markers for analysis and a standard form for the exchange of DNA profiles (with no specific rules on data protection). A number of EU police cooperation frameworks (MLA, Schengen and joint investigation teams) provide for the exchange of personal information so it is questionable to what extent an extension of these rules is necessary. On the exchange of visa data see specific proposals below (42 and 45).</p> <p><i>See: DNA Resolution in OJ 2001 C 187/1</i></p>   | <p>4/5</p> | <p>2/5</p> |
| <p><b>15. Database of forensic material</b></p>                                      | <p>Council<br/>[Point 5(a), draft declaration]</p> |  | <p>Point 5a of the draft EU declaration on terrorism instructs the Council to consider creating a database on forensic material</p>   | <p>This proposal seems to be based an extension of the proposal on the exchange of DNA and fingerprints. The logic seems to be that any systematic “exchange” of information should be recorded in a database for future reference. This again has significant implications for data protection. It is likely that any DNA or fingerprints database would be part of SIS II, which will have the capacity to hold such data (see 37-41 below). In this case it would be much less likely that database will be limited to terrorism cases.</p> <p>The idea of a European DNA database has been around for since at least 1997 when an EU Resolution called upon the member states to establish national DNA databases and for a European database to be set up. There was little justification for an EU database then and it is unlikely that the events in Madrid are a sufficient justification for those member states with limited or no DNA databases to participate.</p> <p><i>See: DNA Resolution in OJ 1997 C 193/2</i></p> | <p>2/5</p> |            |

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| <b>16-23. Financing of terrorism</b>  |  |  |   |   |                             |                        |
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| Proposal  | From   | Justification  | Details   | Statewatch analysis & documentation   | Counter-terrorism relevance | Civil liberties etc. * |
| <b>16. Enhance the efficiency and effectiveness of the EU's mechanisms for the freezing of terrorist assets</b> | Council & Commission<br><br>[Objective 2, draft action plan] | <i>“The persistence of the terrorist threat and the complexity of the fight against the phenomenon raise the need to come up with innovative solutions. To eradicate the phenomenon, and above all to attack terrorism as close as possible to its foundations, action must be taken on the sources of financing of terrorist organisations”</i> | Objective 2 in the draft EU Action plan is to ensure<br><br><i>the effectiveness of EU asset freezing procedures, including the non-financial economic resources, in accordance with UN obligations and the need to respect due process and the Rule of Law</i> | The mechanisms for freezing terrorist assets offer inadequate means of redress for affected individuals and the decisions to impose such sanctions are often arbitrary (see 7 above)  | 5/5                         | 2/5                    |
| <b>17. Improve cooperation and exchange of information on terrorist financing</b>                               | Council & Commission<br><br>[Objective 2, draft action plan] |  | Under point 10 of the draft declaration the MS should increase cooperation between national competent authorities, Financial Intelligence Units [FIUs] and private financial institutions to  | Apparently limited to terrorism. There may be a temptation, however, should the Council agree on special rules for investigating terrorism, to widen their application to other forms of crime in the future. Both the FATF and national FIUs have mandates that are not restricted to terrorism. | 5/5                         | 3/5                    |

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|   |   |  | <p>facilitate improved exchange of information on terrorist financing.</p> <p>Objective 2 of the draft EU action plan calls for close cooperation with the Financial Action Task Force (FATF) on all issues regarding the financing of terrorism and ensure that if EU legal framework is adapted to the eight special recommendations on terrorist financing</p> |   |     |     |
| <p><b>18. Legislative proposal for the creation of a network for exchange of information on terrorist financing</b></p> | <p>Council &amp; Commission</p> <p>[[Point 10, draft declaration]</p> | <p><i>Identifying “the sources and networks of terrorist funding is particularly difficult. As in the case of laundering the proceeds of organised crime, terrorist funding is based on highly secret operations conducted on an international scale, often using parallel circuits”</i></p> | <p>Point 10 of the draft EU declaration calls on the MS to:</p> <p><i>increase cooperation between national competent authorities, Financial Intelligence Units and private financial institutions to facilitate improved exchange of information on terrorist financing.</i></p>   | <p>The reference to “parallel circuits” and “organised crime” in the Commission’s Action Plan suggest that this proposal may not be limited to terrorism.</p>                                 | 4/5 | 2/5 |
| <p><b>19. Regulation and transparency</b></p>   | <p>Council &amp; Commission</p>                                       | <p><i>“may be used by terrorists to acquire funding</i></p>  | <p>Point 10 of the draft EU declaration states that the Commission will</p>   | <p>“Regulation and transparency of legal entities” could be covered by EC powers over company law and rules on alternative remittance systems could fall within an extension of the money</p> | 4/5 | 2/5 |

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| of legal entities, including charities and alternative remittance systems | [Objective 2, draft action plan]                            | <i>for their activities.”</i>  | “consider improvements on regulation and transparency of legal entities, including charities and alternative remittance systems”  | laundrying directive. Some have argued, however, that the EC powers that exist can only be used to facilitate the objectives of the internal market, not to pursue security policy.<br><br>It is dubious whether that the EC has any legal basis at all to legislate on the regulation of charities in the member states.   |     |     |
| 20. Electronic database of all targeted persons and entities              | Commission  | <i>“In order to facilitate the immediate application of freezing measures decided by the Union”</i>  | According to the Commission’s Action Plan:<br><br><i>The Commission and the European banking sector are establishing an electronic database of all targeted persons and entities. The database will be operational in the summer of 2004</i>  | Although this proposal is not mentioned in the Council texts the Commission’s admits that it is already developing this database. There is no legal basis in the EU treaties or any implementing legislation for such a database so it is hard to see how the database could become operational in the summer without spectacular breach of Article 8 of the European Convention on Human Rights and substantial case-law of the European Courts. | 4/5 | 0/5 |
| 21. Exchanges of information on convictions                               | Council & Commission<br><br>[Point 5(a), draft declaration] | <i>“It is essential in the fight against terrorism for the relevant services to have the fullest and most up-to-date information possible in their respective fields, including information on convictions”</i><br><br><i>It represents a major element for avoiding infiltration of terrorist groups in</i> | According to the Commission’s Action Plan it will propose by the end of March 2004 a Council Decision aimed at<br><br><i>“broadening the exchanges of information on convictions for terrorist offences and cooperation between MS, Europol and Eurojust.</i><br><br><i>“At the same time, regard must be had for fundamental rights, and</i> | Apparently limited to terrorism.  | 5/5 | 4/5 |

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|   |   | <i>legal activities in the objective to fight against financing of terrorism</i>   | <i>particularly data protection, and the practicability of measures”.</i>   |   |     |  |
| <b>22. Creation of a European Register of convictions and disqualifications</b> | Council & Commission<br><br>[Point 5(a), draft declaration]   | <i>“Should also be envisaged as a real contribution to the effectiveness of the fight against crime in general, and terrorism in particular”</i> | According to its Action plan the Commission will issue proposals before the end of this year in order to establish such a register.   | This proposal seems to be based on an existing initiative within the EU’s judicial cooperation programme for the creation of a European Criminal Record (this first appeared in the EU’s programme of measures to implement the principle of “mutual recognition” in judicial cooperation in criminal matters).<br><br>While a register of terrorist convictions, in the framework of the exchange of information outlined above could be considered a counter-terrorist measure, the reference to the “effectiveness of the fight against crime in general and terrorism in particular” suggests otherwise.<br><br>To propose an EU-wide register of disqualifications would be relevant to combating terrorism is patently absurd. Consider, for example, a lawyer disqualified for involvement in terrorism. They should surely have been the subject of a criminal conviction and would justifiably be covered by the proposals to exchange terrorism-related information on convictions (21, above). | 2/5 |  |
| <b>23. Mandatory systems for identifying and investigating bank accounts</b>    | Council & Commission<br><br>[[Point 10, draft EU declaration] | To allow account holders to be identified and facilitate investigations into bank accounts and movements of funds                                | According to Commission’s Action Plan the Commission will propose that Member States should be required to have systems allowing holders of bank accounts to be identified and facilitating investigations “in the context of the third money laundering directive” | The EC money laundering directives (and related third pillar Framework Decision) potentially apply to a whole range of crimes. There is nothing to suggest that the Commission’s proposal will be limited to terrorism, indeed it suggests that all bank accounts held by anyone should be identifiable.  | 2/5 |  |

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| <b>24-36. Operational matters</b>  |   |  |   |  |                             |                        |
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| Proposal   | From  | Justification  | Details   | Statewatch analysis & Documentation  | Counter-terrorism relevance | Civil liberties etc. * |
| <b>24. Improve mechanisms for cooperation between police and security services and intelligence services between Member States</b> | Council<br>[Objective 3, draft action plan] | <i>"A number of instruments exist already within the Union to improve operational co-operation and co-ordination. They are however badly used, ratification of conventions is slow and the instruments are poorly used and/or poorly understood by law enforcement and judicial authorities in some member states"</i> | Point 5a of the draft EU declaration on terrorism instructs Council to legislate in this area   | None of the EU mechanisms in for cooperation and coordination are restricted to terrorism.   | 4/5                         | 3/5                    |
| <b>25. Revise and review action plan on terrorism</b>  | Council & Commission                        |  | Point 9 of the draft EU declaration on terrorism requests the Council to complete the adoption of the revised Plan and to report back to the June 2004 European Council | The first EU Action Plan on terrorism was adopted on 21 September 2001. The EU's "roadmap" on the implementation of the plan has been revised at least nine times. The existing "roadmap" contains a number of measures not restricted to terrorism and it is likely that the trend toward the inclusion of as many JHA proposals as possible will continue. The European Parliament has not been consulted on the roadmap at all.<br><br><i>See: "European Union action plan to combat terrorism"</i> | 4/5                         | 1/5                    |

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|                                       |   |   |  | – <i>Update of the roadmap</i> ”, EU Council doc. 13909/1/02, 14.11.02: <a href="http://www.statewatch.org/news/2002/nov/actpl13909-r1en2.pdf">http://www.statewatch.org/news/2002/nov/actpl13909-r1en2.pdf</a>   |     |     |
| <b>26. Strengthen role of Europol</b> | Council & Commission<br><br>[Point 5(a) and (b), draft declaration] | <i>“Member States need to provide Europol with the information and intelligence it needs to do its job properly, in particular in the area of prevention and investigation of terrorist attacks. Member States should consider it their duty to give the Europol Terrorism Task Force with all operational information, not just limited and filtered strategic and technical intelligence”</i> | Point 5(b) of the draft EU declaration on terrorism calls on MS to reinforce Europol’s counter-terrorism capacities and reactivate the Counter-Terrorist Task Force and ensure that Europol is provided with all relevant criminal intelligence related to terrorism | <p>Europol, the European Police Office, has had responsibility for terrorism since July 1999 when it became “operational”. All member states supplied experts on terrorism. In 2000 Europol opened a “Analysis work file” on “extremist Islamic terrorism” in the EU. After the attacks on New York and Washington in September 2001 EU Justice Ministers agreed on the creation of “a team of count-terrorist specialists in Europol with member states appointing liaison officers from their police and intelligence services” (Europol itself already had seven counter-terrorist officers).</p> <p>It may be questioned, however, whether the EU and its member states are actually committed to giving Europol a serious counter-terrorism role. Some member states are clearly reluctant to share and contribute intelligence and a Commission proposal in August 2002 [COM (2002) 439] to provide an extra €3,036,800 for Europol to fund an “EU Bomb Data Network”, a “Communication Network for Special Intervention Units” and an “Operation Control Centre” to deal with major terrorist incidents was rejected by the MS in December 2002” (because “Several members of the Council considered the proposal... an attempt to depart from the principle enshrined in the Europol Convention, that Europol’s budget shall be financed from Member States’ contributions, as distinct from a financing at the charge of the budget of the European Communities” (14593/02. 2.12.02)).</p> <p>Even more surprising is the Commission’s admission in a working document on Europol that the mandate for the Europol Counter Terrorism Task Force set up in the wake of September 11 was allowed to expire and that all counter-terrorism work has been taken over by the “Serious Crime Unit” (<b>REF</b>).</p> <p><i>See: “Non-confidential Europol report on terrorist activity in the European Union from October 2002 to October 2003, 15877/2/02, 3.12.03:</i></p> | 5/5 | 3/5 |

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|  |  |   |   | <a href="http://www.statewatch.org/news/2004/mar/europol-terr-rep-2003.pdf">http://www.statewatch.org/news/2004/mar/europol-terr-rep-2003.pdf</a>  |     |     |
| <b>27. Ratification of three protocols amending the Europol Convention</b> | Council & Commission<br><br>[Point 5(a), draft declaration]    |   | Point 5(a) of the draft EU declaration on terrorism calls for ratification of 3 protocols to Europol Convention by December 2004.   | Of the three protocols to the Europol Convention, the first concerns money laundering, the second extends Europol's role to allow its officers joint investigation teams and recommend to national forces that they undertake specific investigations; and the third amends a whole host of provisions in the Convention. None are restricted to terrorism and Europol has a mandate to deal with more than 30 specific offences. Any new powers for Europol are therefore unlikely to be restricted to terrorism. See also proposals for Europol participation in joint investigation teams (34, below)<br><br><i>See: Statewatch submission to House of Lords Select Committee on the European Union, Sub-Committee F: Proposals to amend the Europol Convention, September 2002:</i><br><a href="http://www.statewatch.org/sem doc/evidence/europolOct2002.htm">http://www.statewatch.org/sem doc/evidence/europolOct2002.htm</a> | 2/5 |     |
| <b>28. Strengthen role of Task Force of EU Police Chiefs</b>               | Council & Commission<br><br>[Point 5(b), draft declaration]    | <i>“The Police Chief’s Operational task Force will meet on 22-23 March and will coordinate operational measures to respond to the Madrid attacks and work on ways to ensure that similar events do not occur again”</i> | Point 5(b) of the draft EU declaration on terrorism calls on the Task Force to review how its operational capacity can be reinforced and to focus on proactive intelligence | The Police Chief’s Operational Task Force was created under a Recommendation from the Tampere European Council in 1999. It is an ad hoc body that has no legal or constitutional status in the EU - it is therefore not accountable. Lacking a legal base it even drew up its own terms of reference and submitted them to the Article 36 Committee for approval. Any “operational capacity and focus on proactive intelligence” must be subject to democratic and judicial control.<br><br>The Police Chief’s Task Force is also dealing with illegal immigration, drug trafficking and organised crime.  | 4/5 | 1/5 |
| <b>29. Eurojust should be given a stronger role in the fight against</b>   | Council & Commission<br><br>[Point 5(a), draft EU declaration] | <i>“Presently, Member States may, provided they come forward with a</i>   | There is no mention of the Commission proposal regarding Eurojust powers in the draft EU declaration on terrorism,  | The Commission’s proposal would give Eurojust express powers to direct national authorities to prosecute cases. Apparently limited to terrorism though of questionable need given the commitment of all EU states to combat terrorism.   | 4/5 | 4/5 |

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| terrorism (possibly including extended powers over national authorities)          |   | <i>justification, refuse to pursue an investigation requested by Eurojust. This should be abrogated, at least when Eurojust's request would relate to investigations on terrorism</i> | though Point 5(a) calls upon the MS to “ensure the execution of any request for mutual legal assistance related to terrorist offence and to provide each other with the fullest cooperation”.  |  |     |     |
| 30. Supply of all relevant information on terrorist cases to Europol and Eurojust | Commission  | <i>“Two Member States have not yet established their national contact points to exchange information on terrorism with Eurojust and Europol”</i>                                      | All Member States are required to establish national contact points responsible for collecting all relevant information concerning and resulting from national criminal investigations and prosecutions with respect to terrorist offences involving listed individuals, groups or entities, and for passing that information on to Europol and Eurojust | Apparently limited to terrorism. Dependent upon the political will of national authorities.  | 5/5 | 4/5 |
| 31. European Arrest Warrant   | Council & Commission<br><br>[Point 5(a), draft declaration] | <i>“The 5 Member States which have not yet taken the necessary measures to put the European Arrest Warrant<sup>2</sup> into their national law should do so as a matter</i>           | Point 5(a) of the draft EU declaration on terrorism calls for implementation by June 2004. The Commission’s action plan argues that:<br><br><i>Transposition is not enough: the Commission will report at the end of</i>   | This measure has little or nothing to do with terrorism in that it is simply implausible that EU member states are “harbouring” wanted “al-Qaeda” suspects.<br><br>The problems that some member states have had in implementing the arrest warrant relate to constitutional and human rights issues which must rightly be given due consideration by all member states (particularly given the rushed and flawed agreement on this measure on the same false pretext after September 11). | 1/5 |     |

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|   |   | <i>of top priority”</i>  | <i>this year on the measures Member States have taken and on the operational working of the European Arrest Warrant, a matter which the Commission and Eurojust are monitoring constantly</i>  | It should also be pointed out that terrorism is only one of 32 crimes on a list for which the arrest warrant is “fast-tracked”.<br><br><i>See: “European Arrest Warrant limps into force”, Statewatch news online, January 2004:</i><br><a href="http://www.statewatch.org/news/2004/jan/01euro-arrest-warrant.htm">http://www.statewatch.org/news/2004/jan/01euro-arrest-warrant.htm</a>  |     |     |
| <b>32. Framework Decision on the fight against terrorism</b>  | Council & Commission<br><br>[Point 5(a), draft declaration] | <i>“Three Member States have not fully reported on the implementation of this legislation, and for the others it is not yet clear that national measures fully implement the requirements of the Framework Decision.</i>         | Point 5(a) of the draft EU declaration on terrorism calls for implementation by June 2004. According to its Action Plan the Commission:<br><br><i>will report the failings in no uncertain terms to the Council and will do all it can to ensure that the Member States take the necessary measures”</i> | It should be recalled that when this Framework Decision was agreed less than half of the 15 EU member states had any substantive counter-terrorism legislation at all. There is also concern at the breadth of the definition of terrorism in this Framework Decision and the possibility that in some states might in the future use the measures in a non-terrorist context (such as public order or protest).<br><br><i>See: “European Parliament supports EU definition of terrorism”, Statewatch news online, February 2002:</i><br><a href="http://www.statewatch.org/news/2002/feb/06ep.htm">http://www.statewatch.org/news/2002/feb/06ep.htm</a>   | 5/5 | 3/5 |
| <b>33. Framework Decision on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime</b> | Council & Commission<br><br>[Point 5(a), draft declaration] | <i>“The deadline for implementation of this instrument was 31 December 2002, and although all but one of the Member States have informed the Commission of the measures taken to implement it, in some cases the information</i> | Point 5(a) of the draft EU declaration on terrorism calls for implementation of the measure by June 2004   | This Framework Decisions limits MS’ reservations in respect of the 1990 Council of Europe Convention on laundering, search, seizure and confiscation of the proceeds of crime and approximates penalties for money laundering offences. Terrorism is only one of a number of crimes to which this measure applies.<br><br>Rules on confiscation of assets may be relevant where a group or individual is convicted of financing terrorism. However, having dealt so extensively with the issue of freezing the assets of terrorist suspects (see 16-23, above) it is questionable if this measure is of any immediate relevance to the investigation and prosecution of terrorism.<br><br><i>See Framework Decision in OJ 2002 L 162/1</i> | 1/5 |     |

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|  |   | <i>provided was not complete</i>   |  |  |     |  |
| <b>34. Framework Decision on joint investigation teams</b>   | Council & Commission<br><br>[Point 5(a) and (b), draft declaration] | <i>“provides an essential operational tool for allowing investigators from two or more Member States to work together to tackle cross-border criminal activities”</i><br><br><i>only nine Member States have notified transposition measures to the Commission</i> | Point 5(a) of the draft EU declaration on terrorism calls for implementation of the Framework Decision by June 2004.<br><br>5(b) calls for Europol and Eurojust representatives to be “associated with the work of Joint Investigation Teams as far as possible” | As part of the EU counter-terrorism plans that followed 11 September 2001, this provision was extracted from the EU Mutual legal Assistance Convention and implemented ahead of that agreement through an EU Framework Decision.<br><br>The scope of this Framework Decision did not limit joint teams to terrorism, however, and can apply to any criminal offence deemed worthy of investigation by two or more member states.<br><br>Participation of Europol and Eurojust has been as an attempt to give the agencies an operational role (their role is limited to providing assistance to the member states and facilitating cooperation). US law enforcement authorities will also be able to participate in joint teams operating in the EU under the EU-US mutual legal assistance Convention of 2003.<br><br><i>See: “Joint teams: scope widened”, Statewatch news online, December 2001:</i><br><a href="http://www.statewatch.org/news/2001/dec/04jointtms.htm">http://www.statewatch.org/news/2001/dec/04jointtms.htm</a> ;<br><i>adopted Framework Decision in OJ 2002 L 162/1</i> | 3/5 |  |
| <b>35. Framework Decision on the execution in the European Union of orders freezing property or evidence</b> | Council & Commission<br><br>[Point 5(a), draft declaration]         | None given   | [Point 5a of the draft EU declaration on terrorism calls for implementation by the MS by December 2004. This is ahead of the deadline set in the Framework Decision itself.  | This Framework Decision applies to a list of 32 offences. There are problems in regard to procedural safeguards and remedies for affected individuals. Again, having dealt extensively with the issue of freezing the assets of terrorist suspects (see 16-23, above) it is questionable if this measure is relevant at all.<br><br><i>See: EU to adopt arbitrary powers on freezing of assets and seizure of evidence, Statewatch news online, April 2002:</i><br><a href="http://www.statewatch.org/news/2002/may/01freezing.htm">http://www.statewatch.org/news/2002/may/01freezing.htm</a> ;<br><i>adopted Framework Decision in OJ 2003 L 196/45</i>  | 1/5 |  |
| <b>36. The 2000 EU Convention on Mutual</b>  | Council & Commission<br><br>[Point 5(a) of the                      | <i>“No legal deadline was set for implementation of</i>  |  | EU Conventions do not contain “legal deadlines” because they must be ratified by national parliaments. The MLA Convention is extremely broad in scope and in no way limited to terrorism. It provides for a general extension of mutual legal assistance and   | 1/5 |  |

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| <b>Assistance in Criminal Matters and its 2001 Protocol</b>   | draft EU declaration on terrorism calls for ratification of both instruments by December 2004] | <i>this instrument. To date only four Member States have formally ratified the Convention, although other Member States have adopted the necessary legislation”</i> |   | includes provisions on a range of police and judicial cooperation matters. The Protocol contains more general provisions relating to financial investigations.<br><br>Financial investigations are covered by a range of more specific measures (16-23, above) and there has already been expedited entry into force of the provisions on joint investigation teams (33) . Given the further unequivocal commitments of the MS to cooperate fully with one another in the investigation of terrorism in the draft EU declaration, it is questionable whether this measure is directly relevant.<br><br><i>See: “Submission by Statewatch to the House of Lords Select Committee on the European Union on the proposed Convention on mutual assistance on criminal matters, particularly organised crime and financial crime”, October 2000:<br/><a href="http://www.statewatch.org/semDOC/evidence/newMLA.htm">http://www.statewatch.org/semDOC/evidence/newMLA.htm</a>;<br/>Convention in OJ 2001 C 326/1 , Protocol in OJ 2000 C 197/1</i> |                             |                        |
| <b>37. Ensure greater security of firearms, explosives, bomb-making equipment, and the technologies used in terrorist attacks</b> | Council<br><br>[Point 5(b), draft EU]  |   | Point 5(b) of the draft EU declaration on terrorism calls on the Council to examine the scope for measures in this area | This is a welcome initiative. It must be hoped that the EU can come up with as specific and implementable proposals as found elsewhere in this document.   | 5/5                         |                        |
| <b>38-42. Development of SIS, VIS and EURODAC databases</b>   |  |   |   |  |                             |                        |
| Proposal  | From   | Justification   | Details   | Statewatch analysis & documentation  | Counter-terrorism relevance | Civil liberties etc. * |
| 38. New   | Council  |   | Point 5(c) of the draft EU declaration on terrorism   | The draft Regulation and Decision to which the Council refers must be agreed by 1 May 2004 because after this point the  | 2/5                         |                        |

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| functions for SIS         | [Point 5(c), draft declaration]            |   | <p>calls for the adoption of necessary measures to enable the Draft Council Regulation and Draft Decision on the introduction of new functions for the Schengen Information System (SIS), to come into force by June 2004</p> <p>The Council is also invited to consider the criteria that should be applied for the purposes of Article 96 of the Schengen Convention in relation to certain persons reported for the purpose of being refused entry.</p> | <p>transitional period referred to in Article 67 TEC will come to an end. As from that date, the Council will no longer be in a position to adopt legal acts, based on Article 66 TEC, insofar as they are based on an initiative of a Member State. As a consequence, the Council will, after the 1st of May 2004, no longer be in a position to adopt the draft Council Regulation which is a Spanish initiative. This may have influenced the deadline on adopting and implementing the measures.</p> <p>The proposals to extend the scope and function of the SIS were originally limited to terrorism but then extended to cover other issues (there is a limited role for the intelligence services under Article 99(3) of the Schengen Convention) .</p> <p>The reference to “criteria” for Article 96 seems illogical. The existing Article 96 provides expressly for MS not to permit entry to persons suspected of involvement with terrorist offences so there seems no relevant need to reconsider this. It should be remembered that the SIS is primarily a border control mechanism.</p> <p><i>See: “From the Schengen Information System to SIS II and the Visa Information System (VIS): the proposals explained”, Statewatch, February 2004:</i><br/> <a href="http://www.statewatch.org/news/2004/feb/summary-sis-report.htm">http://www.statewatch.org/news/2004/feb/summary-sis-report.htm</a></p> |     |  |
| 39. Development of SIS II | Council<br>[Point 5(c), draft declaration] | <i>“Can play its part in combating terrorism”</i> | No specific proposals beyond commitment to existing agreement  | <p>SIS II will allow the UK and Ireland and the ten accession states to participate in the SIS and, as expected, a host of new functions are planned. These include the addition of biometric identification data (photographs and fingerprints); new categories of "terrorist suspects" and "violent troublemakers" (who are to be banned from travelling to demonstrations or foot ball matches); and the linking of individual records. A second database - the Visa Information System (VIS, see below) - is to share a "technical platform" with SIS II and will contain the extensive personal information.</p> <p>Two years ago the European Commission acknowledged that</p>   | 1/5 |  |

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|   |         |   |                       | <p>"some of the proposals currently under discussion would fundamentally change the functions of the SIS, "transforming it from a reporting system to a reporting and investigation system". However, there has been no consultation of the European and national parliaments on the planned new functions. Instead, the member states and officials in the Council and Commission have conspired to avoid debate altogether and agreed to create the "technical capacity" for the new functions in SIS II and then "activate" them later on (so-called "latent development"). "Possible" new functions will be agreed in May in the form of EU Council conclusions and the Commission will appoint a contractor to develop the new system in August. This will present parliaments and civil society with a <i>fait accompli</i>.</p> <p>A database of terrorist suspects is the only proposal for SIS II that has anything to do with combating terrorism. This should not be pretext for the wholesale development of the new system.</p> <p><i>See: Statewatch report in 37, above</i></p> |     |  |
| <b>40. Development of Visa Information System</b> | Council | <i>"Can play its part in combating terrorism"</i> | No specific proposals | <p>In June 2002 the Council of the EU adopted guidelines (in the form of Council Conclusions) on the possible development of a Visa Information System – a database that would contain the personal information (including biometrics) on every visa application (irrespective of whether the visa was issued or the application refused). The proposal dates back to the aftermath of 11 September, when a host of new measures were proposed in the name of ‘counter-terrorism’.</p> <p>The stated purpose of the VIS system is to combat fraud, contribute to consular cooperation and information exchange, facilitate checks by immigration authorities, police and border agents, prevent ‘visa shopping’, facilitate the Dublin Convention, assist expulsions and combat terrorism [COM (2003) 771, 11.12.03]. VIS will have a ‘capacity to connect at least 27 Member States, 12,000 VIS users and 3,500 consular posts worldwide’. A favourable feasibility study has been completed, based on the ‘assumption that 20 million visa requests would be handled annually’.</p>          | 2/5 |  |

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|  |  |   |   | <p>VIS will contain extensive personal data, including the type and status of the visa, ‘all the data required to identify the applicant, to be taken from the application form’, the visa reference, details of the issuing authority and grounds for revoking or extending the visa and digitised photographs of the applicant. In a second stage in the development of VIS, travel documents, ‘record of persons issuing invitations, those liable to pay board and lodging costs’ and insurance policies should be scanned and added to the database. A further stage will see ‘biometric data on the visa applicants’ added to the VIS. There are three options for the inclusion of biometric data – iris scans, facial recognition and fingerprints, though discussions suggest that the EU will, like the US, opt for fingerprints.</p> <p>While the data in VIS may have a limited role to play in terrorism investigations it this is no means its primary purpose. EU the rules on the processing personal data in data should not allow VIS to become a de facto law enforcement database.</p> <p><i>See: Stewatch report in 37, above</i></p> |            |  |
| <p><b>41. Comprehensive and interoperable European Information Systems</b></p> | <p>Council &amp; Commission<br/>[Point 5(c), draft EU declaration]</p> | <p><i>“In order to exploit their value added in the fight against terrorism within their respective legal and technical frameworks”</i></p> | <p>Point 5(c) of the draft EU declaration on terrorism calls on the Commission to:</p> <p><i>submit proposals for enhanced interoperability between European databases and to explore the creation of synergies between existing and future information systems (SIS II, VIS and EURODAC) in order to exploit their added value within their respective legal and technical</i></p> | <p>This proposal is completely incompatible with data protection principles on restricted access and use. It would appear to builds on existing discussions within an ad hoc working group on 3<sup>rd</sup> pillar information systems. The linking of databases is expressly prohibited by the legal frameworks of the SIS and Eurodac.</p> <p>The use of Eurodac for general security purposes is also prohibited . The purpose of Eurodac to facilitate the application of the Dublin Convention and prevent asylum applicants from making multiple claims.</p> <p>“Interoperability” has very little to do with counter-terrorism and a lot to do with using dedicated EU information systems for general law enforcement purposes (or “Maximising the Effectiveness of Information Systems” as the Council puts it).</p> <p><i>See: Stewatch report in 37, above</i></p>   | <p>0/5</p> |  |

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|   |   |   | <i>frameworks in the prevention and fight against terrorism</i>   |  |                             |                        |
| <b>42. National law enforcement agencies access to SIS, VIS and Eurodac</b>                                       | Council<br>[Point 5(c), draft declaration]              |   | Point 5(c) of the draft EU declaration on terrorism calls for Commission proposals that include provisions to enable national law enforcement agencies to have access to the EU systems | The role of the SIS is the subject of a number of specific proposals (37, above). While VIS and Eurodac are arguably of relevance to specific terrorism investigations, there can be no justification for general law enforcement access to these systems.   | 0/5                         |                        |
| <b>43-53. Agreement on draft measures</b>   |   |   |   |  |                             |                        |
| Proposal  | From  | Justification   | Details   | Statewatch analysis & documentation  | Counter-terrorism relevance | Civil liberties etc. * |
| <b>43. Draft Framework Decision on the confiscation of crime-related proceeds, instrumentalities and property</b> | Council & Commission<br>[Point 5(a), draft declaration] | <i>“The Council reached political agreement on this instrument on 19 December 2002, but formal adoption has to await the lifting of constitutional and parliamentary reservations by two Member States”</i> | Point 5a of the draft EU declaration on terrorism calls for finalisation of proposal by June 2004.  | This Framework Decision concerns rules governing the confiscation of proceeds of crime, including extended powers of confiscation. Terrorism is only one of seven crimes to which this measure applies and an extensive range of measures already covers the freezing of assets of suspected terrorists (16-23, above). This measure would only theoretically apply were one member state to refuse to assist another in confiscating the assets of convicted “al-Qaeda” terrorists.<br><br><i>See: proposal in Council doc. 9956/02, 14.6.02 (OJ 2002 C 184/3) and agreement on general approach by Council (December 2002) in 14852/02, 28.11.02</i> | 1/5                         |                        |
| <b>44. Draft Framework Decision on attacks against</b>  | Council & Commission<br>[Point 5(a), draft              | <i>“responds to the increasing concern at the potential threat</i>  | Point 5(a) of the draft EU declaration on terrorism calls for conclusion of work on proposal by June  | This Framework Decision concerns a range of “cybercrimes” and is not limited to terrorism. Moreover, is there a cyber-terrorist from “al-Qaeda” that justifies the inclusion of this measure?  | 1/5                         |                        |

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| information systems  | declaration]  | <i>posed by cyber-terrorism</i><br><br><i>“Political agreement was reached on 28 February 2003 but parliamentary reservations are still pending by three Member States”</i>         | 2004  | <i>See: Commission proposal in COM (2002) 173, 17.4.02 (OJ 2002 C 203 E/109) and agreement on general approach by Council (February 2003) in 8687/1/03, 20.6.03</i>  |     |  |
| <b>45. Draft Framework Decision on Mutual recognition of Confiscation Orders</b> | Council & Commission<br><br>[Point 5(a), draft declaration] | <i>“Discussions on this instrument are nearing completion and the Justice and Home Affairs Ministers should be urged to find agreement on it at their meeting of 30 March 2004”</i> | Point 5(a) of the draft EU declaration on terrorism calls for conclusion of work on proposal by June 2004 | Terrorism is only one of 32 crimes to which this measure applies and again it would only theoretically apply were one member state to refuse to assist another in confiscating the assets of convicted “al-Qaeda” terrorists.<br><br><i>See: proposal in Council doc. 9956/02, 14.6.02 (OJ 2002 C 184/3) and latest draft of text following Council negotiations in 6752/04, 8.3.04 (“partial access”)</i>   | 1/5 |  |
| <b>46. Draft Framework Decision on the European Evidence Warrant</b>             | Council & Commission<br><br>[Point 5(a), draft declaration] | <i>This proposal applies the mutual recognition principle to obtaining certain types of evidence and thereby replaces the existing mutual assistance regime in this area.</i>       | The draft EU declaration on terrorism refers only to taking on the proposal forward                       | Terrorism is only one of 32 crimes to which this measure applies and again it would only theoretically apply were one member state to refuse to assist another in freezing evidence relating to a specific investigation into “al Qaeda” suspects. This is of no relevance to the prevention or investigation of terrorism which depends instead upon effective police and judicial cooperation between the MS.<br><br><i>See: forthcoming Statewatch analysis on news online: <a href="http://www.statewatch.org/news">http://www.statewatch.org/news</a></i> | 0/5 |  |

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| <b>47. Draft Regulation on creation of European Border Agency</b>                                      | Council<br>[Point 6, draft declaration] | <i>“Can play its part in combating terrorism”</i>              | Point 6 of the draft EU declaration on terrorism calls for adoption by May 2004 and the Agency made operational by 1 January 2005.  | A host of <i>ad hoc</i> groups are developing under auspices of EU Border Police. These groups unaccountable, unregulated and not mentioned in formal Commission proposal on issue. While border controls have an obvious general role to play in counter-terrorism this measure is primarily related to immigration control and not an express counter-terrorism initiative.<br><br><i>See: “Proposed Regulation hides unaccountable, operational bodies”, Statewatch news online, November 2003:</i><br><a href="http://www.statewatch.org/news/2003/nov/10euborders.htm">http://www.statewatch.org/news/2003/nov/10euborders.htm</a>   | 1/5 |  |
| <b>48. Use of travellers’ data for border and aviation security and other law enforcement purposes</b> | [Point 6, draft declaration]            | Screening for potential terrorists                             | Point 6 of the draft EU declaration on terrorism calls for “early conclusion on this measure. It also invites the Commission to bring forward a proposal no later than June 2004 for a common EU approach to the use of passengers data for border and aviation security and other law enforcement purposes.<br><br>The action plan of the Commission says that it will “pursue as a matter of priority the discussions that have been started with Member States and other relevant parties, e.g. Europol” | The PNR (passenger name record) system, whereby all passengers are vetted, would introduce the wholesale surveillance of movement and is clearly not limited to terrorism.<br><br>The Commission’s claim that “Such a policy framework will need to strike a balance between security concerns on the one hand and data protection and other civil liberties concerns on the other” is belied by the wholly inadequate and ineffective data protection framework in the draft EU-US treaty on exchange of PNR.<br><br><i>See Statewatch observatories on the exchange of data on passengers (PNR) with USA”:</i><br><a href="http://www.statewatch.org/pnrobservatory.htm">http://www.statewatch.org/pnrobservatory.htm</a> ; and on the EU surveillance of passengers (PNR): <a href="http://www.statewatch.org/eu-pnrobservatory.htm">http://www.statewatch.org/eu-pnrobservatory.htm</a> | 1/5 |  |
| <b>49. Proposals on inclusion of biometrics in all EU passports</b>                                    | Commission & Council<br>[Point 6, draft | <i>As regards visa policy, border management and documents</i> | Point 6 of the draft EU declaration on terrorism calls for to adopt by the end of 2004 the  | The existing proposal provides for an initial period where current passport photos would be digitised before the introduction of fingerprinting. The Commission action plan proposes to extend finger-printing to ID cards. In effect almost everyone in the EU   | 1/5 |  |

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| and visas  | declaration]                               | <i>security, the possibility to adjust the pending Commission proposal on EU passports by making fingerprints mandatory and to extend it to Identity Cards and other travel documents should be considered</i> | Commission's proposals for the incorporation of biometric features into passports and visas, with a view to the finalisation of the technical specification to be adopted by the Commission by June 2005 | <p>will have their fingerprints taken for one reason or another.</p> <p>This is a direct breach of Article 18(3) of the EC treaty which provides expressly that the EC's power to adopt legislation to facilitate free movement "shall not apply to provisions on passports, identity cards, residence permits or any other such document" (both the Commission and the Council have produced torturous legal arguments to circumvent this).</p> <p>These proposals are about document security and of questionable relevance in the prevention of the atrocities in Madrid (the fact that Spain has compulsory national identity cards made no difference on 11 March.</p> <p><i>See: "The road to "1984" Part 2: EU: Everyone will have to have a facial scan taken and give their fingerprints ("biometrics") to get a passport", Statewatch news online, February 2004: <a href="http://www.statewatch.org/news/2004/mar/10eu-intel-centre.htm">http://www.statewatch.org/news/2004/mar/10eu-intel-centre.htm</a>; "Commission's EU biometric passport proposal exceeds the EC's powers", Statewatch news online, February 2004: <a href="http://www.statewatch.org/news/2004/feb/27legal-analysis-EU-biometric-passports.htm">http://www.statewatch.org/news/2004/feb/27legal-analysis-EU-biometric-passports.htm</a></i></p> |     |  |
| <b>50. EU-wide mandatory retention of communications</b> | Council<br>[Point 5(a), draft declaration] | <i>"can play part in combating terrorism"</i>  | Point 5(a) of the draft EU declaration on terrorism calls for adoption of proposal by June 2005  | <p>This is a return to a long-standing demand for the mandatory retention of all traffic data (phone calls, faxes, e-mails etc). Following amendment of EU data protection Directive to remove clause of mandatory destruction of this data by service providers, nine of the 15 EU MS are now introducing data retention for between one and five years.</p> <p>A draft EU Framework Decision was leaked in 2002 but not agreed by the MS. The proposals would place the communications of the entire EU population under surveillance. Data protection and legal experts are in broad agreement that mandatory retention of telecommunications data would be unlawful under the ECHR, disproportionate, contrary to the rule of law and unnecessary in a democratic society.</p>   | 0/5 |  |

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|  |   |  |   | <p>As long they cooperate effectively EU police forces and judicial authorities have today sufficient powers to place known and suspected “al-Qaeda” terrorists under sustained and intrusive surveillance.</p> <p><i>See: “EU surveillance of communications: data retention to be compulsory” for 12-24 months - draft Framework Decision leaked to Statewatch”, Statewatch news online, August 2002: <a href="http://www.statewatch.org/news/2002/aug/05datafd1.htm">http://www.statewatch.org/news/2002/aug/05datafd1.htm</a></i></p> |     |     |
| <b>51. Customs controls on cash movements at the external frontier &amp; agreement on Draft Strategy for Customs Cooperation</b> | <p>Council &amp; Commission</p> <p>[Point 6, draft declaration]</p> | <p><i>“As the provisions of the money-laundering directive begin to bite, criminals and terrorists are likely to turn to cash as an easier way of moving funds around”</i></p> | <p>Point 6 of the draft EU declaration on terrorism calls for agreement on the “Draft Strategy for Customs Cooperation and a related work plan”.</p> <p>The Commission action plan proposes “adoption by the Council of the Commission proposal to introduce customs controls on cash movements at the external frontier”</p> | <p>This proposals is clearly not limited to terrorism and the “draft strategy for customs cooperation” is surely too broad as to be counted as directly relevant.</p>   | 1/5 |     |
| <b>52. EC and MS ratification of Protocol to UN Organised Crime Convention on trafficking of illegal firearms</b>                | <p>Commission</p>   |  | <p>Mentioned in Commission action plan but not in draft Council declaration.</p>  | <p>This measure is not limited to terrorism and concerns organised crime in general. The protocol was signed by the EC in 2001 and a proposal to ratify came in August 2003.</p> <p><i>See: Commission proposal in COM (2003) 512, 22 Aug. 2003; UN Convention on Organised Crime: <a href="http://www.statewatch.org/docbin/UNOCconv.pdf">http://www.statewatch.org/docbin/UNOCconv.pdf</a></i></p>  | 2/5 |     |
| <b>53. Draft Council Directive on compensation for victims of</b>  | <p>Council &amp; Commission</p> <p>[Point 4, draft</p>              | <p><i>“The events of the last days show more than ever how important it</i></p>  | <p>Point 4 of the of the draft EU declaration on terrorism is gives a deadline of 1 May to</p>  | <p>A wholly unobjectionable proposal.</p>   | 5/5 | 5/5 |

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| crime | declaration] | <i>is to ensure that victims of serious crimes and terrorism can be compensated for the damage and suffering they are subjected to”</i> | adopt the proposal and requests the Commission to ensure the allocation of the funds available in the 2004 budget.<br><br>According to the Commission, €1 million is available and the money will be used to support projects which are intended to help the victims of terrorist acts and/or their relatives to recover, as well as projects which are intended to mobilise the public against terrorism in all its forms. |  |  |  |
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## 54-57. External cooperation

| Proposal   | From  | Justification                            | Details   | Statewatch analysis & documentation  | Counter-terrorism relevance | Civil liberties etc. * |
|--|---|--|---|--|-----------------------------|------------------------|
| <b>54. Agreement on draft UN Convention on Terrorism</b> | Council<br><br>[Objective 1, draft action plan] |  | Objective 1 of the draft EU action plan on terrorism calls for agreement on a Comprehensive UN Convention against Terrorism | It seems there is a deadlock over this draft treaty on how to treat actions committed in wartime/occupation, presumably related to the Middle East dispute.<br><br><i>See: reports of the ad hoc committee of the UN general Assembly drawing up the convention:</i><br><a href="http://www.un.org/law/terrorism/index.html">http://www.un.org/law/terrorism/index.html</a> and see the latest report on drafting: <a href="http://www.un.org/terrorism/comesp.htm">http://www.un.org/terrorism/comesp.htm</a> | 5/5                         | 2/5                    |
| <b>55. Anti-terrorism clauses</b>                        | Council & Commission                            | <i>The EU needs to better target its</i> | Objective 1 of the draft EU action plan on  | Anti-terrorism clauses have the potential to further undermine the development agenda (see also 9, above). Needs to be   | 5/5                         | 2/5                    |

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| <p><b>in agreements with third countries to be followed up with technical assistance; sanctions for non-cooperating countries</b></p>                | <p>[Objective 1 in Action plan]</p>                                 | <p><i>dialogue with third countries on terrorism, especially those countries where we have evidence of a terrorist threat or of specific terrorist activity such as recruitment or training, those who are direct or indirect sources of terrorist financing etc.</i></p> | <p>terrorism agrees upon “effective counter-terrorism clauses in all agreements with third countries”. The Commission action plan calls on the Council to “rapidly agree priority countries where assistance should be targeted”:</p> <p><i>If the clauses are not implemented - or third countries refuse to include them in agreements - this should have direct consequences in terms of the EU's willingness to continue to provide assistance more generally.</i></p> | <p>accompanied by specific and implementable measures addressing the “root causes” of terrorism in the framework of Objective 6 of the draft Directive.</p> <p><i>See “Migration, development and the EU security agenda”, Ben Hayes and Tony Bunyan in 'Europe in the World' Essays on EU foreign, security and development policies, BOND, 2003: <a href="http://www.statewatch.org/news/2003/sep/17bhtb.htm">http://www.statewatch.org/news/2003/sep/17bhtb.htm</a></i></p> |            |            |
| <p><b>56. Co-operation with the United Nations Counter Terrorism Committee (CTC) and other relevant international and regional organisations</b></p> | <p>Council &amp; Commission</p> <p>[Objective 1 in Action plan]</p> |   | <p>Objective 1 of the draft EU Action Plan on terrorism is to:</p> <p><i>Support the key role of the UN ... in sustaining the international consensus and the work of the Security Council Counter Terrorism Committee and the Taliban/Al Qaeda Sanctions Committee</i></p> <p><i>“Work to ensure universal adherence to,</i></p>  | <p>See concerns relating to freezing of assets (7 and 16, above) and draft UN Convention (53)</p>  | <p>5/5</p> | <p>2/5</p> |

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|   |   |  | <i>and full implementation of, the UN Conventions on Terrorism, and to agree ... UN Convention against Terrorism and ... UN Convention on the Suppression of Acts of Nuclear Terrorism</i>                   |   |     |     |
| <b>57. Cooperation with US and Partners</b> | Council<br>[[Point 13, draft declaration] |  | Under Point 13 of the of the draft EU declaration on terrorism the “European Council will seek to further strengthen cooperation with the US and other partners in countering the threat posed by terrorism” | The EU and the US already meet regularly to discuss JHA matters concerning not just counter-terrorism but border control, travel documents and immigration policies. There is excessive secrecy in regard to EU-US cooperation and the US is able to exert an unaccountable influence on not just counter-terrorism measures, but EU JHA policy in general.<br><br><i>See: Statewatch’s “Observatory on post ‘11 September’ and civil liberties”:</i> <a href="http://www.statewatch.org/observatory2.htm">http://www.statewatch.org/observatory2.htm</a> | 4/5 | 1/5 |

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