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DRAFT REPORT

on the EU Counter-Terrorism Policy: main achievements and future challenges
(2010/2311(INI))

Committee on Civil Liberties, Justice and Home Affairs

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CONTENTS

Page

MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION 3

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on the EU Counter-Terrorism Policy: main achievements and future challenges (2010/2311(INI))

The European Parliament,

- having regard to the Charter of Fundamental Rights, to Articles 2, 3 and 6 of the Treaty on European Union and to the relevant Articles of the Treaty on the Functioning of the European Union (TFEU),
- having regard to Council Framework Decision on combating terrorism 2002/475/JHA¹ as amended by Framework Decision 2008/919/JHA²,
- having regard to the 2005 EU Counter-Terrorism Strategy³,
- having regard to the EU Strategy for Combating Radicalisation and Recruitment to Terrorism⁴,
- having regard to the Stockholm Programme - An Open and Secure Europe Serving and Protecting Citizens⁵, and the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions of 20 April 2010 on ‘Delivering an area of freedom, security and justice for Europe’s citizens: Action Plan Implementing the Stockholm Programme’ (COM(2010) 0171),
- having regard to the Communication from the Commission to the European Parliament and the Council of 20 July 2010 on the EU Counter-Terrorism Policy: main achievements and future challenges (COM(2010)0386),
- having regard to the Opinion of the European Data Protection Supervisor of 24 November 2010⁶ on the Communication on the EU Counter-Terrorism Policy: main achievements and future challenges,
- having regard to the upcoming opinion of the European Economic and Social Committee on the Communication on the EU Counter-Terrorism Policy: main achievements and future challenges,
- having regard to the Communication from the Commission to the European Parliament and the Council on the EU Internal Security Strategy in Action: Five steps

¹ OJ L 164, 22.6.2002, p.3.

² OJ L 330, 9.12.2008, p. 21.

³ Council Document 14469/4/05, 30.11 2005.

⁴ Council Document 14781/1/05. The Strategy was revised in November 2008. Council Document 15175/08.

⁵ OJ C 115, 4.5.2010, p. 1.

⁶ OJ C 56, 22.2.2011, p.2.

towards a more secure Europe¹,

- having regard to the mid-term review of the 7th Framework Programme for Research and to the Green Paper entitled ‘From challenges to opportunities; towards a common strategic framework for EU research and innovation funding’ (8th Framework Programme),
 - having regard to its various resolutions related to counter-terrorism,
 - having regard to Rule 48 of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the opinions of the Committee on Foreign Affairs and the Committee on Legal Affairs (A7-0000/2011),
- A. whereas after the atrocious attacks of 11 September 2001 the first decade of the 21st century has been marked by the ‘War on Terrorism’, especially with regard to the US approach; whereas although the attacks did not take place on European soil, all Europeans felt them to be an attack on their values and their way of life,
- B. whereas terrorism is not a recent phenomenon; whereas counter-terrorism has always been part of regular law enforcement action; whereas 9/11 led to a fundamental change in the methods and instruments used to fight terrorism; whereas terrorism became a matter of national security, with a very different legal framework,
- C. whereas the aim of counter-terrorism policies should be to undermine the objectives of terrorism, which are to destroy the fabric of our free, open and democratic society; whereas the aim of counter-terrorism must be to protect and strengthen that fabric of democratic society and the effectiveness of counter-terrorism policies must be measured against this aim; whereas in this logic, strengthening civil liberties and democratic scrutiny is not an obstacle to such policies, but their prime objective,
- D. whereas ten years after the attacks that shook the world it is time to take stock of the achievements in fighting terrorism; whereas evaluation allows for more efficient and effective policy-making, and in any modern democracy policy decisions are subject to frequent evaluation and review,
- E. whereas accountability and responsibility are essential factors for the democratic legitimacy of counter-terrorism policies, whereas mistakes, unlawful actions and violations of international law and human rights must be investigated and corrected, and justice be done,
- F. whereas counter-terrorism measures tend to have a profound impact on civil liberties, the rule of law and democratic decision-making; whereas these measures also have a substantial budgetary impact and a growing share of the costs in this field is borne by the private sector,

¹ COM(2010) 673 final, 22.11.2010.

G. whereas mass surveillance has become a key feature of counter-terrorism policies, and whereas the large-scale collection of personal data, detection and identification technologies, tracking and tracing, data mining and profiling, risk assessment and behavioural analysis are all used for the purpose of preventing terrorism; whereas public authorities are making more and more use of data collected for commercial or private purposes,

General considerations

1. Strongly welcomes the Commission Communication; regrets, however, that the scope is rather narrow, limited to the implementation of agreed policy measures, and not national counter-terrorism policies or national measures that transpose policies agreed at European or international level;
2. Deplores also the fact that the Communication does not sufficiently cover measures taken by DGs other than JLS (such as TRAN or MARKT) and that it does not give a clear idea how the measures interact and where there is overlap or gaps; is of the opinion that all the above levels must also be considered, as European, national and international measures are complementary and assessing individual measures does not provide a complete picture of the impact of counter-terrorism policies in Europe;
3. Considers that counter-terrorism policies should meet the standards set with regard to civil liberties, the rule of law and democratic scrutiny and accountability, and that assessing whether these standards are met must be an integral part of an evaluation;

Evaluation by a panel of independent experts and mapping exercise

4. Stresses that a proper evaluation of ten years of counter-terrorism policies must provide the basis for an evidence-based, needs-driven, coherent and comprehensive EU counter-terrorism strategy by means of an in-depth and complete appraisal to be carried out by a panel of independent experts;
5. Underlines that such an evaluation should
 - a. provide a clear input and output analysis of counter-terrorism policies in Europe in the past decade and set out clearly the results of the policies in terms of increased security in Europe;
 - b. set out the facts and figures relating to terrorist activity (successful, failed, prevented attacks) and counter-terrorism activity (arrests and convictions);
 - c. include a full overview of the accumulated impact of counter-terrorism measures on civil liberties, including Member State policies and measures by third countries with a direct impact in the EU;
 - d. examine whether the current instruments for assessing the impact on privacy and civil liberties are adequate;

- e. identify where further law enforcement powers are needed or, inversely, where the powers granted are excessive and go beyond what is necessary;
6. Calls on the Commission to map out which measures have objectives other than counter-terrorism, or where further objectives were added to the initial purpose of counter-terrorism (mission creep and function creep), such as law enforcement, immigration policies, public health, or public order;
7. Calls on the Commission to draw up a complete and detailed ‘map’ of all counter-terrorism policies in Europe; calls at the same time on Member States to carry out a comprehensive evaluation of their counter-terrorism policies, with a particular focus on interaction with EU policies, overlap and gaps, to cooperate better in the evaluation of EU policies, and to provide their input within the given deadlines, as in the case of the Data Retention Directive¹;

Means

8. Calls on the Commission to produce, before July 2011, a full and detailed report on all EU funds used for counter-terrorism purposes, directly or indirectly, and to produce an analysis of the development of the relevant EU budget lines since 2001;
9. Calls on the Commission to carry out a study into the costs of counter-terrorism policies borne by the private sector, as well as an overview of sectors benefiting from counter-terrorism policies;
10. Calls on the Commission to invite the ‘High Level Group of Independent Stakeholders on Administrative Burdens’ (chaired by Mr Stoiber) to assess the administrative burden created by counter-terrorism measures since 2001;

Democratic scrutiny and accountability

11. Calls on the Commission to carry out a study to establish if counter-terrorism policies are subject to effective democratic scrutiny, including at least the following issues:
 - a. for each measure it must be established if either national parliaments or the European Parliament had full rights and the means of scrutiny, such as access to information, sufficient time for a thorough procedure, and rights to modify the proposals; the evaluation must include an overview of the legal basis used for each policy measure;
 - b. all existing measures must be subjected to a retrospective proportionality test;²
 - c. provide an overview of the classification of documents, trends in the use of

¹ Directive 2006/24/EC of the European Parliament and of the Council of 15th March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC. *Official Journal of the European Union L 105* (Brussels: 13th April 2006) pp. 54-63.

² European Court of Human Rights, *S. and Marper v. United Kingdom*, 8 December 2008, §95, 101-103, 125.

classification, and numbers and trends in access granted or denied to documents relating to counter-terrorism policies; documents made available to Parliament must also be consulted in a secure room;

- d. an overview of the use made of external consultants and (independent) expertise in areas such as (international) law, data protection and civil liberties, and security in the context of European counter-terrorism policies;
 - e. an overview of the instruments for the democratic scrutiny of cross-border cooperation by intelligence agencies, and more specifically of SitCen, the Watch-Keeping Capability, the Crisis Room, the Council's Clearing House, and COSI;
 - f. an overview of measures adopted by third countries with extraterritorial effect in the EU, such as the US Foreign Intelligence Surveillance Act (FISA), which are not subject to scrutiny by any parliament in the EU;
 - g. an overview of measures agreed in international governmental and non-governmental bodies (United Nations, ICAO, IATA), and existing instruments for democratic scrutiny;
 - h. an overview of non-legislative EU(-funded) activities, such as research programmes, and how they are subject to democratic scrutiny;
12. Calls on the Commission to investigate and rectify unlawful action and violations of international law and human rights;
13. Considers that the EU and its Member States must fully clarify their role in the CIA programme of renditions and black sites, in line with the recommendations of the European Parliament and the Council of Europe;
14. Is of the opinion that the EU and its Member States must modify the procedures regarding terrorist lists, and make sure they are fully in line with all relevant court rulings¹;
15. Calls on the Commission and the Council to open an investigation into the possible collection of personal data for law enforcement purposes without an adequate legal base or by applying irregular, or even illegal, procedures;

Monitoring and profiling

16. Urges the Commission to conduct a compulsory proportionality test and a full impact assessment for each proposal involving the large-scale collection of personal data, detection and identification technologies, tracking and tracing, data mining and profiling, risk assessment and behavioural analysis or similar techniques;
17. Calls on the European Data Protection Supervisor and the Fundamental Rights Agency to

¹ See *inter alia* *Yassin Abdullah Kadi and Al Barakaat International Foundation v Council and Commission*, Joined Cases C-402/05 P and C-415/05 P.

report annually on profiling, data mining and detection and identification techniques used in Europe for counter-terrorism (and possibly other) purposes;

18. Calls on the Counter-Terrorism Coordinator to draw up a report on the use of Human Intelligence in European counter-terrorism policies;
19. Calls on the Commission to draft a Communication on Ethics in European Counter-Terrorism Policies;
20. Calls on the Commission to launch proposals for strengthening the protection of civil liberties, transparency and democratic scrutiny in the context of counter-terrorism policies, such as improving access to documents by creating an EU Freedom of Information Act and strengthening the Fundamental Rights Agency, the EDPS and the Article 29 WP;
21. Instructs its President to forward this resolution to the Council, the Commission and the national Parliaments.