



EUROPEAN PARLIAMENT

2009 - 2014

Plenary sitting

A7-0286/2011

20.7.2011

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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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

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 the 2003 European Security Strategy¹ and its implementation report of 2008²,
- having regard to Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism³ as amended by Framework Decision 2008/919/JHA⁴, and notably Article 10 thereof on the protection and assistance of victims,
- having regard to the 2005 EU Counter-Terrorism Strategy⁵,
- having regard to the EU Strategy for Combating Radicalisation and Recruitment to Terrorism⁶,
- having regard to the Stockholm Programme - An Open and Secure Europe Serving and Protecting Citizens⁷, 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 Europol EU Terrorism Situation and Trend Report for 2011 (TE-SAT 2011),
- 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

¹ A Secure Europe in a Better World - The European Security Strategy, Approved by the European Council held in Brussels on 12 December 2003 and drafted under the responsibilities of the EU High Representative Javier Solana

² Report on the Implementation of the European Security Strategy - Providing Security in a Changing World, S 407/08

³ OJ L 164, 22.6.2002, p. 3.

⁴ OJ L 330, 9.12.2008, p. 21.

⁵ Council Document 14469/4/05.

⁶ Council Document 14781/1/05. The Strategy was revised in November 2008. Council Document 15175/08.

⁷ OJ C 115, 4.5.2010, p. 1.

24 November 2010 on the Communication on the EU Counter-Terrorism Policy: main achievements and future challenges¹,

- having regard to the Opinion of the European Economic and Social Committee on the Communication on the EU Counter-Terrorism Policy: main achievements and future challenges²,
- 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 towards a more secure Europe (COM(2010)0673),
- having regard to the 1983 Council of Europe Convention on the Compensation of Victims of Violent Crimes (CETS No. 116), the 2005 Council of Europe Convention on the Prevention of Terrorism (CETS No. 196), the 2005 Council of Europe Guidelines on the Protection of Victims of Terrorist Acts, the 2006 Council of Europe Recommendation (2006)8 on Assistance to Crime Victims, and the 2011 Commission proposal for a Directive establishing minimum standards on the rights, support and protection of victims of crime (COM(2011)0275),
- 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",
- having regard to its various resolutions related to counter-terrorism,
- having regard to Council Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism³, and to Council Common Position 2001/931/CFSP of 27 December 2001 on the application of specific measures to combat terrorism⁴,
- 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 (A7-0286/2011),

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 U.S. approach; whereas, although these attacks or other attacks of similar magnitude did not take place on European soil, the planning and preparation of the attacks took place partially in Europe, and many Europeans felt them to be an attack on their values and their way of life,

B. whereas the European Union has been a greater target for, and victim of, terrorism in the

¹ OJ C 56, 22.2.2011, p. 2.

² SOC 388 - CESE 800/2011.

³ OJ L 344, 28.12.2001, p. 70.

⁴ OJ L 344, 28.12.2001, p. 93.

21st century and faces an ever present threat,

- C. whereas severe terrorist attacks on EU soil since the 9/11 attacks in the United States, including the 2004 terrorist attacks in Madrid and the 2005 attacks in London, have had a significant impact on the sense of common security among EU citizens,
- D. whereas the Europol 2011 EU Terrorism Situation and Trend Report (TE-SAT 2011) indicates that the threat of terrorist attacks in the EU remains serious, and that the links between terrorism and organised crime appear to be growing, and points to the fact that there is a decreasing trend of terrorist attacks claimed or attributed to separatist terrorist organisations as compared with 2006, although they still account for the majority of overall terrorist attacks in the EU,
- E. whereas the Stockholm Programme identifies two threats to internal security – international terrorism and organised crime – which, in many cases, operate in the same areas of activity, such as arms and drugs trafficking for example,
- F. whereas terrorism is not a recent phenomenon; whereas in recent decades terrorism has taken new forms such as cyber-terrorism, and terrorist networks have become more complex in structure, means and financing, thus making the terrorist threat all the more complex; whereas counter-terrorism has always been part of the sphere of competence of the Member States and of regular law enforcement action; whereas the 9/11, Madrid and London attacks led to a fundamental change in perception of the terrorist phenomenon and in the methods and instruments used to fight terrorism; and whereas as a result of those attacks terrorism became a matter affecting the security of the whole European Union and not just the national security of the Member States, with a very different legal framework,
- G. whereas there is no unambiguous and universally accepted definition of terrorism, which hampers discussion concerning terrorism and how to combat it,
- H. whereas international cooperation is essential to deprive terrorism of its financial, logistical and operational bases,
- I. whereas although experiences of terrorism, as well as threat levels, vary across the EU Member States, a common EU approach is needed since terrorist operations are often pan-European and terrorists make use of European diversity in laws and anti-terrorism capabilities and the abolition of border controls when committing their acts,
- J. whereas EU citizens and other persons also want their safety and security guaranteed within the EU and elsewhere and the EU has an important role to play in this regard,
- K. whereas terrorist acts seriously jeopardise human rights, threaten democracy, aim to destabilise legitimately constituted governments, undermine pluralistic civil societies and challenge everyone's ideal of leading a life free from fear,
- L. whereas the aim of counter-terrorism policies should be to combat the objectives of terrorism and the execution of terrorist acts, which seek to destroy the fabric of free, open and democratic societies; whereas the prime objective of counter-terrorism must be to

protect and strengthen that fabric of democratic societies by strengthening civil liberties and democratic scrutiny, by ensuring the security and safety of European citizens, by identifying the parties responsible for perpetrating terrorism and prosecuting them, and by responding to the consequences of a terrorist attack through inclusion policies, cross-border judicial and police cooperation and an effective and coordinated strategy at EU level; whereas the effectiveness of counter-terrorism policies must be measured against these aims; and whereas the counter-terrorism approach most likely to succeed is that of focusing on prevention of violent extremism and escalation,

- M. whereas the European Union's counter-terrorism strategy should therefore address not only the consequences of terrorism but also its causes,
- N. whereas the fight against violent extremism is an essential element in the prevention and suppression of terrorism,
- O. whereas counter-terrorism means countering all forms of terrorism, including cyber-terrorism, narco-terrorism and the interconnectability of terrorist groups with and within multiple criminal operations, as well as the tactics it uses to be operational such as illegal funding, financial extortion, money laundering and disguising terrorist groups operations under assumed legal entities or institutions,
- P. whereas terrorism is a State problem and it is therefore the task of democratic institutions to draw up and preserve the main lines of counter-terrorism policy in a search for the widest possible political and social consensus; whereas the democratic fight against terrorism, necessarily within the bounds of the constitutional state and the rule of law, is a matter for all the political parties represented in democratic institutions, whether they be in government or opposition; and whereas this makes it advisable to preserve the definition of the counter-terrorism policy, according to which it is in any democratic society a matter for governments, arising from the lawful confrontation between political parties and thus from electoral competition,
- Q. whereas it is reasonable to measure the costs and benefits of counter-terrorism policies, as policy-makers should know if their decisions are having the desired impact and citizens have a right to hold their elected representatives to account,
- R. whereas ten years after the attacks that shook the world it is time to take stock of achievements in fighting terrorism; whereas evaluation allows for more efficient and effective policy-making and in any modern democracy policy decisions must be subject to frequent evaluation and review,
- S. whereas remarkably little has been done to assess to what degree EU counter-terrorism policies have achieved the stated objectives; whereas Parliament has repeatedly called for a thorough evaluation of EU counter-terrorism policies, as evaluation and assessment are preconditions for the transparency and accountability of policy-makers; and whereas the absence of proper evaluation of EU counter-terrorism policies is mainly due to the fact that a large part of it is conducted in the area of intelligence and security policies, where there is a tradition of secrecy,
- T. whereas terrorist attacks have repeatedly aimed at causing mass casualties, challenging

available institutional capacities,

- U. whereas terrorists target innocent civilians in order to achieve their objective of destroying democracy; whereas those who have suffered injury, damage or loss of their loved ones in terrorist attacks are entitled to our support and solidarity, and to receive reparation, compensation and assistance,
- V. whereas it is vital that justice be done, that the guilty ones are brought to trial and that terrorist crimes do not go unpunished, whereas the position of victims as witnesses in judicial proceedings needs special attention,
- W. 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 law must be investigated and judicially prosecuted,
- X. whereas counter-terrorism measures must respect the rights enshrined in the Charter of Fundamental Rights of the European Union, and any measure adopted in this field has a reciprocal impact on civil liberties,
- Y. 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 these instruments entail the risk of shifting the burden of proof to the citizen; whereas the effectiveness and success rates of these instruments for the prevention of terrorism are dubious; and whereas the sharing of information between agencies is inadequate,
- Z. whereas public authorities are making more and more use of data collected for commercial or private purposes; whereas private companies in various sectors are obliged to retain and provide personal data from their customer databases; whereas the costs connected with the storage and retrieval of data (both infrastructure investments and operational costs) are considerable,
- AA. whereas there is an urgent need for a uniform legal definition of the concept of 'profiling' based on the relevant fundamental rights and data protection standards in order to reduce uncertainty as to which activities are prohibited and which are not,

General considerations

1. Welcomes the Commission Communication and reiterates that it must be linked to the EU's forthcoming internal security strategy; regrets, however, that its scope is rather narrow, is limited to the implementation of agreed policy measures and does not cover national counter-terrorism policies or national measures that transpose policies agreed at European or international level, as well as the fact that there has not been a more thorough investigation of possible legal loopholes or the possible overlapping or duplication of counter-terrorism actions and instruments adopted at EU level; stresses the importance of a consistent approach, at EU and Member State level, to initiatives adopted in the field of internal security, with particular reference to terrorism and organised crime;

2. Also deploras the fact that the Communication does not sufficiently cover and develop in greater detail the measures taken by DGs other than JLS (such as TRAN, ENTER or MARKT) and that it does not give a clear idea how the measures interact and where there are overlaps 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. Regrets that the opportunity was missed to explain how certain EU counter-terrorism instruments such as data retention, PNR and the Swift Agreement fit into the EU counter-terrorism strategy;
4. Believes that the Charter of Fundamental Rights should always be the compass for EU policies in this field and for Member States in the implementation thereof, as well as in cooperation with third parties and third countries;
5. Emphasises the need for the European Union, its Member States and its partner countries to base their strategy for combating international terrorism on the rule of law and respect for fundamental rights; underlines, furthermore, that the Union's external actions to combat international terrorism should in the first place be aimed at prevention, and highlights the need to promote dialogue, tolerance and understanding among different cultures, civilisations and religions;
6. Recalls that counter-terrorism policies should meet the standards set with regard to necessity, effectiveness, proportionality, civil liberties, the rule of law and democratic scrutiny and accountability that the Union has committed itself to uphold and develop, and that assessing whether these standards are met must be an integral part of an evaluation of all EU counter-terrorism efforts; considers that these policies must be developed in accordance with the provisions of EU primary law and, in particular, give priority to respecting the rights enshrined in the Charter of Fundamental Rights of the European Union;
7. Reaffirms that restrictive measures to seize, confiscate or freeze assets and funds linked to natural or legal persons and organisations involved or implicated in terrorist acts, can be useful as a counter-terrorism tool, but that they must comply fully with Article 75 of the TFEU and the Charter of Fundamental Rights;
8. Considers that prevention, tracking and prosecution of terrorist activities are critical policies at EU level and must be part of a systematic approach based not on emergency norms but on a coherent, necessity-founded strategy, must be purpose- and cost-effective and must avoid duplication of measures and function creep on the part of competent institutions, agencies and bodies;
9. Underlines the fact that the evaluation of ten years of EU counter-terrorism policies should result in clearly defined policy objectives;

10. Takes the view that terrorism is a phenomenon that is constantly evolving and should be met by a counter-terrorism policy that can address this fact;
11. Considers the decision to deepen and develop the four main strands of the counter-terrorism strategy – prevent, protect, pursue and respond – to be a good one;
12. Recalls that inside the EU the terrorist threat is multidimensional, and for decades stemmed heavily from separatist sentiments and organised separatist movements; stresses also that the EU must strike the adequate balance between the two main sources of terrorist violence – separatist terrorism and religiously motivated terrorism – on the basis of threat assessment exercises and qualitative information and information sharing at EU level;
13. Believes that prevention, investigation and prosecution of terrorist activities should be based on the reinforcement of judicial and police cooperation at EU level, coupled with full parliamentary scrutiny and full and timely completion of the roadmap for a high-level set of uniform procedural guarantees;
14. Considers that training and awareness-raising among judicial and police authorities must be a priority in order to improve readiness across the European Union in the fight against terrorism;
15. Points out in that regard the importance of cooperation by Member States with OLAF and with other EU agencies such as Europol, Eurojust and CEPOL;
16. Invites the Commission to fully assess the set of counter-terrorism policies and measures adopted and focus on future challenges, including the reform of Europol and Eurojust in the light of the new potentialities offered by the Lisbon Treaty, the need for uniform standards for obtaining evidence and conducting investigations, full implementation of joint investigation teams, a stronger EU framework for judicial and police training, and proper inclusion and integration policies;
17. Takes the view that counter-terrorism measures must be commensurate with the threat level and that they must be adjusted in response to both an increase and a decrease in threat level; notes that counter-terrorism measures, in terms of both new government powers and agencies, must be designed in such a way that they can be scaled up as well as down, depending on the situation;
18. Recalls that radicalisation and recruitment pose the most significant and continuous long-term threat, as stressed in the Commission's Communication, and thus constitute the axis on which the EU must focus its counter-terrorism prevention strategies at the very beginning of the chain; stresses that investment in anti-racism and anti-discrimination policies constitutes a crucial instrument with which to tackle and prevent radicalisation and recruitment of potential terrorists;
19. Recalls the important contribution of many NGOs and civil society, often co-financed by the EU and its Member States, towards socio-economic development, peace building, nation building and democratisation, all essential in countering radicalisation and recruitment;

20. Calls for the creation of a comprehensive strategy on the interconnection between international organised crime, drug trafficking and terrorism; and encourages continuous analysis of new trends and traits in diversification, radicalisation and recruitment, and those related to the role of international non-governmental organisations in terrorism financing;
21. Calls, in that context, on the Commission and the Member States to prevent the rise of extremism;
22. Draws attention to the need to expand and develop existing and new counter-terrorism related strategic partnerships with countries outside Europe, as long as these partnerships respect human rights; emphasises the strategic cooperation between the Union and the US and points out the need for cooperation with other partners, reiterating the importance the Union attaches to the protection of citizens' personal data and their human and civil rights;
23. Underlines that counter-terrorism is an integral part of the Union's relations with third countries; asks for an increase in the funding of counter-terrorism assistance measures in the next Instrument for Stability in order to prevent state failure; agrees, in this respect, with the priority areas being South Asia, in particular Pakistan and Afghanistan, the Sahel region (Mauretania, Mali, Niger), Somalia and Yemen; welcomes the presentation of the European Union Strategy for Security and Development in the Sahel on 21 March 2011 and calls on the Council to adopt the Strategy in consultation with the European Parliament; welcomes the insertion of counter-terrorism clauses in international agreements;
24. Calls on the Commission, the High Representative of the Union for Foreign Affairs and Security Policy and the Council to quickly implement arrangements for the solidarity clause introduced by the Lisbon Treaty;
25. Insists on the importance of defining a uniform set of standards for the specific protection and support of victims of terrorism, including witnesses, including in the framework of the proposal for a Directive of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime (COM(2011)0275);

Evaluation by a panel of independent experts and mapping exercise

26. Stresses that a proper evaluation of ten years of counter-terrorism policies should focus on examining whether the measures taken to prevent and combat terrorism in the EU have been evidence-based (and not based on assumptions), needs-driven, coherent and part of a comprehensive EU counter-terrorism strategy, based on an in-depth and complete appraisal, to be carried out in line with Article 70 of the TFEU, with the Commission reporting back to a Joint Parliamentary Meeting of the European Parliament and national parliamentary committees responsible for overseeing counter-terrorism activities within six months of the study being commissioned, drawing upon reports to be requested from relevant organisations and agencies such as Europol, Eurojust, the

Fundamental Rights Agency, the European Data Protection Supervisor, the Council of Europe and the United Nations;

27. Advocates a holistic and comprehensive approach to counter-terrorism policy in the form of alignment of the European Security Strategy and the Internal Security Strategy and a strengthening of existing coordination mechanisms between Justice and Home Affairs Council structures, agencies and the European External Action Service; stresses that good intelligence is crucial to combating terrorism and that the EU is uniquely well placed to facilitate intelligence-sharing among Member States, but that this must be subject to the same standards of accountability that apply in the Member States; points out accordingly that human intelligence, over and above all technical means available, remains indispensable in tackling terrorist networks and in the timely prevention of attacks;
28. Underlines that any evaluation should:
 - (a) Provide a clear input and output analysis of the terrorist threat based on an agreed definition at EU level, as well as of the framework of counter-terrorism policies in Europe in the past decade to address this threat, and set out clearly the results of the policies in terms of effectiveness, prevention, prosecution and increased security in Europe;
 - (b) Set out the facts and figures, including the budget funding allocated, relating to terrorist activity (successful, failed and prevented attacks) and counter-terrorism activity (arrests and convictions), to the extent that the data are available to the Commission, and in as much detail as possible; stresses that such figures must be verifiable and subject to cross-examination;
 - (c) Include a full overview of the accumulated impact of counter-terrorism measures on civil liberties and fundamental rights, including Member State policies, measures by third countries with a direct impact in the EU and all measures taken in this field under the neighbourhood policy, quantified at least in terms of discrimination statistics and violations of civil liberties found in the relevant case law of the ECHR, the Court of Justice of the European Union and national courts;
 - (d) Examine whether the current instruments for assessing the impact on privacy and civil liberties are adequate and based on international benchmarking practices implemented by democratic countries, taking into account the interinstitutional agreements and further activities on better lawmaking;
 - (e) Examine how effective and proportionate the powers entrusted to EU agencies and services are in the fight against terrorism;
 - (f) Identify how counter-terrorism measures can be improved in cases where there are gaps in security which can be abused for the purposes of carrying out terrorist acts;
29. 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;

30. Calls on the Commission to draw up a complete and detailed map of all existing counter-terrorism policies in Europe, with a special focus on EU legislation and how it has been transposed and implemented at EU level; at the same time, calls on the Member States to carry out a comprehensive evaluation on their counter-terrorism policies, with a particular focus on interaction with EU policies, overlap and gaps, in order to cooperate better in the evaluation of EU policies – including by providing correlation tables that identify which provisions of Member States' laws transpose the provisions of EU acts and by providing their input within the given deadlines, as in the case of the Data Retention Directive;
31. Calls on the Commission to produce, before March 2012, 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, also specifying the resources allocated to this area by third countries, including at least the following items:
 - expenditure specifically labelled as being for counter-terrorism measures,
 - expenditure for policies that include counter-terrorism activities,
 - expenditure for EU staff and agencies carrying out counter-terrorism tasks,
 - expenditure for counter–terrorism-related IT systems and databases,
 - expenditure for research projects (co-)funded by the European Union in the area of counter-terrorism or related areas,
 - expenditure for protection of fundamental rights and data protection in the context of counter-terrorism,
 - expenditure for strengthening democracy and the rule of law,
 - an analysis of the development of the above EU budget lines since 2001;
32. Calls on the Commission to ascertain whether counter-terrorism measures are being implemented properly and to report regularly to the Parliament and the Council on its findings;
33. 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;

Democratic scrutiny and accountability

34. 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 test¹;
 - (c) provide an overview of the classification of documents, trends in the use of 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 instruments for 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;
 - (e) an overview of measures adopted by third countries with extraterritorial effect in the EU;
 - (f) an overview of measures agreed in international governmental and non-governmental bodies (United Nations, ICAO, IATA) and existing instruments for democratic scrutiny;
 - (g) an overview of non-legislative EU(-funded) activities, such as research programmes, and how they are subject to democratic scrutiny;
35. Calls in addition, where counter-terrorism measures are concerned, for the proportionality principle to be taken into account and the fundamental rights of citizens to be observed, bearing in mind that all such measures must comply with the law and the rule of law;
36. Calls on the Commission, the Member States and the competent legal authorities to investigate any unlawful action or violation of human rights, international law and the legal order where there is any evidence or suspicion of such action or violation, and calls on the Member States to ensure their rectification;
37. 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 in the context of new evidence brought to light, strictly on the basis of facts, and not of prejudice or political interest;
38. Stresses that the EU must help the U.S. in finding appropriate solutions to the issues of closing Guantánamo and ensuring its inmates receive a fair trial;
39. In this context, urges the Council and the Commission, when revising the blacklisting and asset-freezing measures, to consider particularly the position of NGOs and civil society so as to ensure that NGOs are not listed "by association" and that they are not unduly hampered in working with their partner organisations;
40. Firmly disapproves of the call by the Council (17-01-2011 Action Plan) for on the Commission and the Member States to lodge appeals against the General Court judgment in the latest case of *Kadi v. Commission*; calls instead on all actors to carry out a thorough

¹ European Court of Human Rights, *S. and Marper v. United Kingdom*, 8 December 2008, §95, 101-103, 125.

revision of the sanctions regime and ensure it is fully in line with international human rights standards and the rule of law, in accordance with all relevant case law¹; takes the view that those targeted by sanctions should be given the information that substantiates their targeting and be entitled to effective judicial remedy;

41. Calls on the Commission and the Council to investigate the collection of personal data – if such collection has taken place – for law enforcement purposes without an adequate legal base or by applying irregular, or even illegal, procedures;

Monitoring and profiling

42. 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;
43. Underlines the need to improve the use of data: the collection of data should only be allowed after the principle of necessity, and the non-existence of a possible overlap with other existing measures and the non-existence of possible less intrusive measures have been explicitly demonstrated, and only on the basis of strict purpose limitation and data minimisation, and when sharing and processing of data are drastically improved;
44. Calls on the European Data Protection Supervisor and the Fundamental Rights Agency to report on the level of protection of fundamental rights and personal data in the field of EU Counter-Terrorism Policy;
45. Urges the Commission and the Council to clarify fully the division of labour between the Counter-Terrorism Coordinator and the High Representative;
46. Calls on the Counter-Terrorism Coordinator to draw up a report on the use of human intelligence and its cooperation with foreign intelligence services in European counter-terrorism policies;
47. 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;
48. Calls on the Commission to propose amendments to the Council Framework Decision 2002/475/JHA on combating terrorism, amended last in 2008, with a view to raising the standard of protection of human rights and fundamental freedoms, inter alia by updating the definition of terrorist offences, and to link it better to the existing EU-level Human Rights instruments, particularly the Charter of Fundamental Rights;
49. Calls on the Commission to incorporate a uniform legal definition of the concept of

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.

‘profiling’;

50. Calls on the Commission to put forward a proposal for a legislative framework for data protection, including the Common Foreign Security Policy, on the basis of Article 16 of the TFEU and without prejudice to the specific rules laid down in Article 39 TEU;

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51. Instructs its President to forward this resolution to the Council, the Commission and the national parliaments.

27.5.2011

OPINION OF THE COMMITTEE ON FOREIGN AFFAIRS

for the Committee on Civil Liberties, Justice and Home Affairs

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

Rapporteur: Ágnes Hankiss

SUGGESTIONS

The Committee on Foreign Affairs calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to incorporate the following suggestions in its motion for a resolution:

1. Recognises that terrorism, as stated in the European Security Strategy¹ and its Implementation Report², remains a major threat to international stability and European societies that requires a globally coordinated response which fully respects human rights and fundamental freedoms; emphasises that counter-terrorism requires a comprehensive approach based on intelligence, police, judiciary, political and – in some limited cases – military means; points out that under the solidarity clause defined in Article 222 TFEU a CSDP operation could be decided to assist a Member State, at the request of its political authorities, in the event of a terrorist attack; underlines the need for preparedness and welcomes the ongoing update of the military database and the European Defence Agency's contribution to combating terrorism;
2. Emphasises the need for the European Union, its Member States and its partner countries to base their strategy for combating international terrorism on the rule of law and respect for fundamental rights; underlines furthermore that the Union's external actions to combat international terrorism should in the first place be aimed at prevention, and highlights the need to promote dialogue, tolerance and understanding among different cultures, civilisations and religions;
3. Highlights that there are still institutional obstacles to an effective EU counter-terrorism policy, notably the multiple committees, agencies and bureaucracies involved; emphasises

¹ <http://www.consilium.europa.eu/uedocs/cmsUpload/78367.pdf>

² http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressdata/EN/reports/104630.pdf

that the Counter-Terrorism Coordinator has a vital role to play in ensuring the implementation and evaluation of the EU Counter-Terrorism Strategy, coordinating counter-terrorist work within the Union, and fostering better communication between the EU and third countries; invites him to continue to brief Parliament regularly on these issues;

4. Promotes a holistic and comprehensive approach to counter-terrorism policy by suggesting the harmonisation of the European Security Strategy and the Internal Security Strategy¹ and the strengthening of existing coordination mechanisms between Justice and Home Affairs Council structures, agencies and the European External Action Service, taking advantage of the new capabilities of the Situation Centre (SitCen) in order to provide timely information and strategic analyses and thereby to better coordinate external and internal policy instruments; encourages the Counter-Terrorism Co-ordinator to continue his efforts in this field;
5. Urges EU Member States to ensure that no acts of terrorism originate from within their own borders and therefore commit sufficient resources to domestic counter-radicalization and counter-terrorism; calls for closer cooperation between the EU and NATO in counter-terrorism policy and suggests that the HR/VP and Counter-Terrorism Coordinator should be actively engaged in counter-terrorism discussions with NATO; welcomes informal groupings of Member States such as the Salzburg Group, Baltic Sea Task Force and G6 coming together to coordinate security and conduct anti-terrorist exercises; advocates widening these efforts to include more Member States and recommends shared training between security and police forces of Member States;
6. Draws attention to the need to expand and develop existing and new counter-terrorism-related strategic partnerships with countries outside Europe, as long as these partnerships respect human rights; emphasises the strategic cooperation between the Union and the US and points out the need for cooperation with other partners, reiterating the importance the Union attaches to the protection of citizens' personal data and their human and civil rights; notes bilateral initiatives and agreements such as the EU-US and Member States 2010 Declaration on Counterterrorism, the Agreement on the Terrorist Finance Tracking Programme (the so-called SWIFT agreement), the Toledo declaration on aviation security, as well as the EU-India Joint Declaration on International Terrorism, as positive examples to be followed in the Union's relations with other third countries;
7. Stresses that good intelligence is crucial to combat terrorism and that the EU is uniquely well placed to facilitate intelligence sharing between Member States; points out accordingly that human intelligence, on top of all technical means available, remains indispensable in tackling terrorist networks and for the timely prevention of attacks; welcomes the work of SitCen in providing strategic analysis and encourages further intelligence sharing at the EU level between Member States and key third countries; encourages closer cooperation by Europol and Eurojust with non-EU law enforcement agencies, in order to ensure early warning;
8. Underlines that counter-terrorism is an integral part of the Union's relations with third countries; asks for an increase in the funding of counter-terrorism assistance measures in

¹ <http://register.consilium.europa.eu/pdf/en/10/st05/st05842-re02.en10.pdf>

the next Instrument for Stability in order to prevent state failure; agrees, in this respect, with the priority areas being South Asia, in particular Pakistan and Afghanistan, the Sahel region (Mauretania, Mali, Niger), Somalia and Yemen; welcomes the presentation of the European Union Strategy for Security and Development in the Sahel on 21 March 2011 and calls on the Council to adopt the Strategy in consultation with the European Parliament; welcomes the insertion of counter-terrorism clauses in international agreements;

9. Stresses the importance of counter-terrorism cooperation between the Union and other international organisations, in particular the UN, which is based on common values and objectives, and calls for universal ratification and full implementation of all UN conventions and protocols relevant to terrorism; calls for a closer working relationship with UN bodies and regional organisations so that all UN Member States can fully implement their counter-terrorism obligations; advocates the adoption of a UN Comprehensive Convention on Terrorism and enhanced cooperation with the Council of Europe and the OSCE in counter-terrorism; highlights the Union's achievement of promoting a Global Counter-Terrorism Strategy at the UN level and asks for a careful examination of the UN Security Council procedure of listing and delisting terrorist organisations and individuals; in this regard, welcomes the adoption of UNSC resolution 1904 (2009) that provided for a periodic review of the list and created an Office of the Ombudsperson to assist the Sanctions Committee in de-listing individuals;
10. Calls for the creation of a comprehensive strategy on the interconnection between international organised crime, drug trafficking and terrorism; encourages the continuous analysis of new trends and traits in diversification, radicalisation and recruitment and those related to the role of international non-governmental organisations in terrorism financing.

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	24.5.2011
Result of final vote	+: 48 -: 7 0: 4
Members present for the final vote	Sir Robert Atkins, Dominique Baudis, Elmar Brok, Arnaud Danjean, Michael Gahler, Ana Gomes, Andrzej Grzyb, Heidi Hautala, Anna Ibrisagic, Anneli Jäätteenmäki, Jelko Kacin, Ioannis Kasoulides, Tunne Kelam, Nicole Kiil-Nielsen, Evgeni Kirilov, Andrey Kovatchev, Paweł Robert Kowal, Eduard Kukan, Alexander Graf Lambsdorff, Krzysztof Lisek, Sabine Lösing, Ulrike Lunacek, Barry Madlener, Mario Mauro, Kyriakos Mavronikolas, Willy Meyer, Francisco José Millán Mon, María Muñoz De Urquiza, Annemie Neyts-Uyttebroeck, Norica Nicolai, Raimon Obiols, Kristiina Ojuland, Ria Oomen-Ruijten, Cristian Dan Preda, Fiorello Provera, Libor Rouček, José Ignacio Salafranca Sánchez-Neyra, Nikolaos Salavrakos, Jacek Saryusz-Wolski, Werner Schulz, Marek Siwiec, Hannes Swoboda, Charles Tannock, Inese Vaidere, Geoffrey Van Orden, Kristian Vigenin, Graham Watson, Boris Zala
Substitute(s) present for the final vote	Reinhard Bütikofer, Tanja Fajon, Kinga Gál, Elisabeth Jeggle, Baroness Sarah Ludford, Norbert Neuser, Doris Pack, Vittorio Prodi, Dominique Vlasto, Luis Yáñez-Barnuevo García
Substitute(s) under Rule 187(2) present for the final vote	Joachim Zeller

13.4.2011

OPINION OF THE COMMITTEE ON LEGAL AFFAIRS

for the Committee on Civil Liberties, Justice and Home Affairs

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

Rapporteur: Luis de Grandes Pascual

SUGGESTIONS

The Committee on Legal Affairs calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to incorporate the following suggestions in its motion for a resolution:

1. Welcomes the Commission's Communication and reiterates that it must be linked to the EU's forthcoming internal security strategy;
2. Regrets that the opportunity was missed to explain how certain EU counter- terrorism instruments such as data retention, PNR and the Swift Agreement fit into the EU counter-terrorism strategy;
3. Considers the decision to deepen and develop the four main strands of the counter-terrorism strategy – prevent, protect, pursue and respond – to be a good one;
4. Warns that it is a mistake to label as 'Islamist terrorism' what should rather be described as 'radical Jihadist terrorism'; considers that making generalisations that discredit the whole of a legitimate religious belief is neither just nor proper;

Prevent

5. Is aware that all measures that lead to prosecution may at the same time be preventive measures and is therefore concerned about the delay in implementing Framework Decision 2002/475/JHA and calls on the Commission to assess the implementation of Framework Decision 2008/919/JHA; bearing in mind that within democratic societies there is no cause that legitimises terrorist actions, considers that preventive measures should not involve a priori stigmatisation, and that it is necessary to seek cooperation and dialogue with civil society in order to achieve social inclusion in EU Member States and

projects with third countries;

6. Welcomes the fact that many Member States have added specific articles to their criminal codes condemning terrorist acts, which lay down more severe penalties for activities linked to terrorism; calls on the Member States to take the steps required to criminalise terrorist groups and their activities, one means to that end being exchanges of information under Council Framework Decision 2002/475/JHA;
7. Calls on the Commission and Council to encourage positive and negative conditionality in relation to national, regional and local governments, should they fail to contribute effectively to counter-terrorism; calls on the Commission to ascertain whether counter-terrorism measures are being implemented properly and to report regularly to Parliament and the Council on its findings;

Protect

8. Considers that terrorism is a phenomenon that is constantly evolving and should be met by a counter-terrorism policy that can address this fact; welcomes in this respect the measures adopted recently in the field of aviation safety on checking cargo; calls on the Commission to ensure that the processing of passenger name records both within the EU and in third countries complies with EU data protection law and that the introduction of body scanners respects individual rights and does not cause any harm to health;
9. Considers also that the best possible balance must invariably be achieved between, on the one hand, the obligation incumbent on public authorities, at EU level and in Member States, to protect their citizens from injury and guarantee their security and, secondly, the need to safeguard their individual rights;

Pursue

10. Recalls Parliament's important role in preventing and combating terrorism and related activities, such as the financing of terrorism; would welcome the introduction of administrative measures in respect of the freezing of assets to prevent and combat terrorism and related activities; urges the Commission to clarify the role of certain counter-terrorism instruments (data retention, PNR, EU-US TFTP Agreement);
11. Calls in addition, as far as counter-terrorism measures are concerned, for the proportionality principle to be taken into account and the fundamental rights of citizens to be observed, bearing in mind that all such measures have to be in accordance with the law and the rule of law;

Respond

12. Welcomes the inclusion of victims of terrorism in the Commission's forthcoming legislative proposal to provide a comprehensive instrument on the protection of victims; endorses in this respect the petition from the International Congresses of the Victims of Terrorism; urges the Member States to adopt the laws necessary to provide victims with decent and adequate support, protection and assistance, as well as social recognition of their status as victims of terrorism;

13. Calls, by virtue of the subsidiarity principle, for the national parliaments to play an active role regarding the Area of Freedom, Security, and Justice, especially for the purposes of evaluation and implementation of Union policies, as provided for in Article 70 of the TFEU; considers that they should also be involved in the political monitoring of Europol and the evaluation of Eurojust activities, in accordance with Article 12(c) of the TEU;
14. Calls on the Commission, the High Representative of the Union for Foreign Affairs and Security Policy and the Council to quickly implement arrangements for the solidarity clause introduced by the Lisbon Treaty;
15. Calls for a more accurate assessment of the counter-terrorism measures already taken, extending also to fundamental rights and budgetary aspects.

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	12.4.2011
Result of final vote	+: 21 -: 2 0: 0
Members present for the final vote	Sebastian Valentin Bodu, Christian Engström, Lidia Joanna Geringer de Oedenberg, Klaus-Heiner Lehne, Antonio López-Istúriz White, Antonio Masip Hidalgo, Alajos Mészáros, Bernhard Rapkay, Evelyn Regner, Alexandra Thein, Diana Wallis, Rainer Wieland, Cecilia Wikström, Zbigniew Ziobro, Tadeusz Zwiefka
Substitute(s) present for the final vote	Piotr Borys, Sergio Gaetano Cofferati, Luis de Grandes Pascual, Sajjad Karim, Kurt Lechner, Eva Lichtenberger, Arlene McCarthy, Angelika Niebler
Substitute(s) under Rule 187(2) present for the final vote	Claudio Morganti

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	12.7.2011
Result of final vote	+: 29 -: 24 0: 0
Members present for the final vote	Jan Philipp Albrecht, Sonia Alfano, Alexander Alvaro, Gerard Batten, Viliija Blinkevičiūtė, Mario Borghezio, Rita Borsellino, Emine Bozkurt, Simon Busuttil, Philip Claeys, Carlos Coelho, Rosario Crocetta, Agustín Díaz de Mera García Consuegra, Cornelia Ernst, Tanja Fajon, Hélène Flautre, Kinga Göncz, Nathalie Griesbeck, Sylvie Guillaume, Ágnes Hankiss, Anna Hedh, Salvatore Iacolino, Sophia in 't Veld, Teresa Jiménez-Becerril Barrio, Timothy Kirkhope, Juan Fernando López Aguilar, Baroness Sarah Ludford, Monica Luisa Macovei, Véronique Mathieu, Nuno Melo, Jan Mulder, Antigoni Papadopoulou, Georgios Papanikolaou, Carmen Romero López, Birgit Sippel, Csaba Sógor, Renate Sommer, Rui Tavares, Wim van de Camp, Daniël van der Stoep, Renate Weber, Tatjana Ždanoka
Substitute(s) present for the final vote	Edit Bauer, Anna Maria Corazza Bildt, Luis de Grandes Pascual, Ioan Enciu, Monika Hohlmeier, Jean Lambert, Antonio Masip Hidalgo, Mariya Nedelcheva, Hubert Pirker, Michèle Striffler, Kyriacos Triantaphyllides, Cecilia Wikström