



EUROPEAN PARLIAMENT

2009 - 2014

Committee on Civil Liberties, Justice and Home Affairs

19.1.2011

WORKING DOCUMENT 1

The EU Counter-Terrorism Policy: main achievements and future challenges

Committee on Civil Liberties, Justice and Home Affairs

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I. Introduction

The first decade of the 21st century has been marked after the atrocious attacks of 11 September 2001 by the what has been referred to especially with regard to the US approach as the “War on Terrorism”, directed against Islamist terrorism. Although the attack did not take place on European soil, we all felt it was an attack on our values, our way of life. 9/11 led to a fundamental change in the methods and instruments used to fight terrorism. Ten years after the attacks that shook the world, it is time to take stock of the achievements in fighting terrorism.

Terrorism is not a recent phenomenon. 20th Century Europe has witnessed (and still does occasionally) many waves of terrorism making many victims: ETA, IRA, 17th November movement, Brigade Rosse, Rote Armee Fraktion, and the Moluccan liberation movement, as well as the more recent Islamist attacks in Madrid and London, or the murder of Theo van Gogh. Over time, our response to terrorism has varied, but counter-terrorism was always part of regular law enforcement. That changed with the 'War on Terror' introduced by the US administration. Since 9/11 counter-terrorism has become a matter of national security, creating a very different legal framework and different methods than applied thus far.

In recent years, the European Parliament has repeatedly called for a thorough evaluation of EU counter-terrorism policies. Evaluation and assessment are preconditions for transparency and accountability of policy makers, cornerstones of democracy. Evaluation allows for more efficient and effective policy-making, and in any modern democracy policy decisions are subject to frequent evaluation and review.

When it comes to counter-terrorism policies however, remarkably little has been done to thoroughly assess to what degree policies achieve the stated objective, and whether they comply with the set criteria and standards. The absence of proper evaluation is due on the one hand 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. On the other hand, it seems the approach to counter-terrorism is sometimes irrational, driven more by emotions and assumptions, than by facts and evidence.

Counter-terrorism measures tend to have a profound impact on civil liberties, the rule of law and democratic decision-making. They also have a substantial budget impact. It is therefore reasonable to measure the costs and benefits of counter-terrorism policies, just like any other policy area. Policy makers should know if their decisions have the desired impact, and citizens have a right to hold their elected representatives to account.

The Communication of the European Commission is the first attempt at an overall assessment of counter-terrorism policies. It is strongly welcomed by your Rapporteur. However, the scope is rather narrow, as the Commission has evaluated only the implementation of the agreed policy measures, not their results in terms of increased security, the costs and the impact on civil liberties. Nor does it look at issues like 'function creep' and democratic scrutiny.

In addition, the Communication addresses only certain categories of all counter-terrorism and

related policies, but on the other hand the Communication also includes civil protection, which has only marginal overlap with counter-terrorism policies. Finally, national counter-terrorism policies are not covered, nor national measures that are the transposition of policies agreed at European or international level. These must be considered as well, as European, national and international measures are complementary, and as an assessment of single measures does not provide a complete picture of the impact of counter-terrorism policies in Europe.

Counter-terrorism policies should meet certain standards with regard to civil liberties, the rule of law and democratic scrutiny and accountability. Assessing if these standards are met should be integral part of an evaluation.

The aim of counter-terrorism policies should be to undermine the objectives of terrorism. The goal of terrorism is to destroy the fabric of our free, open and democratic society, by means of killing innocent people. Therefore, the aim of counter-terrorism must be to protect and strengthen that fabric of democratic society. Effectiveness of counter-terrorism policies must be measured against this aim. In this logic, strengthening civil liberties and democratic scrutiny is not an obstacle to such policies, but their prime objective.

EU counter-terrorism policies lack coherence and a clear objective. There is no integral vision of EU counter-terrorism policies. They are mainly a collection of ad hoc measures, often incident driven. In addition, counter-terrorism policies in third countries, particularly the United States have largely shaped EU policies, without verifying if the challenges are comparable to those of other countries. This evaluation should result in clearly defined policy objectives.

Recommendation 1: an in-depth and complete evaluation to be carried out by a panel of independent experts. 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.

The evaluation should provide a clear analysis of input and output of the counter-terrorism policies in Europe in the past decade. It should set out clearly the results of the policies, in terms of increased security in Europe, trends in terrorist activity in response to counter-terrorism policies, and facts and figures relating to terrorist activity (attacks succeeded, failed, prevented) and counter-terrorism activity (arrests and convictions). The independent study must clearly distinguish between results in terms of *prevention*, *investigation* and *prosecution*. The evaluation must also identify where further law enforcement powers are needed or inversely where powers granted are excessive and go beyond what is necessary.

The Commission Communication provides information on certain measures and policies. However, this list is far from complete, it does not sufficiently cover measures taken by DGs other than JLS (such as TRAN or MARKT), nor does it give a clear idea how the measures interact, where there is overlap or – on the contrary – gaps. The Commission should also 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.

Recommendation 2: the European Commission to draw up a complete and detailed “map” of all counter-terrorism policies in Europe. A similar exercise should be carried out for Member States counter-terrorism policies, with a particular focus on interaction with EU policies, overlap and gaps. An evaluation that does not include the national counter-terrorism policies does not give a realistic picture of the situation. Member States must better cooperate with the evaluation of EU policies and provide their input within the given deadlines, as for example for the data retention directive.

II. Means

Like any other policy area, the *costs* of counter-terrorism policies should be made visible. In addition to public funds, a growing share of the costs is borne by the private sector. Airports for example have to take costly measures in order to comply with security legislation. But increasingly, public authorities are making use of data collected for commercial or private purposes, and companies in various sectors are obliged to retain and provide personal data from their customer databases. The costs connected with the storage and retrieval of data (both infrastructure investments and operational costs) are considerable, and in most cases borne by the companies themselves. This would apply in particular to the telecoms sector, internet providers and banks, but also to various other sectors. The total amounts concerned are considerable, but invisible in national budgets. In order to make well founded policy decisions, we must have a clear picture of the costs involved. Furthermore, the costs for obligatory public tasks carried out by private actors, must be covered by public funds.

Inversely, many sectors benefit from counter-terrorism measures, such as manufacturers of technical equipment or consultants for the implementation of counter-terrorism policies. Some companies and sectors benefit from public funding for security research. Furthermore, counter-terrorism measures may add to the administrative burden for companies, contrary to the aim of cutting unnecessary red tape.

Recommendation 3: the European Commission must produce, before July 2011, a full and detailed report on all EU funds used for counter-terrorism purposes, directly or indirectly, including in any case the following items:

- Expenditure specifically labelled as 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 EU, 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

Recommendation 4: the European Commission must carry out a study into the costs for counter-terrorism policies borne by the private sector, as well as an overview of sectors benefiting from counter-terrorism policies.

Recommendation 5: the European Commission must 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.