EU counter-terrorism policy: main achievements and future challenges

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The Committee on Civil Liberties, Justice and Home Affairs adopted the own-initiative report drafted by Sophia in 't VELD (ADLE, NL) on the EU Counter-Terrorism Policy: main achievements and future challenges in response to the Commission communication on the same subject.

The committee highlighted that according to the Europol 2011 EU Terrorism Situation and Trend Report (TE-SAT 2011), 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.

Although the Members welcome the Commission Communication, they regret that its scope is rather narrow at European level. They stress 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. They deplore 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 regret 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.

Members emphasise the need for the EU, 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. The Union’s external actions to combat international terrorism should in the first place be aimed at **prevention, as well promoting dialogu**e, tolerance and understanding among different cultures, civilisations and religions.

The report 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. It considers the decision to deepen and develop the four main strands of the counterterrorism strategy – prevent, protect, pursue and respond – to be a good one.

Members believe 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. T raining 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.

The Commission is invited 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.

According to Members, **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.

The report recalls that radicalisation and recruitment pose the most significant and continuous long-term threat and thus constitute the axis on which the EU must focus its counter-terrorism prevention strategies at the very beginning of the chain. It calls for the creation of a **comprehensive strategy on the interconnection between international organised crime, drug trafficking and terrorism**.

On an international level, the report underlines that counter-terrorism is an integral part of the Union's relations with third countries. It asks for an increase in the funding of counter-terrorism assistance measures in the next Instrument for Stability in order to prevent state failure. Members agree, in this respect, with the priority areas being South Asia, in particular Pakistan and Afghanistan, the Sahel region (Mauretania, Mali, Niger), Somalia and Yemen.

Evaluation by a panel of independent experts and mapping exercise: Members stress the need for a proper evaluation of ten years of counter-terrorism policies and on the need to report back to a Joint Parliamentary Meeting of the European Parliament and national parliamentary committees responsible for overseeing counter-terrorism activities.

Any evaluation should, *inter alia*:

- 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;
- 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);
- include a full overview of the accumulated impact of counter-terrorism measures on civil liberties and fundamental rights;
- examine whether the current instruments for assessing the impact on privacy and civil liberties are adequate;
- examine how effective and proportionate the powers entrusted to EU agencies and services are in the fight against terrorism;
- 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.

The Commission is called upon to: (i) map out which measures have objectives other than counterterrorism, 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; (ii) 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; (iii) produce, before March 2012, a full and detailed report on all EU funds used for counter-terrorism purposes, directly or indirectly; (iv) 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 counterterrorism

policies.

Democratic scrutiny and accountability: Members call on the Commission to carry out a study to establish if counter-terrorism policies are subject to effective democratic scrutiny. The evaluation must include an overview of the legal basis used for each policy measure as well as all existing measures must be subjected to a retrospective proportionality test. Other elements include 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 counterterrorism policies; an overview of measures adopted by third countries with extraterritorial effect in the EU; an overview of non-legislative EU-funded) activities, such as research programmes, and how they are subject to democratic scrutiny.

Members consider that the EU and its Member States must fully clarify their role in the CIA programme of renditions and **black sites**. The report stresses that the EU must help the U.S. in finding appropriate solutions to the issues of closing Guantanamo and ensuring its inmates receive a fair trial. In this context, Members urge 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.

Members firmly disapprove of the call by the Council for on the Commission and the Member States to lodge appeals against the General Court judgment in the latest case of Kadi v. Commission. They call on all actors to carry out a thorough revision of the sanctions regime and ensure it is fully in line with international human rights standards.

Monitoring and profiling: Members urge 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. They call on the Commission to incorporate a **uniform legal definition of the concept of 'profiling'**.

The report 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.

Lastly, Members call 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. The Commission should put forward a proposal for a legislative framework for data protection, including the Common Foreign Security Policy.