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Committee on Civil Liberties, Justice and Home Affairs

2004/2167(INI)

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OPINION

of the Committee on Civil Liberties, Justice and Home Affairs

for the Committee on Foreign Affairs

on the European Security Strategy
(2004/2167(INI))

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SUGGESTIONS

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

First set of suggestions: To reinforce the legitimacy and effectiveness of the European Security Strategy, both internally and externally

The Committee on Civil Liberties, Justice and Home Affairs:

1. Notes with satisfaction the recognition given by the new European Security Strategy ("ESS") to the need to address a multitude of social factors affecting security, including those that can threaten fundamental freedoms and human rights, violate the rule of law and lead to the alienation of young people;
2. Emphasises that the legitimacy of a ESS ultimately depends on the accountability of EU institutions to the citizens of Europe; such legitimacy is undermined by the fact that the European Parliament is not formally consulted on international agreements, common positions and joint actions implementing the ESS; this Council approach is incompatible with the principles enshrined in Article 6 of the TEU and creates a clear gap between the democratic control at EU level and the existing rules in the Member States; the lack of judicial review by the European Court of Justice of second pillar instruments only serves to strengthen Parliament's concerns in this domain;
3. Recalls that according to Article 47 of the TEU, "*...nothing of this Treaty shall affect the Treaties establishing the European Communities*"; as a consequence of this constitutional principle considers that the implementation of the European Security Strategy must not lead to a weakening, directly or indirectly, of the fundamental rights as protected by Community law (as for instance with the European standards on data protection) by measures based on the second or the third pillar;
4. Stresses that the Security Strategy, as a complement to national security strategies, and while having due regard to the transatlantic relations, should be designed to counter threats at a European level;
5. Notes that a coherent ESS, once defined, ought to be defended by the EU institutions and the Member States at the international level; this is of particular importance in the case of Member States that are also members of the UN Security Council and of all Member States when negotiating international conventions dealing with international crimes (such as the UN and COE convention on terrorism or on cyber crime, trafficking in human beings, corruption, money laundering, etc.); the Member States should also promote the formal representation of the EU or of the Community in the administrative bodies of the UN Agencies (such as UNDOC or UNHCR);
6. Reiterates, in order to achieve the goals defined in the European Security Strategy, the necessity of establishing a European Civil Peace Corps, as has been recommended by the European Parliament at various occasions since the year 2000, in order to assure the

possibility of civilian rapid reaction in the case of crisis situations risking to escalate into violence and terrorism as well as to take up humanitarian tasks after the break out of natural or manmade disasters such as the 2004 tsunamis. The task of the Civil Peace Corps would be to coordinate at a European level the training and deployment of civilian specialists to carry out practical peace-making measures such as arbitration, mediation, distribution of non-partisan information, de-traumatization, and confidence-building between the warring parties, humanitarian aid, reintegration, rehabilitation, reconstruction, education, and monitoring and improving the human rights situation, including human rights accompaniment

Second set of suggestions: To strengthen and simplify EU policy against organised cross-border crime and terrorism, while ensuring full respect for fundamental rights

7. Regarding internal security policy, is deeply concerned by the inadequate implementation by the Member States of the anti-terrorism plan adopted on October 2001, as noted in the last European Council conclusions in this domain¹; moreover, considers that the Council and the Commission are not sufficiently proactive in reorganising the EU strategy, procedures, agencies and tools, to be mobilised against international crime and terrorism;
8. Considers that an effective European Security Strategy has to be based on a clear and well founded assessment of the threats and needs emerging at national, European and international levels;
9. Regrets that the Council continues to ignore Parliament's suggestions to establish a true European internal security strategy founded on the concept of a European internal legal order, to transform Europol into a true European body and to create a solid legal framework for data exchanges between the security and intelligence services at national and European levels that would allow the fight against organised crime and terrorism to be efficient, while fully conforming with the requirements of data protection and the protection of fundamental rights of EU citizens;
10. Recalls its suggestion from October 2002, to launch a comprehensive reform of the instruments of police and judicial cooperation, including a revision of the Europol Convention to bring it into line with the higher standards and methods of democratic control of the police forces of the Member States; recalls that comprehensive reform should gradually aim to communitarise these instruments, to strengthen judicial control by the Court of Justice and to fund the instruments through the Community budget, even before the entry into force of the Constitutional Treaty;
11. Considers the Europol reports on organised crime insufficient and suggests that, from 2007, Europol should, in close cooperation with the Member States, collect, on a continuous decentralised basis, data on trends in international crime on the territories of the Member States; this data should be incorporated in the Europol annual reports referred to in Article 28(10), first subparagraph, of the Europol Convention and in special reports such as the report on terrorism; the reports should refer to the primary objectives to be achieved at European and national level regarding cross-border crimes and should

¹ Declaration on combating terrorism adopted by the European Council on 25 March 2004.

be forwarded to the European Parliament for the annual debate referred to in Article 39 of the EU Treaty; the reports should be published afterwards, together with the opinions of the European and national Parliaments and Eurojust and any observations and appraisals from individual Member States;

12. Requests therefore, that the implementation of the ESS be subject to continuous parliamentary scrutiny at European and national level; asks to be kept directly informed about the policies or mechanisms of the ESS, especially those containing weaknesses or a lack of resources;
13. Agrees with the European Council on the need to create a European central alert system before the end of 2006, which could collect and analyse all the information needed to prevent cross-border crises (whether ensuing from natural causes or terrorists attacks); supports the Commission's idea to create an ARGUS system which could collect and diffuse this information online (also linked with the alarm network protecting critical infrastructures - CIWIN - along with the ENISA); considers of primary importance that all the investment and research currently envisaged be co-ordinated, regardless of its source.
14. Supports the European Council recent conclusions aiming to:
 - set up integrated and coordinated EU crisis-management arrangements for crises with cross-border effects within the EU
 - establish "a Solidarity Programme" regarding the consequences of terrorist threats and attacks.
 - assess the capabilities that Member States could make available to the Civil Protection Mechanism in the event of an attack
 - develop civil protection capabilities, including joint exercises and coordination of public information, and improved availability of medical resources
 - adopt a European Programme for critical infrastructure protection with potential trans-boundary effects
 - strength the rapid response mechanism for cooperation between the competent authorities in police investigation

Recalls therefore that all these activities are of fundamental importance in order to develop a coherent and complete European Security Strategy and should be developed on a sound legal basis which associate the European parliament as a legislator and budgetary authority and under the scrutiny of the national parliaments.

RAPPORTEUR'S EXPLANATORY NOTE

1. The European Security Strategy ("ESS") adopted by the European Council in December 2003 outlines a very general scope for the Union and its Member States in improving the Union's internal and external security.

The ESS, to its credit, recognises that a number of social factors – including poverty, malnutrition, disease, and economic collapse – all contribute to a climate of instability and increased security threats, as they can often lead to regional conflict and failed states and, as a consequence, fuel support or tolerance for organised crime and terrorism.

The ESS identifies five "key threats" against Europe today: (a) Terrorism; (b) Proliferation of Weapons of Mass Destruction; (c) Regional Conflicts (which, according to the ESS, by threatening minorities, fundamental freedoms, and human rights, can lead to extremism, organised crime and terrorism); (d) State Failure; and (e) Organised Crime.

In addressing these threats, the ESS explicitly recognises that a whole host of means (including economic, humanitarian, civilian, diplomatic, judicial, intelligence, police, trade, development, cultural, and others) should be utilised in conjunction with each other, and that military means may be only one of many methods to be used in an effective European threat-averting strategy.

The ESS further notes that the pursuit of building security in the Union's neighbourhood can largely help in addressing regional threats, whereas threats of a global nature must be tackled through effective multilateral structures where "strengthening the United Nations, equipping it to fulfil its responsibilities and to act effectively, is a European priority."

Significantly, regarding Europe's security goals, the ESS stresses that the EU must appropriately utilise all the means available to it in "spreading good governance, supporting social and political reform, dealing with corruption and abuse of power, establishing the rule of law and protecting human rights". This is of paramount importance, according to the ESS, as these are "the best means of strengthening the international order." However, the ESS makes no reference to the human and fundamental rights obligations of the EU when implementing ESS actions.

Finally, with regard to the specific competencies of the Committee on Civil Liberties, Justice and Home Affairs, the ESS references are few and far between. The ESS notes with satisfaction recent measures, including the adoption of the European Arrest Warrant, steps to attack terrorist financing, and the EU-US agreement on mutual legal assistance. The ESS also mentions that "common threat assessments" are the "best basis for common actions" and states that "this requires improved sharing of intelligence among Member States and with partners." (The AFET Rapporteur agrees on this point and states that, in his view, any contributions by the Union in this regard

"must be initially limited in scope and in nature in order to have full effect."). Finally, the ESS Report also concludes, without elaboration, that "better co-ordination between external action and Justice and Home Affairs policies is crucial in the fight both against terrorism and organised crime." (The AFET Rapporteur takes note of this provision but notes, appropriately, the "sparsity of content within the ESS on linking the two concepts to coherently address threats.")

2. From the European Union point of view, the AFET Report indicates a slow but sure improvement in the cooperation among Member States (whether on the level of heads of state, Defence ministers, or heads of national armies) towards the goal of strengthening external security. Indeed, the interaction between the political, the institutional and the operational layers in this domain has arguably created a momentum which could increase the Union's gradual ability to establish a real common defence policy as outlined in the Constitutional Treaty.

By contrast, the push factors and political will present in external security-building are either weak or inexistent as far as the establishment of a credible and democratically accountable internal security policy is concerned, even as the Constitutional Treaty (which is planned to enter into force in November 2006) foresees a solidarity clause in case of terrorist attacks or natural catastrophes.

This situation was denounced in the Working Group X "Freedom, Security and Justice" final report to the Convention which broadly acknowledged that "... *current operational collaboration lacks efficiency, transparency and responsibility,*" and became even more pronounced in the analysis of the European Council after the Madrid attacks and in the recent Hague five-year plan.

3. This gap between aspirations and reality in dealing with internal security matters is not surprising, as the internal security order has been treated from the beginning (and still is) as a "forbidden area" for the European Institutions. Having said that, it is beyond doubt that the cultural, legal and institutional barriers presently blocking the European security area will have to be appropriately addressed if the Union is ever to establish an internal security policy that fully respects its democratic values and of the demands of its citizens.

A so-called "pragmatic" or piecemeal approach in this domain is a false shortcut, as is currently arguably demonstrated by our experience with Europol, the new Schengen System and the External Borders Agency. In fact, Europol was negotiated before the Amsterdam Treaty but was not updated thereafter, the Schengen System was created for controlling external borders but now the Member States plan to transform it into a multi-purpose police tool, without a redefinition of its mission, while the External Borders Agency will be operational in a few months, but without having taken into due account the links needed with police services. So it is not surprising that the lack of a long term perspective and of possible interactions between these initiatives has created an even more confusing situation that raises serious questions of democratic accountability, protection of fundamental rights, and efficiency.

4. From the Rapporteur's point of view, the internal security strategy (more than the

external security domain) can only be founded on a strong political commitment and on a more solid legal framework, as provided for by the European Constitution. Particular emphasis must be given to the respect of citizens' fundamental rights, as enshrined in the Constitution, within any discussion of internal police or other cooperation. Before the Constitution's entry into force, the Union can only continue the preparatory work according to what has already been suggested in the EP recommendation on the future of the Freedom Security and Justice Area.

5. The suggested amendments to the Kuhne report are aimed at:

- Enhancing the legitimacy and effectiveness of ESS and minimising negative spill-over effects that could undermine European security, by ensuring that, when acting to avert security threats, the EU ensures that international law and fundamental and human rights obligations are fully respected.
- Reinforcing the legitimacy of European Union action in this domain by establishing real democratic control by the European and the national parliaments.
- Reinforcing the coherence between European Union and Member States in international fora, when negotiating international agreements or participating in fora dealing with freedom, security and justice.
- Defining a European internal security plan to be understood as a complement to national security strategies, with a clear role for European Agencies (such as Europol), in order to enhance transparency, democratic accountability for policy and actions.
- Building a central alarm system inside the Commission which could collect the appropriate information for preventing and combating transboundary threats.

PROCEDURE

Title	European Security Strategy	
Procedure number	2004/2167(INI)	
Committee responsible	AFET	
Committees asked for its opinion Date announced in plenary	ITRE 28.10.2004	LIBE 28.10.2004
Enhanced cooperation		
Drafts(wo)man Date appointed	Stavros Lambrinidis 18.1.2005	
Discussed in committee	21.2.2005	
Date suggestions adopted	21.2.2005	
Result of final vote	for: 37 against: abstentions:	
Members present for the final vote	Alexander Nuno Alvaro, Edit Bauer, Johannes Blokland, Mario Borghezio, Kathalijne Maria Buitenweg, Maria Carlshamre, Michael Cashman, Giusto Catania, Jean-Marie Cavada, Carlos Coelho, Rosa Díez González, Kinga Gál, Ewa Klamt, Ole Krarup, Wolfgang Kreissl-Dörfler, Barbara Kudrycka, Stavros Lambrinidis, Henrik Lax, Sarah Ludford, Edith Mastenbroek, Jaime Mayor Oreja, Claude Moraes, Hartmut Nassauer, Martine Roure, Inger Segelström, Ioannis Varvitsiotis, Manfred Weber, Stefano Zappalà, Tatjana Ždanoka	
Substitutes present for the final vote	Frederika Brepoels, Richard Corbett, Luis Francisco Herrero-Tejedor, Bill Newton Dunn, Vincent Peillon, Marie-Line Reynaud, Bogusław Sonik, Kyriacos Triantaphyllides	
Substitutes under Rule 178(2) present for the final vote		