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with a proposal for a European Parliament recommendation to the Council on the exchange of information and cooperation concerning terrorist offences (2005/0000(INI))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Antoine Duquesne

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PROPOSAL FOR A EUROPEAN PARLIAMENT RECOMMENDATION TO THE COUNCIL

on the exchange of information and cooperation concerning terrorist offences (2005/0000(INI))

The European Parliament,

– having regard to the proposal for a recommendation to the Council by Antoine Duquesne on behalf of the ALDE Group on the exchange of information and intelligence, and cooperation concerning terrorist offences (B6-0128/2004),

– having regard to the declaration on combating terrorism, adopted by the European Council on 25 March 2004,

– having regard to Article I-51 of the Treaty establishing a Constitution for Europe, relating to the protection of personal data[1],

– having regard to Article 8 of the Charter of Fundamental Rights, relating to the protection of personal data,

– having regard to Council of Europe Convention 108 for the protection of individuals with regard to automatic processing of personal data,

– having regard to the principles laid down by Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data[2],

– having regard to Rule 114(3) and Rule 94 of its Rules of Procedure,

– having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A6-0000/2005),

A. whereas the bomb attacks which rocked the Kingdom of Spain on 11 March 2004 showed that there is still a very real threat of terrorist acts in Europe or against European interests,

B. whereas, following the Madrid attacks, the European Council decided at its meeting of 18 June 2004 to review the European Union's plan of action on combating terrorism as the tragic events in Spain had unfortunately demonstrated that the working method which had been used by the Union since 2001, based essentially on an empirical line of reasoning, had reached its limits and needed to be replaced with a new more proactive approach,

C. restating firmly that all forms of terrorism, whatever ideological dressing may be put upon them, are criminal acts and, as such, utterly unjustifiable, but that, if they are to be combated in an appropriate manner, steps must be taken to clearly distinguish between and understand them,

[1] OJ C 310, 16.12.2004, p. 36.
[2] OJ L 281, 23.11.1995, p. 31.

D. whereas, in order to tackle this problem effectively, a modern approach is required, taking due account of the close links which may exist between the various terrorist organisations and between terrorism and large-scale organised crime, making it possible to rapidly conclude clear agreements on the exchange of information in transatlantic relations, based on effective common standards respectful of people's rights,

E. whereas it is essential to avoid multiplying the number of legal instruments to combat terrorism, and whereas it is instead necessary to work towards the standardisation and simplification of existing instruments,

F. whereas a systematic evaluation of the policies conducted and results obtained would make it possible to highlight shortcomings and malfunctions experienced in practice, as well as to detect those measures which have proved effective,

G. whereas closer involvement of those working on the ground in defining action strategies and instruments would make it possible to target measures more effectively in future,

H. whereas, in its declaration of 25 March 2004 on the fight against terrorism, the European Council called both for a simplification of the exchange of information and data between law enforcement services in the Member States with a view to combating terrorism as effectively as possible and for Member States to ensure that optimum use be systematically made of existing EU bodies, in particular Europol and Eurojust, in order to promote cooperation in the fight against terrorism, especially by improving the flow of information supplied to Europol in relation to all aspects of terrorism,

I. whereas two initiatives have been taken in response to the European Council's declaration of 25 March 2004, one by the Commission and the other by the Kingdom of Sweden, both aimed at improving and simplifying the exchange of information concerning the fight against terrorism,

J. whereas the objective pursued by these proposals should go hand in hand with the introduction of harmonised minimum guarantees in respect of data protection under the third pillar, in particular with regard to allowing the persons concerned access to data, in full compliance with the rights of citizens recognised by the Charter of Fundamental Rights, Article 6 of the EU Treaty and Article I-51 of the Treaty establishing a Constitution for Europe, as well as the relevant principles defined by the Hague programme,

K. noting that, in its declaration of 25 March 2004, the European Council announced that 'the further development of the relationship between Europol and intelligence services will also be taken forward'[1], and whereas the gathering and sharing of intelligence are absolutely essential to the fight against terrorism since the information deriving from judicial proceedings or police investigations very often becomes available when it is too late,

L. aware of the practical difficulties inevitably linked to the establishment of a European criminal record, but anxious to restate firmly the absolute necessity of giving genuine

[1] Declaration on combating terrorism, 25 March 2004, point 9 - Sharing of intelligence.

priority to the achievement of this objective and setting a detailed and tight schedule for this purpose,

1. Addresses the following recommendations to the Council:

   (a) that it work to combat terrorism in a proactive and not merely reactive manner;

   (b) that it take a more systematic and coordinated approach and that it constantly seek to ensure that the legislation drawn up is consistent, given that this essential consistency calls for action to be taken on the basis of a genuine policy line, based on clear concepts;

   (c) that its action therefore be based on three guidelines:

   - making the necessary resources and capacities available to clearly identify each of the targets to be combated, in the clear knowledge that terrorism is not one single phenomenon but on the contrary a multi-faceted problem, which varies according to the type of acts committed, perpetrators and objectives pursued;

   - making the instruments for tackling terrorism more effective by adopting a modern and realistic approach, based on an understanding of the very close links which often exist between the various terrorism organisations and between terrorism and large-scale organised crime, in particular with regard to funding aspects;

   - avoiding a large increase in the number of legal instruments to combat terrorism and seeking, instead, to standardise and simplify existing instruments, in particular by ensuring that systematic assessments are carried out to determine their degree of effectiveness, and deciding to adopt new rules only when it is established that they will represent an improvement on existing rules;

   (d) that it seek to involve as far as possible those working on the ground in devising measures, in order to take due account and advantage of their practical experience in the new instruments;

   (e) that it adopt, on the basis of the fundamental principles governing the exchange of information as well as the needs of law enforcement services on the ground, a handbook of good practices for police officers, providing them with an explanation in simple and practical terms of the context in which they are to act, in particular with regard to the transfer and gathering of information and data protection;

   (f) that it establish an instrument to facilitate the transfer of intelligence, in particular as part of the introduction of an early warning system;

   (g) that it harmonise existing rules on the protection of personal data in the instruments of the current 'third pillar', bringing them together in a single instrument, on the basis of the following fundamental principles, reiterating in particular the principles set out in the Hague programme, failure to act upon which would seriously undermine the credibility of the Union institutions:

- the quality and relevance of the collected data must be guaranteed;

- data should only be collected for the purpose of carrying out legal tasks;

- data relating to racial or ethnic origin, political, philosophical or religious opinions or beliefs, health and sexual habits and data concerning non-suspected individuals may only be collected in cases of absolute necessity and under strict conditions;

- individuals should be informed of the existence of data concerning them, except in the event of a major obstacle;

- individuals should have a right of access to data concerning them and the right to rectify inaccurate data except where such access is liable to pose a threat to security and law and order or to the rights and freedoms of third persons or where it is likely to interfere with investigations;

- individuals should be protected against misuse of data;

- the integrity and confidentiality of data must be guaranteed;

- the transfer of data should be governed by common standards, providing in particular for protection of the sources of information and ensuring the confidentiality of the data at all stages of the exchange and thereafter;

- compliance with data protection rules must be guaranteed, in particular by means of a supervisory authority;

- everyone has the right to the restoration of legality and, where necessary, reparation in the event of non-compliance with the principles set out;

(h) that it give genuine priority to the prompt establishment of an operational register of criminal sentences and losses of rights at European level, i.e. the European criminal record, the absolute necessity of which is regularly highlighted in the context of the fight against terrorism and organised crime;

(i) that, in general terms, it forge ahead, even in the case of controversial or complex subjects, setting a detailed and tight schedule for the establishment and implementation of instruments so long as they are intended to constitute a genuine step forward towards combating terrorism, as in the case of the European criminal record;

(j) that it inform Parliament of the timeframe in respect of the elaboration of legal instruments for the registration of bank accounts and measures to improve the transparency of legal persons;

2. Instructs its President to forward this recommendation to the Council and, for information, to the Commission and the European Council.

28.10.2004

PROPOSAL FOR A RECOMMENDATION TO THE COUNCIL (B6-0128/2004)

pursuant to Rule 114(1) of the Rules of Procedure
by Antoine Duquesne
on behalf of the ALDE Group
on the exchange of information and intelligence, and cooperation concerning terrorist offences

The European Parliament,

– having regard to the proposal for a Council Decision on the exchange of information and cooperation concerning terrorist offences (COM(2004) 0221),

– having regard to draft Framework Decision on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union, in particular as regards serious offences including terrorist acts,

– having regard to Rule 114(1) of its Rules of Procedure,

A. whereas law enforcement authorities' ability to cooperate in combating crime is to a large extent a reflection of their ability to obtain and exchange information and intelligence in good time;

B. whereas it is necessary to strike the right balance between law enforcement requirements and the protection of data, human rights and fundamental freedoms;

1. Addresses the following recommendations to the Council:

   (a) that there is a need for a political debate for the future development of closer cooperation between law enforcement authorities as well as common action in terms of law enforcement cooperation with a view to detecting, preventing and investigating criminal offences;

   (b) that Parliament will be looking at the two proposals, the Council decision and the Swedish initiative, which can be seen as complementary approaches to the exchange of information and intelligence;

   (c) that it is necessary to establish a comprehensive and coherent framework for law enforcement cooperation;

   (d) that law enforcement cooperation must always be accompanied with guarantees for data protection and fundamental rights;

2. Instructs its President to forward this recommendation to the Council and, for information, to the Commission and the European Council.