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COMMISSION PAPER ON TERRORISM TO THE COUNCIL
PROVIDING INPUT FOR THE EUROPEAN COUNCIL

EUROPEAN ACTION IN RESPONSE TO THE TERRORIST ATTACKS ON MADRID

The terrorist responsible for the attacks in Madrid have **struck against the fundamental principles** of all European states and on which the Union is built: respect for human dignity, liberty, democracy, equality, the rule of law and respect for human rights.

The Commission does not believe that the right answer to these attacks is proposing new legal instruments or new institutions. First, because most of the legislative and institutional framework is proposed or in place and simply needs to be approved and/or implemented on the ground. Second, because we cannot afford to wait for long legislative procedures to give answers to such atrocities. Priority is now on co-ordinating operational action¹.

This paper sets out **five types of action** which the Commission should propose that the Union take in response to these terrorist outrages:

- Declaration of solidarity, to be pronounced solemnly by the Heads of State and Government at their meeting in Brussels on 25-26 March;
- Better implementation of existing legislative instruments relevant to the fight against terrorism, and adoption of draft measures already on the Council table;
- Strengthening the fight against terrorist financing;
- Enhanced operational coordination and cooperation;
- External action;
- Other measures.

1) DECLARATION OF SOLIDARITY

One of the Member States of the Union is the victim of an appalling terrorist outrage. It is the duty of the Union, its institutions and all its Member States to act quickly and in a spirit of solidarity to provide all possible support and assistance to Spain in both investigating this outrage and bringing the perpetrators to justice, and in preventing the terrorist threat to Spanish and other EU territory for the future.

¹ In parallel, the Commission at its meeting of the 16th of March has approved by way of a paper on counter-terrorism its contribution to the European Security Strategy. This contribution presents an exhaustive inventory of the challenges and achievements in the fight against terrorism. The aim of the present paper, on the contrary, aims at focusing on the main political messages and outcomes, especially on better implementation and coordination, which the Madrid atrocities call for.

The Commission proposes that the Heads of State and Government, together with the Presidents of the European Parliament and European Commission, should, at the meeting of the European Council on 25-26 March, make a solemn declaration of commitment to fulfilling this duty. The declaration would send a visible sign of solidarity to the people of Spain and a clear message that Europe as a whole will not tolerate terrorism or those who perpetrate it.

The declaration would be the forerunner of the formal solidarity clause which the European Convention has proposed for inclusion in the new Constitutional Treaty.

Draft Declaration of Solidarity

The Heads of State and Government of the European Union, the President of the European Parliament, and the President of the European Commission, bearing in mind the formal solidarity clause proposed in the draft Constitutional Treaty, solemnly proclaim the text below as the Declaration of Solidarity between the Union and its Member States.

The Union and its Member States shall act jointly in a spirit of solidarity if a Member State is the victim of a terrorist attack. All Member States are equally exposed to the threat of terrorism. The Union shall mobilise all the instruments at its disposal to:

- prevent the terrorist threat in the territory of the Member States;
- protect democratic institutions and the civilian population from any terrorist attack;
- assist a Member State in its territory at the request of its political authorities in the event of a terrorist attack.

2) BETTER IMPLEMENTATION OF EXISTING LEGISLATIVE INSTRUMENTS RELEVANT TO THE FIGHT AGAINST TERRORISM, AND ADOPTION OF DRAFT MEASURES ALREADY ON THE COUNCIL TABLE

The Union has already put in place a series of legislative measures to combat terrorism. But implementation of these measures is often slow, poor and inadequate. This is unacceptable. Action is needed to turn political agreements into legal reality.

- The 5 Member States which have not yet taken the necessary measures to put the **European Arrest Warrant**² into their national law should do so as a matter of top priority. And transposition is not enough: the Commission will report at the end of this year on the measures Member States have taken and on the operational working of the European Arrest Warrant, a matter which the Commission and Eurojust are monitoring constantly;

² Council Framework Decision of 13 June 2002 relative on the European Arrest Warrant and surrender procedures between the Member States, JO L 190 of 18.7.2002, p.1

- In the wake of 11 September 2001, the Union adopted a landmark **Framework Decision on the fight against terrorism**³ to ensure that the definition of terrorist crimes is similar across the Union and to set common minimum maximum sentences applicable to these atrocious crimes. Three Member States have not fully reported on the implementation of this legislation, and for the others it is not yet clear that national measures fully implement the requirements of the Framework Decision. In the coming weeks the Commission will report the failings in no uncertain terms to the Council and will do all it can to ensure that the Member States take the necessary measures;
- The **2000 EU Convention on Mutual Assistance in Criminal Matters and its 2001 Protocol** provide for improvements to the rules on mutual assistance. It includes provisions relating to cross-border requests for interception of communications and monitoring of bank accounts. No legal deadline was set for implementation of this instrument. To date only four Member States have formally ratified the Convention, although other Member States have adopted the necessary legislation.
- In relation to tackling the means by which terrorist organisations finance their activities, it is essential that Member States take the necessary measures to implement the **Framework Decision on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime**⁴ which limits Member States' reservations in respect of the 1990 Council of Europe Convention on laundering, search, seizure and confiscation of the proceeds of crime and approximates penalties for money laundering offences. The deadline for implementation of this instrument was 31 December 2002, and although all but one of the Member States have informed the Commission of the measures taken to implement it, in some cases the information provided was not complete.
- The **Framework Decision on joint investigation teams**⁵ provides an essential operational tool for allowing investigators from two or more Member States to work together to tackle cross-border criminal activities. The instrument should have been implemented by Member States by the start of 2003; however, to date only nine Member States have notified transposition measures to the Commission;
- Furthermore, attention should be given to ensuring that the full use is made of the tools set up by two Council Decisions relevant for the fight against terrorism, namely the **Decision establishing Eurojust**⁶ and the **Decision on the implementation of specific measures for police and judicial cooperation to combat terrorism**⁷. Under this latter instrument all Member States are required to

³ Council Framework Decision of 13 June 2002 on the fight against terrorism, JO L 164 of 22.6.2002, p.3

⁴ Council Framework Decision of 26 June 2001 on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime, JO L 182 of 5.7. 2001, p.1

⁵ Council Framework Decision of 13 June 2002 on joint investigation teams, JO L 162 of 20.6.2002, p.1

⁶ Council Decision of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime, JO L 63 of 6.3.2002, p.1

⁷ Council Decision of 19 December 2002 on the implementation of specific measures for police and judicial cooperation to combat terrorism in accordance with Article 4 of Common Position 2001/931/CFSP

establish national contact points responsible for collecting all relevant information concerning and resulting from national criminal investigations and prosecutions with respect to terrorist offences involving listed individuals, groups or entities, and for passing that information on to Europol and Eurojust. But two Member States have not yet established their national contact points to exchange information on terrorism with Eurojust and Europol.

- Looking to the future, the Commission urges all Member States to demonstrate their compliance with the **Framework Decision on the execution in the European Union of orders freezing property or evidence**⁸ by the deadline of 2 August 2005;
- The Commission calls on Member States to rapidly implement the existing legislation on **maritime and aviation security**, in particular Regulation 2320/2002 on civil aviation security, Regulation 1486/2003 on procedures on Commission inspections in the field of civil aviation security and the not yet published Regulation on enhancing port and ship facility security.

Furthermore, Justice and Home Affairs Ministers should overcome bureaucratic and technical blockages to ensure that the draft instruments on terrorism currently before it are adopted as a matter of priority.

Draft instruments relevant to the fight against terrorism which the Justice and Home Affairs Council should adopt as a matter of priority:

- Draft Framework Decision on the **confiscation of crime-related proceeds, instrumentalities and property**, which seeks to ensure that all Member States have effective rules governing the confiscation of proceeds of crime, including extended powers of confiscation. The Council reached political agreement on this instrument on 19 December 2002, but formal adoption has to await the lifting of constitutional and parliamentary reservations by two Member States;
- Draft Framework Decision on **attacks against information systems**, which responds to the increasing concern at the potential threat posed by cyber-terrorism. Political agreement was reached on 28 February 2003 but parliamentary reservations are still pending by three Member States;
- Draft Framework Decision on the application of the principle of mutual recognition to **confiscation orders**. Discussions on this instrument are nearing completion and the Justice and Home Affairs Ministers should be urged to find agreement on it at their meeting of 30 March 2004;
- Draft Framework Decision on the **European Evidence Warrant** for obtaining objects, documents and data for use in proceedings in criminal matters⁹. This proposal applies the mutual recognition principle to obtaining certain types of evidence and thereby replaces the existing mutual assistance regime in this area.

⁸ Council Framework Decision of 22 July 2003 on the execution in the European Union of orders freezing property or evidence, JO L 196 of 2.8.2003, p.45

⁹ COM(2003)688 of 14 November 2003

The Commission is going soon to put forward **legislation on cross-border hot pursuit**. It is increasingly outdated to continue to work on a basis that national police forces can only act on limited circumstances beyond the borders of their Member States. There can be no explanation for allowing a terrorist atrocity to occur just because the police forces of a Member State had no possibility to cross an internal border.

3) STRENGTHENING THE FIGHT AGAINST TERRORIST FINANCING

The EU and the Member States have made great progress in a range of areas, but the persistence of the terrorist threat and the complexity of the fight against the phenomenon raise the need to come up with **innovative solutions**. To eradicate the phenomenon, and above all to attack terrorism as close as possible to its foundations, action must be taken on **the sources of financing of terrorist organisations**. But action on the sources and networks of terrorist funding is particularly difficult. As in the case of laundering the proceeds of organised crime, terrorist funding is based on highly secret operations conducted on an international scale, often using parallel circuits.

As the provisions of the money-laundering directive begin to bite, criminals and terrorists are likely to turn to cash as an easier way of moving funds around. The adoption by the Council of the Commission proposal to introduce **customs controls on cash movements** at the external frontier would transform the present fragmented approach into a common, simple and rapid first defence mechanism.

In order to facilitate the immediate application of freezing measures decided by the Union, the Commission and the European banking sector are establishing an **electronic database of all targeted persons and entities**. The database will be operational in the Summer of 2004. A **qualitative and quantitative improvement in exchanges of information** is crucial in this respect. At the same time, regard must be had for fundamental rights, and particularly data protection, and the practicability of measures.

It is essential in the fight against terrorism for the relevant services to have the fullest and most up-to-date information possible in their respective fields, including information on convictions. The Commission will propose by the end of March 2004 a proposal for a Council Decision aimed at broadening the **exchanges of information on convictions for terrorist offences and cooperation between Member States, Europol and Eurojust**. It represents a major element for avoiding infiltration of terrorist groups in legal activities in the objective to fight against financing of terrorism.

- The establishment of a European Register on convictions and disqualifications for individuals and bodies corporate should also be envisaged as a real contribution to the effectiveness of the fight against crime in general, and terrorism in particular. Direct access to the Register should be given to the competent. The Commission will issue proposals before the end of this year in order to establish such a register.
- Work is to be launched in the Forum on Organised Crime Prevention for the establishment of a **database of persons, groups and entities covered by restrictive measures for the fight against terrorism or under criminal proceedings for terrorist offences**. This work will be undertaken in partnership with the private sector and in liaison with Europol.

- Furthermore, in the context of the third money laundering directive, the Commission will propose that Member States should be required to have **systems allowing holders of bank accounts** to be identified and facilitating investigations into bank accounts and movements of funds.
- Freezing the funds or other financial assets and economic resources of individuals, groups and entities involved in terrorism is a key tool to combat terrorism. Several legal instruments have been adopted in the wake of September 11 events under the Title V of the TEU, which provide for the freezing of the funds and other financial assets or economic resources of persons, groups and entities involved in acts of terrorism. The lists of terrorist organisations/assets should become operational and reactive on a “real time” basis. They urgently need to be streamlined and the Commission is ready to assist Member States in that regard. Allowing for modification of the lists under qualified majority voting is an option as is the replacement of the present three lists by only two, one on suspected cases/threats, the other one as a record of past terrorist activity. This last list, to be set up in a form of a court record, should cover not only decisions on the freezing of assets connected to terrorism but also all condemnations for terrorist behaviour.

4) ENHANCED OPERATIONAL COORDINATION AND COOPERATION

Tribute should be paid to all the security forces of the EU that have avoided attacks such as those planned between 11 September 2001 and 11 March 2004 from materialising. However, more should be done and real action is needed now. There is no 100% security proof system but much more could be done in order to prevent the repetition of an attack as serious as that of Madrid by strengthening the operational and coordination tools at our disposal. We cannot go on producing networks and institutions and then refuse to provide them with the necessary tools to perform their jobs or simply not using them. Much has been done. Let us use it.

- The Union should put in place a new coordination mechanism for the exchange of information -a clearing house mechanism - where law enforcement, judicial authorities and intelligence services meet to enhance mutual trust and exchange operational intelligence enabling each to perform its duty properly. Europol and Eurojust should be fully involved, together with national intelligence and law enforcement networks. In accordance with the Treaty provisions, the Commission could be fully associated. The priorities of the aims of such exchange of information mechanism should be set up by Council, although one could think of prioritising its activities on (i) the method of recruitment of terrorist organisations, (ii) the identification of the sleeping cells, (iii) their financial powerbases in civil society and (iiv) their external connections The **exchange of information** among and between national authorities and at EU level must be dramatically improved. A certain culture of secrecy, understandable only at first sight, has proven extremely counter-productive. More than new institutions or bodies, the Union has to come forward with a comprehensive across the board methodology for the exchange of information.

This new coordination mechanism should neither be a European CIA not just a second pillar instrument. Terrorism is first and foremost an internal security matter

and therefore the mechanism we suggest to establish should exchange information mostly within a third pillar umbrella. In this way, we put existing – Community, Union, international and national - networks in dialogue among themselves rather than losing time destroying existing and creating new procedurally time-consuming institutions and bodies.

- The Union should work towards the implementation of a **European information policy for law enforcement purposes**. Intelligence-led law enforcement and effective national criminal intelligence systems which are compatible at EU level and allow for the effective access, analysis, and use of data should be developed. Such a information policy should aim at facilitating the detection of threats to public order and security, to avert security risks, and to fight organised crime and terrorism throughout the Union, including through enhanced access to data not produced for law enforcement purposes.
- We are working with major partners to enhance controls to prevent goods linked to terrorist actions from entering the Community. The EC-US negotiations and follow up actions on the **Container Security Initiative (CSI)** provide an example of concrete co-operation to combat terrorism and it will be important that any recommendations resulting from the follow-up actions should be quickly implemented and possibly extended to other regions
- The Commission will pursue as a matter of priority the discussions that have been started with Member States and other relevant parties, e.g. Europol, with a view to making a first proposal by the middle of 2004 outlining an **EU approach to the use of travellers' data for border and aviation security and other law enforcement purposes**. Such a policy framework will need to strike a balance between security concerns on the one hand and data protection and other civil liberties concerns on the other.
- **Comprehensive and interoperable European Information Systems** should be developed. The Commission is prepared to explore the creation of synergies between existing and future information systems (SIS II, VIS and EURODAC) in order to exploit their value added in the fight against terrorism within their respective legal and technical frameworks.
- **Traceability and control of the weapons of terror and precursors**. We need to urgently review whether we have adequate measures in place to allow us to monitor and trace bomb-making materials such as explosives, detonators, and radioactive sources as well as precursors. Detection and traceability should become our key words here. The tracing and checking of dangerous goods and explosives should be made possible by creating new databases or upgrading existing databases such as SIS II with new functionalities, as well as making full use of advanced technologies such as satellite-enhanced (GALILEO) RFID (Radio Frequency Identification Device) tracking. All this action needs to be underpinned by a re-prioritisation of our research resources by fostering their increasing dedication to security matters, in particular inter-operability. The present amount of 65M€ devoted to security-related research is woefully inadequate.

- The Member States must strengthen the identification, control and interception of illegal trafficking in **WMD materials**. This should include (i) Member States' support for international initiatives aimed at disrupting WMD networks, (ii) the interception of illegal WMD shipments, as well as measures aimed at enhancing controls on WMD related material in the EU, including the transit and transshipment of sensitive materials and (iii) the development of common policies related to criminal sanctions for illegal export, brokering and smuggling of such material.
- Member States and the European Community should ensure that they are able to ratify the Protocol to the United Nations Transnational Organised Crime Convention on **trafficking of illegal firearms** as soon as possible.
- As regards **visa policy, border management and documents security**, the possibility to adjust the pending Commission proposal on EU **passports** by making fingerprints mandatory and to extend it to Identity Cards and other travel documents should be considered together with the creation of a European Registry for issued travel documents. Extended use by different law enforcement and security authorities of data available in the **visa consultation process** should be foreseen.
- **Europol**, which already has a clear anti-terrorism mandate, should be used more and better. Member States need to provide Europol with the information and intelligence it needs to do its job properly, in particular in the area of prevention and investigation of terrorist attacks. Member States should consider it their duty to give the Europol Terrorism Task Force with all operational information, not just limited and filtered strategic and technical intelligence. It is also imperative that Member State respect the target dates imposed by the Council for ratification of the three protocols amending the EUROPOL convention;
- The **Task Force of EU Police Chiefs** should be given a stronger role in the operational activities concerning prevention and fight against terrorism, which should become one of its priorities for action. The Task Force will meet on 22-23 March and will coordinate operational measures to respond to the Madrid attacks and work on ways to ensure that similar events do not occur again.
- **Eurojust** should be given a stronger role in the fight against terrorism. The Council should give it a clear mandate to coordinate the activities of national prosecuting authorities across the Union in relation to terrorism. We should open an urgent debate about giving Eurojust an initiating role in this regard too; Presently, Member States may, provided they come forward with a justification, refuse to pursue an investigation requested by Eurojust. This should be abrogated, at least when Eurojust's request would relate to investigations on terrorism;
- **Internal coordination within the Commission** needs to be fostered. A network led by Directorates General JAI and RELEX, supervised by their Commissioners and the President, should be in charge of better internal co-ordination of all aspects of the institution's activities that touch upon directly or indirectly, on terrorism. Counter-terrorism, besides its core JHA subject matters, covers matters as diverse as foreign relations, environment, health, internal market, industry, research, i.e. practically all areas of public policy dealt with by the Commission. Internal co-ordination has

lacked and needs to be reinforced. The Commission likewise welcomes any move by Council to improve its own internal co-ordination.

5) EXTERNAL ACTION

The EU needs to better target its **dialogue with third countries on terrorism**, especially those countries where we have evidence of a terrorist threat or of specific terrorist activity such as recruitment or training, those who are direct or indirect sources of terrorist financing etc. We need to use the information we already have, whether from threat assessments from various sources or the more general EU Crisis Prevention Watch List exercise to identify countries representing a potential threat and target our political dialogue accordingly. The **anti-terrorism clauses** in agreements with third countries should be followed up and the related provisions on co-operation implemented, underpinned by technical assistance as appropriate. If the clauses are not implemented - or third countries refuse to include them in agreements - this should have **direct consequences** in terms of the EU's willingness to continue to provide assistance more generally.

The EU should be prepared to offer more and better targeted technical assistance in co-operation with the United Nations **Counter Terrorism Committee (CTC)** and other relevant international and regional organisations. The Commission will step up its strategy for mainstreaming counter-terrorism objectives within relevant programmes as well as continuing to use the **Rapid Reaction Mechanism** for specific projects in priority countries. The aim should be to rapidly agree priority countries where assistance should be targeted, drawing on all available threat assessment information and in consultation with the Council. Assistance to help countries implement the FATF special recommendations on terrorist financing should be considered a particular priority."

6) OTHER MEASURES

- **Financial support for victims of terrorism:** €1 million is available in the 2004 budget for supporting the victims of terrorism. The money will be used to support projects which are intended to help the victims of terrorist acts and/or their relatives to recover by means of social or psychological support provided by organisations and/or their networks, as well as projects which are intended to mobilise the public against terrorism in all its forms. The Commission is currently preparing a call for proposals which will be launched before the end of next month.
- **Draft Directive on state compensation to crime victims:** a Commission proposal for a draft Directive on state compensation to crime victims has been discussed in the Council at length over the past year. The events of the last days show more than ever how important it is to ensure that victims of serious crimes and terrorism can be compensated for the damage and suffering they are subjected to. Justice and Home Affairs Ministers must think very seriously about these issues and make every effort to agree on an instrument with real added value at their meeting on 30 March. Continuous discussions following the atrocious attacks of last week is making a mockery of our commitments with public opinion.

- Terrorists are often more innovative in using legitimate goods for illegal purposes than we might imagine. The Commission as well as Member States should monitor all its legislative or standard producing machinery so as to have it subject to “ex ante” **terrorism proofing**. No legislation should leave this institution without first being submitted to a terrorism proofing scrutiny. For example, it is important to take measures to avoid that **mobile telephones** are used as tool by terrorists and other criminal groups. Reprogramming of stolen mobile communications equipment should be criminalised. Information campaigns should be launched to encourage the general public to ensure that lost and stolen mobile phones are reported so that they can be blocked and cannot become a resource to the use of these groups. Measures should be taken so that the sale of replacement SIM cards does not impede the efficient actions of law enforcement authorities..
 - Tackling **bio-terrorism** requires specific Health Security measures. It is also apparent that the health and security communities are not communicating as they should and that urgent action should be taken in order to remedy this state of affairs. Building on work already done, the EU and Member States should accelerate the implementation of a Health Security Strategy addressing in particular (i) the adoption of a general EU Emergency Preparedness Plan, (ii) joint emergency planning and response exercises, (iii) an agreed risk incidence classification scale, and (iv) most crucially, ensuring the mutual availability of adequate stocks of medicines and vaccines. **A European Centre for Disease Prevention and Control (ECDC)** will be established in 2005 and will prioritise the coordination of efforts to improve surveillance, notification, response, assistance, communication and laboratory capacity on health security matters.
 - The **Community Civil Protection Mechanism**, which operates on a 24 hours basis, pools the capabilities of the Member States and can be called upon, not only on case of natural catastrophe – where it has proven successful - but also in case of a terrorist attack in order to provide immediate assistance. It is a key tool for implementing solidarity between Member States in critical situations. The Commission will propose by the end of the month to reinforce our capacity by way of (i) an improved database
hereby Member States will have to identify and detail on the basis of some pre-defined scenarios their available assistance and equipment, (ii) of the financing of an extensive programme of training and exercises that would in particular test the interoperability between intervention teams, including military assets of (iii) the establishment of a dedicated communication system and of (iv) better coordination of the assistance delivered. Appropriate links should also be established between the Mechanism and the "civil-military planning cell" which will be created on the basis of the agreement reached in the European Council in December 2003.
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