



*European Economic and Social Committee*

**SOC/528**  
**European Agenda on**  
**Security**

Brussels, 17 March 2016

**OPINION**

of the

European Economic and Social Committee

on the

**Communication from the Commission to the European Parliament and the Council  
implementing the European Agenda on Security: EU action plan against illicit trafficking in and  
use of firearms and explosives**

COM(2015) 624 final

and the

**Proposal for a directive of the European Parliament and of the Council on combating terrorism  
and replacing Council Framework Decision 2002/475/JHA on combating terrorism**

COM(2015) 625 final - 2015/0281(COD)

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Rapporteur: **Cristian Pîrvulescu**

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On 22 December 2015, the European Commission decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the European Union, on the

*Communication from the Commission to the European Parliament and the Council implementing the European Agenda on Security: EU action plan against illicit trafficking in and use of firearms and explosives*

COM(2015) 624 final

and the

*Proposal for a directive of the European Parliament and of the Council on combating terrorism and replacing Council Framework Decision 2002/475/JHA on combating terrorism*

COM(2015) 625 final - 2015/0281(COD).

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 24 February 2016.

At its 515th plenary session, held on 16 and 17 March 2016 (meeting of 17 March), the European Economic and Social Committee adopted the following opinion by 145 votes to none, with 3 abstentions.

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## **1. Conclusions and recommendations**

- 1.1 The Committee encourages the Member States to pool resources to combat both trafficking in firearms and ammunition and terrorism. However, increasing the number of European and national safeguards can have a cumulative effect and harm fundamental rights. If fundamental rights are harmed, the EU will fail to achieve its fundamental task.
- 1.2 The European Economic and Social Committee considers that the proposal for a directive and the communication are necessary to make Europe more secure for everyone who lives there, as the fight against terrorism is a competence shared between the Member States and the EU. This throws open the debate on the potential compulsory measures which the directive could attempt to impose on Member States. The Member States are responsible for doing everything possible to prevent and combat all forms of organised crime and terrorism in particular, irrespective of its motivation. Likewise, the EU institutions are responsible for helping to coordinate and harmonise efforts to curb the spread of this type of violent crime.
- 1.3 The EESC stresses and urges that the principle of proportionality – which is absolutely fundamental to any state governed by the rule of law – must be respected by all state authorities and courts. In order to prevent misinterpretation or abuse of the necessary security

measures, the EESC, in accordance with Resolution 1566 of the UN Security Council, notes that an accusation of terrorism can only be made when threats or acts used to cause death or serious bodily injury, hostage-taking or serious infrastructure damage are intended to provoke a state of terror, intimidate a population or coerce a government.

- 1.4 These legislative changes are part of a broader effort, which faces difficulties in the current international political situation, to tackle a type of threat which by its nature targets the very foundations of Europe's democratic systems. The spread of fear, divided public opinion, the encouraging of stereotypes about specific groups, the undermining of the balance between public authorities, and defence and security institutions gaining at the expense of democratic and representative institutions – this is what terrorist action aims to achieve, and we must stand firm and act boldly to stop it. The Committee believes that it is possible to be both *secure* and *free* in Europe.
- 1.5 The Committee considers that it is dangerous for any democracy to legislate against anticipated crimes (criminalising offences or crimes which have not yet been committed). Article 3(2)(i) of the proposal must be removed to avoid confusion between justice and security. Similarly, Article 15 of the proposal for a directive does not guarantee public freedom or the presumption of innocence. The Committee is also concerned about the issue of proving intention and considers that all the cases listed in Articles 5 to 13 must be submitted to a judge so that the charges can be confirmed.
- 1.6 The Committee considers that tools to prevent radicalisation must be developed as part of a broader programme which factors in the social, economic, cultural, religious and political causes of the spread of this type of threat, and that they must be coordinated with action to combat and punish terrorism. However, radicalisation does not automatically mean predisposition or instigation to violence. Prevention policies and programmes must target individuals and groups most predisposed to use violence for the purpose of terrorism. The role of civil society is crucial in dealing with the conditions which foster radicalisation and the predisposition to use violence.
- 1.7 In addition to clarifying legislation and improving cooperation between the Member States in the abovementioned areas, steps must be taken to coordinate Europe's foreign policy in the Middle East and North Africa, a region which has recently undergone major changes, many of them violent and which, in some cases, have led to instability and conflict. In recent years, the terrorist threat has become so serious because of open conflict zones which act as a hub and provide inspiration and training for many European citizens. The existence of extended conflicts in this region, even frozen conflicts, will also encourage groups and individuals to organise terrorist action. The Committee considers that a clearer commitment to stabilisation, development and democratisation efforts in this region must be a priority. Priority must be given to combating poverty, corruption and political and social exclusion.

1.8 The Committee considers that drastically curbing access to firearms, ammunition and explosives must be a priority for the Member States and the European institutions. The recent attacks in Europe have shown that people involved in terrorist activities can acquire dangerous firearms on the black market where there is a wide range available. Links between terrorist groups and organised crime are a major threat to the security of people in Europe and elsewhere.

1.9 The Committee supports the clarifications to the legislation on the victims of terrorism. The victims of terrorism must be supported swiftly and efficiently, both immediately after the event and in the medium and long term. We also need to gain a deeper understanding of the social, economic and psychological effects of terrorist attacks on communities, individuals and industries. The Committee urges the European Commission to look into these aspects and to propose the necessary measures based on the resulting findings. The recent attacks can affect industries such as tourism and transport, and the European and national institutions have a responsibility to develop support programmes. The Committee points out that preventing and combating terrorism has a price tag, and the EU must consider providing financial support for Member State action in this area.

## 2. **The current situation: reconciling the need for greater security with fundamental rights**

2.1 As it pointed out in its opinions on the Hague programme, the Stockholm programme and the communication on *An open and secure Europe*, the Committee believes that policies on freedom, security and justice must be based on and begin by ensuring seamless and non-discriminatory protection for the fundamental rights guaranteed by the European Convention on Human Rights and the EU Charter of Fundamental Rights<sup>1</sup>.

2.2 With regard to combating terrorism, the Committee considers that in the current international situation, the current legal framework needs to be revised in order to criminalise acts associated with terrorist activities. The Committee notes that in the section on fundamental rights (chapter 3 of the explanatory memorandum), the proposal for a directive excludes any form of arbitrariness and, as in previous opinions on this subject, points out that fundamental rights and the need to maintain a stable, functional democratic environment despite this threat must be given priority<sup>2</sup>.

2.3 The Committee flags up the importance of maintaining the Schengen area, the embodiment of the principles enshrined in the Treaty. The Committee urges the Member States not to resort to ways to limit movement inside the EU.

2.4 The Committee is fully aware of the extremely challenging current geopolitical situation, and notes that the proposal for a directive does not contain definitions clear enough to guarantee

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<sup>1</sup> [OJ C 451, 16.12.2014, p. 96–103.](#)

<sup>2</sup> [OJ C 218, 23.7.2011, p. 91–96.](#)

the rights recognised by the Charter of Fundamental Rights and enshrined in the Treaty. The Committee points out that there is too great a margin for interpretation and that in the current circumstances, terms are interpreted not by judges but by prosecutor's offices and law enforcement. The Committee also points out that there might be a temptation, at national and European levels, to shift exceptional measures into common law, as could be suggested by a proposal for a directive in an area of shared competence.

- 2.5 The Committee welcomes implementation of the interoperability of digital information systems, insofar as they are designed to help curb terrorists. The Committee therefore believes that the Schengen Information System (SIS) is a key part of the EU's information mechanism and urges decision makers to do their utmost to ensure that all Member States participate in it.

### **3. General and specific comments**

#### **3.1 The EU action plan against illicit trafficking in and use of firearms and explosives**

##### **3.1.1 General comments**

- 3.1.1.1 The Committee endorses the proposals set out in the communication. Institutional cooperation between the Member States must be significantly improved, both as regards information exchange and linking up existing databases. Particular emphasis should be given to training programmes for national authority staff, which have not been a priority to date.
- 3.1.1.2 The Committee considers that interoperable databases and encouraging national agencies to collect data are key to correctly analysing the control of the use of firearms and explosives.
- 3.1.1.3 The Committee welcomes the focus on disrupting illicit firearms supply via the internet (open and darkweb) and on the risks stemming from technological innovation, such as 3D printing.
- 3.1.1.4 Although further efforts are needed as regards using and harmonising the use of detection tools, the Committee wishes to flag up the danger involved in creating a market for them. Businesses wanting to sell these tools might exaggerate the potential security risks and thus encourage people to be afraid. Similarly, the Committee would not endorse making detection tools general practice; they should be used selectively on the basis of need and risk.
- 3.1.1.5 The Committee would encourage the Commission to support close cooperation between Europol, INTERPOL, the main iTRACE actors and other relevant bodies, such as customs and firearms import-export licensing authorities, to optimise operational cooperation, traceability and the prevention of firearms being diverted onto the illicit market.
- 3.1.1.6 The Committee is pleased that the Commission intends to enhance operational activities and enlarge the scope of the EU-South East Europe Action Plan, and to strengthen cooperation

with Middle East and North African countries (MENA). Cooperation with third countries is very important in this area as well.

3.1.1.7 The Committee points out that there are institutional problems in most of these countries, particularly as regards police integrity. In addition to cooperation on firearms, the EU must promote and support institutional reform in these countries.

## 3.2 **The directive on combating terrorism**

### 3.2.1 **General comments**

3.2.1.1 The Committee considers that laws and institutional procedures must continuously adapt to security situations and risks. Recent events have shown that terrorism is becoming international, owing to communication infrastructure and the existence of conflicts in the Middle East and North Africa.

3.2.1.2 Financing, training, inciting and travel for the purposes of terrorism are all actions related to terrorist acts. The Committee urges the EU institutions and Member States to abide by the proportionality principle, and to reflect the seriousness and intention of these actions when criminalising and combating them.

3.2.1.3 The Committee also endorses the criminalisation of actions encouraging or coordinating terrorist acts; such actions are generally carried out by people who do not act directly but rather work through other people.

3.2.1.4 At the same time, the Committee is concerned at the capacity and varying degrees of willingness of the Member States to safeguard fundamental rights and ensure that the provisions of the Constitutions and international treaties are upheld in practice. The establishment of a state of emergency in France following the terrorist attacks at the end of last year enabled the state to introduce a number of measures questioned by civil society organisations from the point of view of fundamental rights<sup>3</sup>. The Committee urges national authorities to carry out their remit proportionately and efficiently and to avoid measures which will have unintended effects. Terrorism can only be prevented and combated by respecting the rule of law, fundamental rights and international treaties. The Committee considers that some form of continuous monitoring of Member State action on terrorism is needed, and therefore asks the European Commission to consider establishing procedures to identify and remedy any inappropriate measures. One option would be to use the mechanism for checking compliance with the rule of law (established by the European Commission) which identifies misconduct and stipulates procedures for correcting it.

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3 See report on *France: Abuses under State of Emergency. Halt Warrantless Search and House Arrest*, Human Rights Watch (HRW), 3 February 2016 and the report on *Devant l'urgence, que deviennent les principes de l'Etat de droit?* (Dominique Guibert), European Association for the Defense of Human Rights (AEDH).

3.2.1.5 With a view to efficient coordination of action to prevent and combat terrorism and deal with the effects of terrorism, and a uniform approach including compliance with fundamental rights, the Committee asks the Commission and the other European institutions to consider establishing a European anti-terrorism agency.

### 3.2.2 **Specific comments**

3.2.2.1 With regard to the definition of terrorist offences (Title II, Article 3), there is a danger that terrorism and related acts may be defined much too broadly.

3.2.2.2 For instance, Article 3(2)(d) states that "causing extensive destruction (...) to an infrastructure facility, including an information system" could be considered terrorism. It is unclear whether hacking could be considered a terrorist act. There have been cases where such action aims to disseminate documents of public interest, and even if obtaining and publicising such documents is a criminal act, it does not fall under the standard definition of terrorism.

3.2.2.3 Article 3(2)(i) states that "threatening to commit" a terrorist act is equivalent to committing one. This point is extremely problematic, particularly where the proportionality principle is not upheld. A threat cannot equate to commission, because it is a potential act and not an act which has been committed. The Committee proposes that Article 3(2)(i) of the proposal for a directive be removed.

3.2.2.4 With regard to "public provocation to commit a terrorist offence" (Title III, Article 5), the offence is not defined clearly. As freedom of the press and freedom of speech are guaranteed, it is unclear when informing the public of a terrorist attack ceases to be information and becomes provocation. Similarly, with the rise of social media platforms, where each user also generates content, it is extremely difficult to track and identify correctly what constitutes information as opposed to provocation.

3.2.2.5 With regard to criminalising travelling abroad for terrorism (Title III, Article 9), the definition of "for terrorism" is extremely unclear. The situation is quite clear when someone organises an attack or takes part in training, but it is far from clear when someone takes part in an uprising, armed rebellion or civil war as in Syria or Libya. Does participation in a quasi-conventional war constitute travelling abroad for terrorism<sup>4</sup>? There may be other cases of European combatants fighting alongside insurgent groups which are classified as terrorist groups by the national governments of the country in which they are fighting or by third governments.

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An interesting case in point would be European combatants fighting in Syria alongside Kurdish soldiers who are opposing Daesh, a group which is at the heart of religiously-inspired global terrorism. One Dutch national, a former soldier in the national army, is being investigated by the Netherlands authorities having been charged with murder after fighting in Syria alongside the Kurdish forces (YPG). Following the transposition of the directive into Netherlands legislation, it is unclear whether the legal framework for similar acts will be changed.

- 3.2.2.6 One related issue is that it is extremely difficult to determine whether a group is "terrorist" in nature. Analytical and institutional issues come into play. The EU has its own system for listing and delisting terrorist organisations, particularly those on the autonomous list operated separately from the UN list<sup>5</sup>. National practice and definition of a terrorist organisation may differ from European practice, and in this case coordination between Member States and EU institutions, particularly those which are competent in this regard (such as Europol) is necessary.
- 3.2.2.7 With regard to Articles 12 to 14, it is not clear why these offences should be criminalised separately from criminalisation under the penal codes applicable in the Member States. The terrorist intent of these offences may be identified as an aggravating factor which, under the proportionality principle, weighs heavily during sentencing.
- 3.2.2.8 With regard to relationship to terrorist offences (Article 15), it is problematic that, for an offence mentioned under Article 4 and Title III to be punishable, there is no need for a terrorist offence to have been actually committed. How can terrorist intent be established? – that is to say, whether a specific act is part of a chain leading to a committed act rather than isolated acts? This could be detrimental to fundamental rights.
- 3.2.2.9 The Committee questions the relevance of the proposal in Article 17 on penalties for natural persons, which calls on Member States to establish criminal penalties "which may entail extradition".
- 3.2.2.10 The proposal refers to a period of twelve months for the transposition of the directive. In order to speed up implementation, the Committee encourages the Member States to reduce this period as far as possible.

Brussels, 17 March 2016

The President  
of the  
European Economic and Social Committee

Georges Dassis

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<sup>5</sup> *EU Terrorist Listing: An Overview about Listing and Delisting Procedures*, Martin Wahlisch, Berghof Peace Support, 2010.