

Action Plan for strengthening the fight against terrorist financing

Summary

The Committee has examined the European Commission's Communication on an Action Plan for strengthening the fight against terrorist financing

In its Communication the Commission presents a broadly based action plan for further strengthening the European framework for combating terrorist financing. The plan has three main sections: preventing the movement of funds and identifying terrorist funding; targeting the sources of funding; and the foreign policy dimension.

The Committee welcomes the Commission's initiative in producing a broadly based action plan for further strengthening the European framework for combating terrorist financing. However, the Committee considers it very important for there to be a balance between, on the one hand, initiatives to combat terrorism and, on the other, respect for fundamental rights and freedoms and, not least, the protection of privacy. It is very important also to take account of data protection issues in the continued work that is to be done.

The Committee proposes that the Swedish Parliament take note of its opinion.

Document examined

The European Commission's Communication to the European Parliament and the Council on an Action Plan for strengthening the fight against terrorist financing (COM(2016) 50).

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The Committee's proposal for a decision by the Swedish Parliament

Action Plan for strengthening the fight against terrorist financing

The Swedish Parliament takes note of the opinion.

Stockholm, 12 May 2016

On behalf of the Committee on Justice

Beatrice Ask

The following members participated in taking the decision: Beatrice Ask (Moderate Party), Mats Pertoft (Green Party), Helene Petersson i Stockaryd (Swedish Social Democratic Party), Elin Lundgren (Swedish Social Democratic Party), Krister Hammarbergh (Moderate Party), Arhe Hamednaca (Swedish Social Democratic Party), Anti Avsan (Moderate Party), Susanne Eberstein (Swedish Social Democratic Party), Johan Hedin (Centre Party), Anders Hansson (Moderate Party), Petter Löberg (Swedish Social Democratic Party), Adam Marttinen (Sweden Democrats), Roger Haddad (Liberals), Linda Snecker (Left Party), Andreas Carlson (Christian Democrats), Lawen Redar (Swedish Social Democratic Party) and Runar Filper (Sweden Democrats).

Overview of the matter

Subject matter and preparatory work

Following consultation with the group leaders, the President determined that the European Commission's Communication to the European Parliament and the Council on an Action Plan for strengthening the fight against terrorist financing (COM(2016) 50) should be discussed by the Swedish Parliament (see Chapter 9, Section 20 § of the Parliament Act). On 9 March 2016 the Chamber referred the matter for scrutiny to the Committee on Justice.

The Government Offices of Sweden have supplied the Swedish Parliament with explanatory memorandum 2015/16:FPM53: Communication on an Action Plan for strengthening the fight against terrorist financing

Examination by the Committee

Communication from the Commission on an Action Plan for strengthening the fight against terrorist financing

The Committee's proposal in brief

The Swedish Parliament takes note of the opinion.

Context

On 2 February 2016 the European Commission submitted a Communication to the European Parliament and the Council on an Action Plan for strengthening the fight against terrorist financing (COM(2016) 50).

The Communication states that the recent attacks in the European Union and beyond underlined the need for the EU to work across all policy areas to prevent and fight terrorism. Terrorist organisations and individual terrorists need financing – to maintain their networks, to recruit and obtain supplies, and to commit terrorist acts themselves. Cutting off sources of finance, making it harder to escape detection when using these funds, and using any information from the financing process to best effect can therefore make a powerful contribution to the fight against terrorism.

The European Agenda on Security (COM(2015) 185) emphasises the need for more effective and comprehensive measures to combat terrorist financing. It emphasises the link to organised crime, which feeds terrorism by means of, for example, the supply of weapons, financing through drug smuggling, and the infiltration of financial markets.

Ongoing work, particularly within the United Nations (UN) and the Financial Action Task Force (FATF), provides a good basis for building further on, internationally. The UN Security Council has made itself a conduit for reaching a global consensus on action to prevent terrorist financing. In 2014 the Security Council introduced further measures for punishing terrorist financing, which led to the Council of Europe's adopting an additional protocol to the Convention on the prevention of terrorism, signed by the Commission in October 2015. The Security Council adopted a further resolution in December 2015, aimed more specifically at financing for IS, and the existing Al-Qaida sanctions were also extended.

Communication on an Action Plan for strengthening the fight against terrorist financing

The European Commission's Communication to the European Parliament and the Council on an Action Plan for strengthening the fight against terrorist financing (COM(2016) 50) contains a broadly based action plan for further strengthening the European framework for combating terrorist financing. In the Communication, the Commission states that measures should be taken to detect cases in which terrorist organisations and their backers transfer funds and other assets and to prevent this from happening, and also to disrupt the sources of revenue of terrorist organisations by reducing their capacity to raise funds.

To be effective, it is not enough for the measures to target terrorist organisations as such. Affiliates such as foreign terrorist fighters, financial backers and fundraisers, and anyone who knowingly supports terrorist activities need also to be targeted. Action both inside the EU and in conjunction with related organisations outside it is also required.

The Commission states that it will undertake impact assessments to prepare the legislative actions identified in the action plan. It will also take into account the balance between the need to increase security and the need to protect fundamental rights, including that of data protection, and economic freedoms.

The action plan has three main sections: preventing the movement of funds and identifying terrorist funding; targeting the sources of funding; and the foreign policy dimension. In the three sections, the Commission presents a number of proposals and measures it intends to implement or consider over the next two years.

Work to prevent the movement of funds and to identify terrorist funding

The Commission considers that there are a number of actions that can be taken immediately to intensify the fight against terrorist financing under the existing legal framework. Firstly, the Member States are encouraged to implement the already agreed Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (Fourth Anti-Money Laundering Directive) sooner than on the date stated in the Directive (26 June 2017) and preferably before the end of 2016. Secondly, the Commission will speed up the work, following on from the Fourth Anti-Money Laundering Directive, on identifying third countries with strategic deficiencies in their systems for combating money laundering and terrorist financing. According to the action plan, a list of high-risk jurisdictions is to be in place by the second quarter of 2016 at the latest. Thirdly, the Member States are urged, in line with Financial Action Task Force (FATF) recommendations and best practices, to improve the exchange of financial intelligence, firstly between Financial Intelligence Units (FIUs) inside and outside the EU and, secondly, between FIUs and the private sector.

The Commission also presents a number of proposals for new measures to combat the misuse of the financial system for terrorist funding. The Commission proposes that these measures be introduced by the second quarter of 2016 at the latest by means of amendments to the existing Fourth Anti-Money Laundering Directive.

According to this Directive, stronger measures are to be taken in relation to stakeholders from countries that are listed as having strategic deficiencies in their systems for combating money-laundering and terrorist financing (EU list of high-risk third countries). The Commission intends to introduce detailed provisions, based on FATF standards, defining the practical enhanced due diligence measures and countermeasures that should be applied.

Virtual currencies are at present not regulated at EU level. As a first step the Commission will propose that the scope of the Fourth Anti-Money Laundering Directive be extended to include virtual currency exchange platforms. The Commission will also examine whether to include virtual currency 'wallet providers' in the Directive.

Issuers of prepaid instruments such as prepaid cards are already covered by the Anti-Money Laundering Directive, but the Commission is now considering amendments linked to when enhanced due diligence measures are to be adopted. In designing such measures, the Commission is taking account of the need for proportionality, especially where economically vulnerable people's need for the prepaid cards is concerned.

The Commission will propose that centralised bank and payment account registers or central data retrieval systems be introduced through amendment of the Anti-Money Laundering Directive. The aim is to make it easier for FIUs and other competent authorities to access information on bank and payment accounts. Closely linked to this proposal is the Commission's intention to explore the possibility of a self-standing legislative instrument to allow for a broader consultation of bank and payment account registers for other investigations and by other authorities, beyond the scope of the Anti-Money Laundering Directive. The Commission is expected to present such a proposal by the second quarter of 2016 at the latest.

It also wishes to bring about better cooperation in financial investigations. As a first step towards facilitating cooperation between FIUs, the rules on accessing information are being aligned with the latest international standards. This measure will be implemented through amendment of the Anti-Money Laundering Directive.

Through the changes to the Fourth Anti-Money Laundering Directive, the Commission will, at the latest by the second quarter of 2016, improve the efficiency of the EU's transposition of UN asset-freezing measures, partly through the enhanced flow of information between the EU and the UN, and reinforce the capacity of Member States, the Commission, the European External Action Service and economic operators to share information on problems with implementing restrictive measures, partly through exchanging information (via the Financial Sanctions Database) on new UN listings.

The Commission will also announce a number of other initiatives to complement the existing legal framework.

The Commission intends, by the fourth quarter of 2016 at the latest, to propose a Directive on the criminalisation of money laundering and on sanctions to be applied in this connection. The Commission also intends to adopt measures to combat illegal cash movements, given that payments in cash are often used to finance terrorist activities. The existing legislation (Regulation (EC) No 1889/2005) places controls on persons carrying cash equal to or in excess of EUR 10 000 when they enter or leave the EU. In the Commission's judgement, the scope of this Regulation needs to be

extended to include cash shipped by post or as freight, and the authorities need to be able to act in respect of lower amounts of cash where there are suspicions of illicit activity. The upper limits for cash payments could also be reconsidered.

It is anticipated that a final assessment will be made, by the fourth quarter of 2016 at the latest, of the need for a new EU system for freezing terrorists' assets and reinforcing the existing rules on the mutual recognition of freezing and confiscation orders. At the same time, the Commission also intends to submit a final assessment of whether a new EU-based system for tracking international transactions (Terrorist Finance Tracking System, TFTS) should be introduced. The EU and the United States already have a programme for tracking terrorist financing – the EU-US Terrorist Finance Tracking Programme (TFTP). The purpose of an EU-based system would be to complement the TFTP by closing loopholes and catching transactions that otherwise could not perhaps be tracked.

Measures to counter the sources of funding

The second section deals with the sources of terrorist financing. The financing can come both from legitimate sources such as non-profit organisations and collections and from criminal activity. The threat from IS has highlighted new problems and challenges inasmuch as that organisation's primary sources of revenue are illicit proceeds from its occupation of territory, bank looting, extortion, control of oil fields and refineries, robbery, kidnapping for ransom, cash smuggling and 'grass-roots funding'.

According to the Commission, one obvious shortcoming in the existing EU instruments is that they do not give the customs authorities the ability to intervene effectively against terrorism financing from trade in goods. By the second quarter of 2017 at the latest, the Commission will therefore propose legislation on increased powers for customs authorities.

Another source of revenue for IS has been that of looting and selling archaeological remains and cultural artefacts. The two current Regulations containing trade restrictions on cultural artefacts illicitly removed from Iraq and Syria are of limited effectiveness. By the second quarter of 2017 at the latest, the Commission will therefore consider a wider response to combating terrorism that is financed via illicit trafficking in cultural artefacts.

Illegal wildlife trafficking is recognised as being a further source of funding of terrorist and related activities. On 26 February 2016, the Commission presented a communication on an EU Action Plan against Wildlife Trafficking (KOM(2016) 87).

Foreign policy dimension

The third section of the action plan presents the measures to be taken at an international level by the Commission and the High Representative.

The Commission believes that it is important for the EU not only to continue with its work in connection with the UN Global Counter Terrorism Strategy and within both the Global Counter-Terrorism Forum (GCTF) and the Financial Action Task Force (FATF), but also to support partner countries – in particular, neighbouring countries – that are facing threats from the same groups that have attacked the EU. Broader ongoing efforts are being made to help governments of

third countries comply with United Nations Security Council resolutions and FATF recommendations in order to enhance their capacity to combat terrorist financing.

The Commission and the High Representative will deepen the current cooperation with third countries in drawing up and maintaining lists of terrorist organisations, where lists drawn up by third countries' authorities serve as a basis for listing terrorist organisations at EU level. The work is also to include dialogues with third countries on alignment with the existing restrictive measures to combat terrorism.

There is probably also a need for the EU to help third countries combat the illicit trade in cultural artefacts and the use of revenue from such trade for terrorist financing. By the fourth quarter of 2016 at the latest, a project will be launched to provide technical assistance to Middle East and North African countries combating trafficking in cultural artefacts

The Swedish Government's preliminary position

The Swedish Government has issued an explanatory memorandum on the Commission communication (2015/16:FPM53), in which it states that it welcomes the direct measures identified by the Commission. The Government intends to do its utmost in order as quickly as possible to implement the already agreed Fourth Anti-Money Laundering Directive.

It broadly supports the proposals for new measures put forward by the Commission and to be implemented partly through amendments to the aforementioned Directive – proposals that include application of the EU list of high-risk third countries, extension of the scope of the Directive to include virtual currency exchange platforms and prepaid instruments, and measures for improving and facilitating FIUs' access to information.

As for the proposal for centralised bank and payment account registers and central data retrieval systems, the Government is cautiously well disposed to having the proposal analysed and taken further. However, the proposal raises questions about data protection and privacy that need to be analysed and to which closer consideration needs to be given. The privacy aspect may also become an issue in other areas, for example in connection with the enhanced exchange of information between FIUs.

With regard to the other initiatives that the Commission intends to present, the Government states that it intends to consult the Swedish Parliament again once the proposals have been made more precise.

The Committee's position

Terrorism is a national and global threat to everyone's security and to democratic societies. The work on preventing and combating terrorism must therefore be done at all levels and have democratic and legally sound bases. The Committee therefore welcomes the Commission's initiative in producing a broadly based action plan in order further to reinforce the European framework for combating terrorist financing. As the Committee has already pointed out, it is also important to protect our open and free society and the values we wish to defend (Opinion 2014/15:JuU5y, report

2014/15:JuU19). It is very important for there to be a balance between, on the one hand, initiatives to combat terrorism and, on the other, respect for fundamental rights and freedoms and, not least, the protection of privacy. It is very important also to take account of data protection issues.

Like the Government, the Committee takes a positive view of the immediate actions that have been proposed by the Commission and that can be taken under the existing legal framework. The Committee welcomes the fact that the Government intends to do its utmost in order as quickly as possible to implement the already agreed Fourth Anti-Money Laundering Directive.

The Committee is mainly positive about the Commission's proposals for new measures to combat abuse of the financial system. The Committee welcomes, for example, the proposal that the scope of the Fourth Anti-Money Laundering Directive be extended to include virtual currency exchange platforms. Such platforms are not at present regulated at EU level and, because of the anonymity they offer, they can be used for money-laundering, etc. When it comes to the proposal to introduce centralised bank and payment account registers and central data retrieval systems, the Committee – in common with the Swedish Government – considers, however, that the proposal needs to be analysed and given closer consideration in view, for example, of the questions it raises about data protection and privacy.

The Committee wishes to emphasise that it must not be possible for systems for moving funds to be used for financing serious crime. For that reason, the systems ought to be transparent. At the same time, it is important that legitimate transfers not be made more difficult than is necessary. It is important that efforts be made to come up with efficient search functions that can accurately pinpoint transactions associated with money-laundering or serious crime. It ought to be possible to carry out general searches because, resources being what they are, there will be limited opportunities to carry out individual searches. It should be possible to carry out searches on an international basis because terrorism is financed across borders.

The Committee has already (in Opinion 2011/12:JuU6) expressed its position on whether a new EU-based system for tracking international transactions (Terrorist Finance Tracking System, TFTS) should be introduced. The Committee stated, for example, that it is very important to strive for a good balance between, on the one hand, the need for such a system in order to combat terrorism effectively and, on the other, respect for fundamental rights, especially the right to privacy. The Committee maintains that view.

The Committee welcomes the foreign-policy measures presented in the Communication and thinks that the EU should play an active role in the international fight against terrorist financing.

In conclusion, the Committee wishes to draw attention to the issue of companies in certain cases being used as platforms for criminality and money-laundering. In April 2014 the Commission submitted a proposal for a Directive of the European Parliament and of the Council on single-member private limited liability companies (*Societas Unius Personae*, or SUP company) (COM(2014) 212). The aim of the proposal is to make it easier to form single-member private limited liability companies. The Committee considers that, in the continuing work on this issue, account should be taken of the risk of this form of company being used for money-laundering and the financing of terrorism.

The Committee thinks it important that, in the fight against terrorist financing, efforts also be made to limit the opportunities to conceal assets in, for example, tax havens.

The Committee proposes that the Swedish Parliament take note of its opinion. The Committee will keep track of the continuing work on the measures proposed in the Communication.

ANNEX

List of documents examined

The European Commission's Communication to the European Parliament and the Council on an Action Plan for strengthening the fight against terrorist financing (COM(2016) 50).