

EU SECURITY STRATEGY REVIEW: EFC Legal Committee CONTRIBUTION

We welcome the opportunity to raise some key issues and concerns during this consultation and trust that our views will influence the renewal of the EU Internal Security Strategy for 2015-2020.

We would like to comment as follows:

1. Which specific challenges need to be tackled by EU action in the coming five years regarding international crime, radicalisation and terrorism, cybercrime and cyber-attacks, natural and man-made disasters? What role should the border security have in addressing those challenges?

- We consider it of utmost importance that a thorough assessment is undertaken of the impact of future EU security actions on citizens/human rights including data protection rights and to ensure that these rights are guaranteed. The adoption of the Stockholm programme (2009-2014) coincided with the entry into force of the Lisbon Treaty. The Lisbon Treaty reinforced the importance of human rights in the EU by making the EU Charter of Fundamental Rights legally binding. The EU when shaping future policies in the area of justice and home affairs must ensure that respect for human rights is the core value of all its policies and action. This requires the commitment of all EU institutions and member states to protect and promote human rights, in line with articles 2 and 3 of the Treaty of the European Union (TEU).
- We also consider it important that policy makers better cooperate with the NPO sector when reviewing/developing new legislation and operational methods.
- Since the fight against money laundering, tax evasion, terrorism (in particular terrorism financing) will have to continue to be tackled at EU and national levels – an evaluation of existing mechanisms is needed, see below.

2. Taking into account the developments in the next five years, which are the actions to be launched at the EU level?

The fight against terrorist financing (revised strategy as endorsed in 2008) is a key part of the EU Counter-Terrorism strategy of 2005 and EU Action Plan on combating terrorism of 2006. Before any further action is suggested or new strategy developed, a clear assessment of the implementation of the 2008 strategy has to happen.

From the EFC perspective we would like to contribute to this review as follows:

- An evidence based approach is needed with regard to measures to fight against terrorism financing – there is no evidence of structural abuse of the NPO sector for financing terrorism; where NPOs may be abused for terrorist financing, fraud, or money laundering, these are rare exceptions and such incidents are clearly criminal activity (as all types of financial crimes) and tightened NPO rules are not the appropriate and effective tools to catch these types of criminal activity. Existing abuse cases were indeed identified by Europol and national criminal investigation authorities or even secret services. Terrorism financing appears to be using similar methods as other types of financial crimes hence **focus should continue to address the problem of financing of terrorism through legislation that deals with financial crimes** (Anti Money Laundering/criminal asset recovery and confiscation mechanisms/tax fraud etc)
- Measures to mitigate possible risks should be in any case appropriate and proportionate to the risk they seek to address without harming the legitimate activities of NPOs.

- Good regulatory and self-regulatory practices should be taken into account when reviewing existing and new measures at EU level.
 - Suggested measures and their implementation/collaborations with 3rd countries have to respect international human rights obligations
 - Access to financial resources and service such as opening bank account for the NPO sector must be secured – the 4th **AML/CTF Directive** (COM 2013 – 45 final proposal includes customer due diligence (CDD) mechanisms). These CDD mechanisms must be accompanied by protection mechanisms to ensure that customers/NPOs would not simply be refused accounts/transactions based on unsubstantial information.
 - The concept of beneficial ownership as outlined in the AML Directive does not fit public benefit foundations, which have no owners or a clearly identifiable beneficiary circle since they by definition benefit the general public.
 - **COM (2013)44 final** (revised regulation on information accompanying transfer of funds, providing for better traceability of funds) appears to enhance access to relevant information to law enforcement/criminal investigation authorities.
 - **Cash control regulations** (in particular data exchange systems such as Customer Files Identification Database, FIDE; Customer Risk Management system, CRMS; Risk Information system, RIF) must be accompanied by customer information and protection mechanisms
 - **Asset recovery** offices collaboration could be enhanced with a view to better trace criminal assets while ensuring that fundamental rights of all citizens and entities are respected. Further analysis has to happen with regard to the New Directive on confiscation of criminal assets, Directive 2014/42/EU.
 - **Payment services and electronic money Directives** – no specific comments
- 3. Which specific research, technology and innovation initiatives are needed to strengthen the EU's capabilities to address security challenges?**

We are of the opinion that criminals use new technology and electronic transfer of money and that the security agenda has to be able to respond appropriately to technology.

4. What is needed to safeguard rights of European citizens when developing future EU security actions?

Any measures/initiatives including collaborations with 3rd countries must respect international human rights obligations including EU data protection rights.

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