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DRAFT REPORT

on strengthening chemical, biological, radiological and nuclear security in the European Union – an EU CBRN Action Plan
(2010/2114(INI))

Committee on Civil Liberties, Justice and Home Affairs

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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on strengthening chemical, biological, radiological and nuclear security in the European Union – an EU CBRN Action Plan (2010/2114(INI))

The European Parliament,

– having regard to Article 3 TEU and Articles 67, 74, 196 and 222 TFEU,

– having regard to the Programme of the Council and the Commission of 20 December 2002 to improve cooperation in the European Union for preventing and limiting the consequences of chemical, biological, radiological or nuclear terrorist threats (2002 CBRN Programme)[1],

– having regard to Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism[2], as amended by Council Framework Decision 2008/919/JHA[3],

– having regard to the 2003 EU Strategy against Proliferation of Weapons of Mass Destruction and their Means of Delivery,

– having regard to the 2003 European Security Strategy - A Secure Europe in a Better World, as adopted by the European Council held in Brussels on 12 December 2003,

– having regard to the 2004 EU Solidarity Programme on the consequences of terrorist threats and attacks[4],

– having regard to the 2005 EU Counter-Terrorism Strategy, as adopted by the Brussels European Council on 1 December 2005[5], and the implementing Action Plan[6],

– having regard to Council Decision 2007/162/EC, Euratom of 5 March 2007 establishing a Civil Protection Financial Instrument[7],

– having regard to Council Decision 2007/779/EC, Euratom of 8 November 2007 establishing a Community Civil Protection Mechanism (recast)[8],

– having regard to Council Framework Decision 2008/919/JHA of 28 November 2008 amending Framework Decision 2002/475/JHA on combating terrorism[9],

– having regard to the Council conclusions of 30 November 2009 on strengthening chemical, biological, radiological and nuclear (CBRN) security in the European Union

[1] 14627/02.
[2] OJ L 164, 22.6.2002, p. 3.
[3] OJ L 330, 9.12.2008, p. 21.
[4] 15480/04.
[5] 14469/4/05.
[6] 5771/1/06.
[7] OJ L 71, 10.3.2007, p. 9.
[8] OJ L 314, 1.12.2007, p. 9.
[9] OJ L 330, 9.12.2008, p. 21.

and approving an EU CBRN Action Plan,

– having regard to the Communication from the Commission to the European Parliament and the Council on Strengthening Chemical, Biological, Radiological and Nuclear Security in the European Union - an EU CBRN Action Plan (COM(2009)0273),

– having regard to the Stockholm Programme – An open and secure Europe serving and protecting citizens[1],

– having regard to the Communication on the EU Counter-Terrorism Policy: Main achievements and future challenges (COM(2010)0386),

– having regard to the Communication from the Commission on Delivering an area of freedom, security and justice for Europe's citizens - Action Plan Implementing the Stockholm Programme (COM(2010)0171),

– having regard to its resolution of 10 February 2010 on the recent earthquake in Haiti[2], which calls for the establishment of an EU Civil Protection Force,

– having regard to Rule 48 of its Rules of Procedure,

– having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the opinions of the Committee on Environment, Public Health and Food Safety, the Committee on Industry, Research and Energy and the Committee on Foreign Affairs (A7-0000/2010),

A. whereas CBRN disasters, whether accidental or resulting from a terrorist attack, pose serious threats to the security of the people living in the EU, affecting their lives and assets and even the functioning of society in one or several EU Member States, by disrupting critical infrastructures and governance capabilities,

B. whereas the greatest CBRN risks stem from proliferation, and whereas, therefore, the most important measures concern the strengthening of the non-proliferation regime and disarmament through the universal and full implementation of all relevant treaties and international agreements (namely the Nuclear Non-proliferation Treaty, the Chemical Weapons Convention and the Biological Weapons Convention) and achieving agreement on a treaty on banning the production of fissile material for weapons purposes (Fissile Material Cut-off Treaty),

C. whereas the manufacture, possession, acquisition, transport, supply or use of weapons and explosives or of nuclear, biological or chemical weapons, as well as research into, and development of, biological and chemical weapons and instruction in the making or use of explosives, firearms or other weapons is part of the EU definition of terrorism and training for terrorism as referred to in Council Framework Decisions 2002/475/JHA and 2008/919/JHA,

D. whereas measures regarding CBRN material are one of the cornerstones of the EU

[1] OJ C 115, 4.5.2010, p. 1.
[2] P7_TA-PROV(2010)0015.

Counter-Terrorism Strategy, and whereas, consequently, an EU CBRN Action Plan was approved by the Council on 30 November 2009,

E. whereas following the entry into force of the Lisbon Treaty a new balance of responsibilities between the various EU institutions, on one hand, and the EU and its Member States, on the other, is being established; whereas the building of such a new framework is a continuous process demanding an understanding of shared values and a common goal,

F. whereas an EU CBRN Action Plan should make for the efficient interaction of national and EU initiatives in addressing CBRN risks and in preparing the necessary responses, enhancing both 'horizontal' coordination between the Commission and Member States and 'vertical' coordination between the EU-level instruments and Member States' instruments, in order to increase the effectiveness and speed of information sharing, analytical reporting at all stages, joint planning, the development of operational procedures, operational exercises and the cost-effective pooling of existing resources,

G. whereas several EU criminal law-enforcement agencies are involved in CBRN measures, for example Europol, through the establishment of a European Bomb Database and the Early Warning System for explosives and CBRN material; whereas this calls for the establishment of proper procedures for the exercise of scrutiny by the European Parliament and national parliaments, as envisaged, for example, by Article 88 TFEU,

H. whereas the EU can point to a long-term involvement in CBRN programmes, starting with the conclusions of the Ghent European Council of 19 October 2001 and of the Laeken European Council of 13-14 December 2001; whereas a CBRN Programme was adopted in 2002, and then replaced by the EU Solidarity Programme in 2004, and whereas a new EU CBRN Action Plan was adopted by the Council on 12 November 2009,

I. whereas the EU CBRN Action Plan is divided into three main parts: Prevention, Detection, and Preparedness and Response, and includes a fourth chapter on 'Actions applicable to CBRN prevention, detection and response'; and whereas recognising the importance of each of the stages is crucial to ensure proper implementation of risk-assessment studies, responses and countermeasures, while adopting a cross-cutting and cross-border approach to dealing with CBRN materials, i.e. through the proper allocation of measurable goals and actions at each stage,

J. whereas the changes made by the Council to the EU CBRN Action Plan proposed by the Commission make the Action Plan weaker, making the commitment on the part of Member States non-binding and watering down the measures provided for, many of which are kept at national level instead of being given an EU-wide scope, as well as weakening the monitoring and scrutiny of their implementation by the Commission, sometimes even failing to include the Commission as an 'involved actor' along with the Member States,

General guidelines

1. Notes that the EU CBRN Action Plan straddles the new division of competences between the Member States and the EU following the entry into force of the Lisbon Treaty, as envisaged in Article 5 TEU in connection with the principles of conferral, subsidiarity and

proportionality; points out that the EU CBRN Action Plan covers the area of shared internal competences (Article 4 TFEU) regarding the area of freedom, security and justice, common safety concerns, and transport; civil protection measures (Article 196 TFEU); as well as external actions of the Union (Articles 21 and 22 TEU);

2. Acknowledges that it is crucial to avoid duplication, fragmentation and inconsistency in the Member States' efforts in a security area where the implications of carelessness and laxity know no borders;

3. Stresses that the EU should strengthen its common approach to CBRN prevention, detection and response through the creation of specific mechanisms (regulatory, legislative or non-legislative instruments) which make cooperation and the provision of means of assistance compulsory in the event of a CBRN disaster caused by an accident or terrorist attack; recalls that the main objective of the EU institutions should be to ensure the efficiency of a national or transnational response to a CBRN accident or terrorist attack, on the basis of EU solidarity, in a coordinated manner and with a pan-European outreach;

4. Stresses that it is essential to strengthen the scope for normative and regulatory intervention by the Commission, which in the present version of the EU CBRN Action Plan is afforded a somewhat vague role in connection with many of the goals and actions provided for; consequently, urges that the Commission should be called on to establish EU rules in all areas covered by the Action Plan; and stresses that only if a robust regulatory role is entrusted to the Commission can gaps in the efforts developed by each Member State be filled;

5. Urges that the commitment of the Member States to CBRN control must go further than the simple sharing of best practices and information, and that technologies and infrastructures should also be pooled/shared, so as to avoid duplication and waste of resources, in order to create valuable and cost-effective synergies at EU level; calls on the Member States to agree on methods for the detection and prevention of CBRN disasters, the transferral of CBRN materials within the EU and response measures, including cross-border assistance;

6. Calls for EU quality and security standards, as well as an EU system and network of laboratories for the certification of CBRN security equipment and technologies, to be developed; stresses that the necessary research and development funding should be provided to ensure that applied research and major demonstration programmes with an EU dimension are carried out, and that an EU industrial policy in the field of civil security is needed, stimulating cooperation between enterprises in the EU and with specific support for small and medium-sized enterprises/small and medium-sized industries (SMEs/SMIs);

7. Recalls that an EU CBRN Action Plan offers an opportunity to enable the EU and its Member States to implement effectively the Solidarity Clause included in Article 222 TFEU, and that Member States must be aware of each others' plans to deal with and counter CBRN disasters, whether caused accidentally or intentionally, so that they can come to each others' assistance in a coordinated and effective manner;

8. Calls for the urgent establishment of a European crisis-response mechanism which should

coordinate civilian and military means so as to ensure that the EU has a rapid-response capability to deal with a CBRN disaster; and reiterates its call for the establishment of a EU Civil Protection Force based on the existing EU Civil Protection Mechanism, which will enable the Union to bring together the resources necessary for providing emergency assistance, including humanitarian aid, within 24 hours of a CBRN disaster inside or outside EU territory;

9. Notes that the existing EU Civil Protection Mechanism, as defined in Council Decision 2007/779/EC, is currently the appropriate instrument to deal with CBRN disasters, and stresses that this structure should be the forum where emergency decisions concerning CBRN disaster preparedness and response should be taken; notes, however, that in order to achieve this goal and to ensure proper prevention and detection cooperation must be established with civil protection bodies, with the intelligence and law-enforcement authorities, as well as with security-service and military information and response centres in each of the Member States and at EU level, such as the Civilian Planning and Conduct Capability (CPCC) of the Political and Security Committee (PSC) and the Joint Situation Centre (SitCen);

10. Stresses that the strengthening of the EU's civil protection capacity must include the exploration of dual-use technologies, infrastructures and capabilities, as well as strategic cooperation with the European Defence Agency (EDA), the European Space Agency (ESA), the International Atomic Energy Agency (IAEA), the Organisation for the Prohibition of Chemical Weapons (OPCW) and other international CBRN centres or programmes of excellence;

11. Stresses that suitable bridges and partnerships should also be built between bodies such as Europol, Interpol and law-enforcement authorities in the Member States with a view to creating an appropriate and effective network for proactive anticipation/real-time monitoring of emergencies and operational engagement/coordination to deal with CBRN-related disasters;

12. Recalls that preventing terrorist access to CBRN materials is a key priority under both the current 2005 EU Counter-Terrorism Strategy and the future one, as well as under the 2003 EU Strategy against Proliferation of Weapons of Mass Destruction and their Means of Delivery; requests, therefore, that the EU Counter-Terrorism Coordinator report regularly to Parliament on any potential CBRN risks or threats within the Union or against EU citizens and interests elsewhere; insists that further clarification is needed on the appropriate roles of the various EU and national bodies involved in the fight against terrorism; acknowledges in that connection the coordination and information-gathering role of the Standing Committee on Operational Cooperation on Internal Security (COSI) and the SitCen; is nevertheless concerned at the lack of democratic oversight of both bodies; calls for Parliament, as the only directly democratically elected body in the EU, to be kept promptly and fully informed about the actions of both of these bodies;

13. Calls for the mainstreaming of the measures provided for in the CBRN Action Plan in all the EU's external relations instruments for economic cooperation and political dialogue with third countries (including in the EU's non-proliferation clauses); urges the Commission and Council, in their political and economic dialogue with third countries, to

use all available means (including Common Foreign and Security Policy and external relations instruments) to promote standards for the detection and prevention of and response to CBRN incidents in third countries, as outlined in the Action Plan;

14. Urges the EU institutions and Member States to resist pressure from industry and other interested stakeholders seeking to escape the burden of more regulation, as is to be expected (and as emerges clearly from a comparison between the Commission and the Council versions of the EU CBRN Action Plan); considers that industry concerns about the quality and impact of the proposed regulatory measures should be taken into consideration, without losing sight of what is at stake, namely the safety of EU citizens and societies; stresses the priority of ensuring supervision and protection of CBRN materials throughout the EU and the efficiency of the EU response to a disaster, be it accidental or intentional;

15. Calls on the Member States to participate fully in the implementation phases of the EU CBRN Action Plan, cooperating in this respect with the EU bodies that are translating the goals and actions of the Action Plan into concrete steps, so that CBRN security is guaranteed in each of EU Member States;

I. Prevention

16. Calls on the Commission to act as the main facilitator and monitor in connection with the establishment and regular updating of EU lists on CBRN agents, whereby the Commission should be the one to decide on a reasonable timeframe; insists that the lists should also include possible preventive and response measures for each CBRN agent, in accordance with its level of dangerousness and potential for malicious use and vulnerability;

17. Takes the view that the EU CBRN Action Plan must set higher standards where security assessment criteria for high-risk CBRN facilities are concerned, since the development of 'criteria', as stated in the current Action Plan amended and adopted by the Council, is in itself simply not enough and sets an astonishingly low standard, coupled with the low levels of responsibility allocated to the organisations dealing with CBRN materials, relevant Member States authorities and EU bodies;

18. Stresses that security arrangements and requirements at high-risk CBRN facilities throughout the EU must be the subject of EU regulations, rather than merely 'good-practice documents', through a consistent consultation process bringing together EU bodies, Member State authorities and organisations dealing with high-risk CBRN agents; urges that until such regulations are adopted and in place, a greater monitoring and inspection role should be entrusted to the Commission;

19. Believes that the Commission and Member State authorities should oversee the activities carried out by the organisations dealing with high-risk CBRN materials and should ensure that these organisations comply with the highest attainable security and public safety standards, which implies that proper inspections of high-risk sites must be carried out regularly;

20. Considers it crucial that the 'Prevention' part of the EU CBRN Action Plan should be amended in such a way as to force the chemicals industry to replace the use of high-risk

chemicals with suitable lower-risk alternatives, where such replacement is possible, regardless of the economic costs; suggests that a specific link should be established with the existing REACH Regulation[1] , something which the version of the Action Plan proposed by the Commission rightly sought to do;

21. Calls on the Commission to present an overall assessment of the state of play in industries in Europe when it comes to securing and increasing control over high-risk CBRN materials, including an overview of all relevant national laws regarding implementation of the Chemical Weapons Convention (CWC), of the Biological Weapons Convention (BWC) and other international instruments related to CBRN materials; that overview should include reporting on the degree to which Member States and industries fulfil their international obligations;

22. Considers that the EU CBRN Action Plan should unambiguously call for the development of EU guidelines on security training and standard requirements to be implemented in all 27 Member States, and should ensure that specific training programmes are provided for those security staff dealing with high-risk CBRN materials, including staff in industries and research centres where high-risk CBRN are present, and that requirements are laid down for CBRN officers (role, competence and training);

23. Stresses that a future short-term revision of the EU CBRN Action Plan should not simply promote self-regulation among the industries concerned, and not merely advise the industries to adopt codes of conduct, but actually call on the Commission to develop pan-European guidelines and regulations applicable to all sectors dealing with high-risk CBRN agents;

24. Considers that it is of the utmost importance to keep a close track of all transactions involving high-risk CBRN materials in the EU, and that instead of merely 'urging' the industry to report on transactions, as stated in the adopted Action Plan, the Commission and the Member States should work on a proper legal framework to regulate and monitor transactions, thus ensuring proper and rapid reporting of all suspicious transactions as well as the loss or theft of CBRN materials; emphasises that these regulations should establish a proper basis for full transparency in all sectors dealing with CBRN agents, thus holding industries accountable for such transactions;

25. Calls for clarification regarding the strengthening of the import/export regime with regard to the roles of the Member States and the Commission; calls on the Member States to implement and ensure the application of the existing international regulations, and on the Commission to play a monitoring role, assessing and reporting on compliance;

II. Detection

26. Calls on the Commission to launch a study, in cooperation with the Member State authorities, to assess the situation on the ground when it comes to the detection of CBRN; encourages the Commission to build on the results of such an assessment and work on

[1] Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) (OJ L 396, 30.12.2006, p. 1).

common EU guidelines on how to handle such accidents or intentional attacks, including finding the means to ensure that Member States allocate adequate human and material resources to such an effort;

27. Calls for the establishment of a closely-monitored mechanism that would allow for proper exchanges of information and good practices between Member States, leading to pan-European standards in the detection of CBRN activities;

28. Requests the Commission to monitor, assess and report on Member States' compliance, and requests national authorities to ensure that regulations and guidelines are being followed and complied with by the relevant industries and organisations dealing with high-risk CBRN materials;

29. Considers it essential to carry out proper studies with a view to involving all relevant national and EU bodies and stakeholders, including an assessment of ways to make exchanges and cooperation faster and easier, thus making the response to a public safety threat more effective;

III. Preparedness and Response

30. Calls on the Council to entrust the Commission with the role of an 'involved actor' with regard to emergency planning, so that it can act as a monitor, thus ensuring that local and national emergency plans do exist; stresses that the Commission should take the role of a depository of such plans, putting it in the best position to identify potential gaps and to act accordingly more promptly than the relevant authorities;

31. Welcomes the planning of EU exercises to simulate CBRN incidents or attacks and stresses that an EU CBRN Action Plan should make provision for the results and assessments of such exercises to feed into what should be an ongoing debate on the development of pan-European standards;

32. Draws attention to the fact that the Commission, or a specialised mechanism at the EU level under its responsibility, should be leading in the setting of standards based on the needs on counter-measure capacities; stresses that this is the only way to achieve the highest possible standard of security throughout the whole of the EU, as it would be the only possible way to ensure that all Member States are following the same guidelines and applying the same principles when storing capacities and preparing the appropriate human and material resources to respond to a disaster, accidental or intentional;

33. Stresses the need to create regional/EU-wide stockpiles of response resources, whether medical or other types of relevant equipment, under the coordination of the European Civil Protection Mechanism; urges that until such time as this EU/regional pooling of resources comes into effect, the EU CBRN Action Plan should point to a possible way in which Member States would share counter-measures and resources in the event of a CBRN accident or terrorist attack, so as to put the new Solidarity Clause into practice;

34. In order to prepare for the unfortunate event of an accident, outbreak or deliberate use of CBRN, calls on the Commission to establish reporting mechanisms to provide a link between the work of the European Civil Protection Mechanism and other EU early-

warning systems in the relevant areas of health, food production and animal welfare; calls also on the Commission to establish mechanisms for exchanges of information and analyses with international bodies such as the World Health Organisation and the Food and Agriculture Organisation;

35. Calls for the creation of EU/regional specialised response teams, including medical personnel, law-enforcement agents and military personnel, and notes that, if such teams are created, special training and operational exercises should be scheduled regularly;

36. Calls on the Member States and the Commission rapidly to review and apply the EU CBRN Action Plan in accordance with its recommendations, and expects them to implement it swiftly;

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37. Instructs its President to forward this resolution to the Council, the Commission and the national parliaments.

EXPLANATORY STATEMENT

Chemical, Biological, Radiological and Nuclear (CBRN) risks present a new dimension of possible terrorist attacks, accidents, natural disasters and/or pandemics due to their transnational character and mass scale victimization. An appropriate response against such a danger does not include only ex post facto intervention programmes but starts much earlier when dealing with such materials, their proper storage, limited access, controls, etc. At the same time, an aftermath intervention demands large scale cooperation between different national authorities inside a Member State (civil protection, military, law enforcement, etc.) as well as between national authorities of different Member States and EU instances. Therefore, an all-hazard coordinated approach is needed.

In the past the EU initiated and developed several mechanisms dealing with trans-border CBRN issues. The long term EU involvement in CBRN programmes started with the declaration of the Ghent European Council of 19 October 2001, focusing on combating terrorism 'in every form throughout the world'[1] as a direct response to the 11 September 2001 attacks in New York, followed by the conclusions of the Laeken European Council of 13-14 December 2001[2]. Subsequently, the 'Programme to improve cooperation in the EU for preventing and limiting the consequences of chemical, biological, radiological or nuclear terrorist threats'[3] was adopted in 2002, replaced by the EU Solidarity Programme in 2004[4]. In 2008 a CBRN Task force has been established by the Commission to prepare the main elements of the new plan.

The new EU CBRN Action Plan was presented by the Commission in June 2009[5] and adopted by the Council in November 2009[6]. The EU CBRN Action Plan will be under implementation for the three subsequent years (2010 – 2012) and is divided into three main parts: Prevention, Detection, Preparedness and Response. Recognising the importance of each of these four stages in dealing with CBRN materials is crucial to ensure proper implementation of risk assessment studies, response and counter measures, altogether. Also, it boldens the need for a cross-cutting and cross-border approach to dealing with CBRN materials, hence through the proper allocation of measurable Goals and Actions in each of the three parts into which the Action Plan is divided.

The Rapporteur agrees fully with the goal of the adopted CBRN Action Plan - it should ensure the efficient interaction of national and EU initiatives in addressing CBRN risks and preparing the necessary response. Anyway, the Rapporteur is of the opinion that the adopted EU CBRN Action Plan is weak and lacks coherence on several points.

It is of crucial importance to stress that a CBRN Action Plan offers a valuable opportunity to implement the Solidarity Clause enshrined in the Lisbon Treaty. Unfortunately, the Action Plan adopted by the Council does not even make reference to the Solidarity Clause.

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[1] SN 4296/2/01.
[2] SN 300/1/01.
[3] 14627/02.
[4] 15480/04.
[5] COM(2009)0273.
[6] 15505/1/09 and 16868/09.

It should be highlighted that CBRN risks stem from not only state, but also non-state actors and, therefore, most important is the strengthening of the non-proliferation regime and disarmament through the universal an full implementation of all relevant treaties and international agreements, namely the Nuclear Non-proliferation Treaty, the Chemical Weapons Convention, the Biological Weapons Convention, and achieving agreement on a treaty on banning the production of fissile material for weapons purposes (Fissile Material Cut-off Treaty).

To realise the implications of the EU Action Plan adopted, it is important to compare it with its earlier version, as sent by the Commission to the Council in June 2009. The changes introduced by the Council make the Action Plan weaker and dilute the binding level of the measures foreseen, as well as the monitoring and control of their implementation. Instead, the Action Plan should strengthen the normative and regulatory role of the European Commission, envisage the creation of a specialised European mechanism for crisis reaction, articulating civil and military capabilities, to ensure an EU rapid response capability to fight a CBRN disaster.

Considering that CBRN accidents or attacks pose serious threats to the security of the people living in the European Union and can disrupt critical infrastructure and the normal functioning of societies in any or several EU Member States without knowing borders, the European Parliament calls on the Council and the Commission to rapidly review and strengthen the Action Plan according to the recommendations in this report and to ensure its swift implementation.