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**NOTE**

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From: Presidency  
To: Delegations

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Subject: Improving the transmission of information between administrations in the follow-up of persons representing a terrorist threat

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*Courtesy translation*

In the past few years, examples have confirmed the need to fight against attempts to infiltrate the Schengen area by individuals belonging to terrorist networks<sup>1</sup>. For example, the Islamic State exploited migrant flows to send to Europe the individuals who carried out the Paris attacks of November 2015, while the perpetrator of the Berlin Christmas market attack in December 2016 had joined the European Union illegally via Italy. In addition, in Belgium, Finland, France and Sweden, since 2016, attacks have also involved refugees, asylum seekers and illegal residents.

In this respect, making EU information systems interoperable and reinforcing our external borders are necessary. However, it is also essential to be able to implement effective measures, within our borders, against individuals who pose a threat or are known to the security services, so that they cannot carry out their attack plans on the European soil.

Taking hindering measures against individuals posing a terrorist threat is an essential means of action in the fight against terrorism. These measures aim to prevent terrorist acts through enhanced surveillance and better consideration of individuals posing a risk by the competent national authorities in charge of counter-terrorism.

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1. "The perpetrators of five attacks [in 2020] had entered the EU as asylum seekers or irregular migrants; in four cases, they had entered the EU several years before carrying out their attack. One perpetrator entered the EU from Tunisia via Italy approximately a month prior to his attack in Nice (France)." Europol. (2021). European Union Terrorism Situation and Trend Report (TE-SAT) 2021, p.14.

"The pressure of migrant flows towards the EU stabilised in 2018, but the continuation of the use of smuggling routes, mainly through the Western Mediterranean Sea and Western Balkan countries, remained a matter of concern from a counterterrorism perspective. [...] However, future clandestine use of this modus operandi by FTFs cannot be ruled out." Europol. (2019). European Union Terrorism Situation and Trend Report (TE-SAT) 2019.

"The influx of refugees and migrants to Europe from existing and new conflict zones is expected to continue. IS has already exploited the flow of refugees and migrants to send individuals to Europe to commit acts of terrorism, which became evident in the 2015 Paris attacks. IS and possibly other jihadist terrorist organisations may continue to do so". Europol. (2017). European Union Terrorism Situation and Trend Report (TE-SAT) 2017.

In order to implement the most appropriate counter-terrorism measures in each case, the competent services need to have all the relevant information on the targeted individuals, such as: their identity, location, administrative situation, *etc.* However, the administrative situation of migrants and applicants for international protection is difficult to grasp for the services in charge of preventing and investigating terrorist threats. While the situation of these individuals differ according to the progress and outcome of their application for international protection (refugee status, subsidiary protection, humanitarian protection or rejection), the measures that may be taken against them can vary and must consider every specific situation.

For example, in case an individual represents a terrorist threat, it may be necessary to choose between:

- the initiation of a legal procedure if an application for international protection has just been submitted by the individual;
- the implementation of control or surveillance measures (such as house arrest, discreet monitoring measures, compulsory reporting, *etc.*, depending on the possibilities offered by national law) which will be more appropriate within a short timeframe (if the processing of the application for international protection is completed), pending the possibility to expel the dangerous individual.

In order to better adjust those measures (administrative or judicial)<sup>2</sup>, it would be useful for the competent services to be able - in addition to the information which will be indicated in the near future in the revised Eurodac system<sup>3</sup> - to identify in which Member State an application for international protection has been lodged by a migrant and to be able to obtain basic information on the progress status of this procedure. This would **exclude, of course, any element linked to the substance of the case** (invoked grounds, content of the interview, provided documents, *etc.*) In this sense, it seems important to allow some form of **follow-up of the state of progress of asylum applications**.

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2. Deciding on the best measures according to the situation and the location of the individual on the territory or not, among which: deportation, expulsion, detention, individual surveillance measures, ban on entering the territory, *etc.*
  3. Although services already have access to Eurodac, in the context of the revision of the Regulation, the Council and the Parliament agreed on the need to facilitate access to the information system for law enforcement and/or services responsible for the prevention of terrorism and serious crime.

Such information on the stage of the procedure and the timetable - which is **not linked** to the content of the case being dealt with - would thus constitute valuable additional **information** available to the investigation services to **better adapt operational counter-terrorism measures**. The status of any appeals lodged by an individual whose application has been rejected, which generally have the effect of suspending removal orders, would also be useful information.

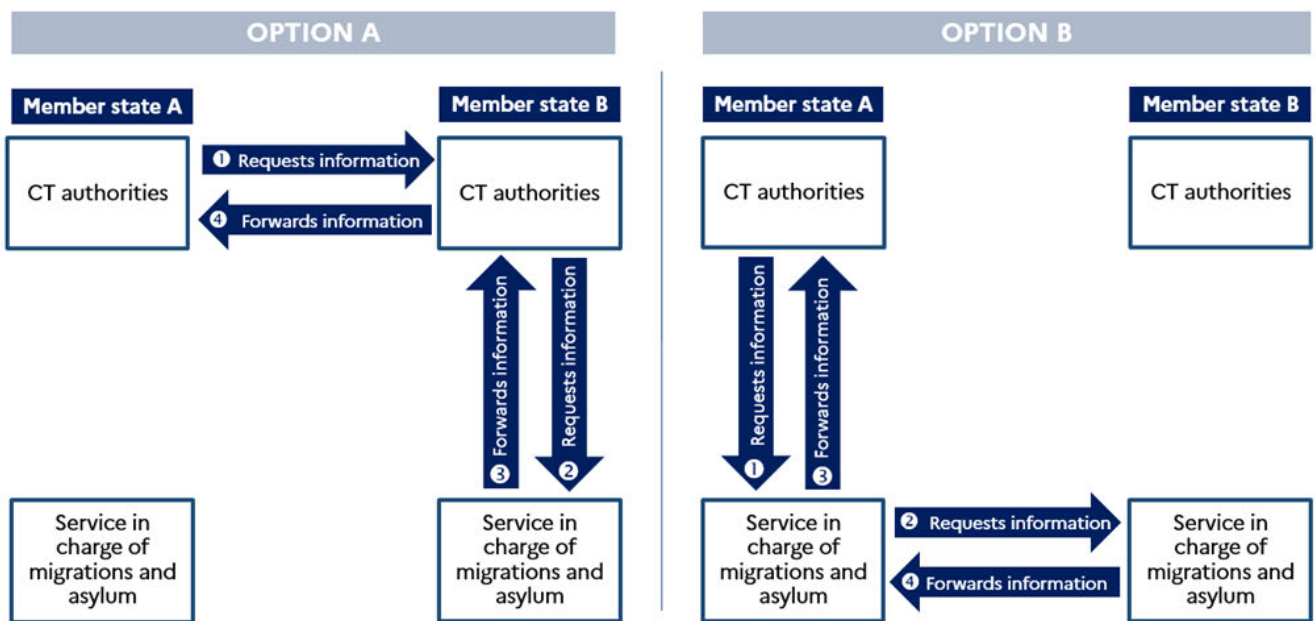
At EU level, **there is currently no procedure for investigative services to obtain accurate information on the status** of asylum seekers' cases (submission of the application, registration of the application, interviews, decisions, appeals, *etc.*) between several Member States. The need to improve this information exchange can be illustrated by the following example:

- a third-country national arrives in a Schengen country (A) irregularly and applies for international protection;
- he then travels irregularly to a country (B) in the Schengen area, where members of his family reside;
- cooperation between the investigative services of the two countries made it possible to determine that the individual poses a significant terrorist threat ;
- country (B) therefore takes steps (registration in its databases and possibly, setting up a plan for more precise monitoring of the individual).

In this situation, knowing the status of the international protection application procedure in the country (A) would allow the country (B)'s investigation services to decide on the most appropriate surveillance and obstruction measures (administrative or judicial), in preparation, if necessary, of a possible Dublin transfer to the country (A).

Depending on the Member State, a request for information between counter-terrorism and immigration authorities on such cases is usually made in one of two ways:

- through the counter-terrorism service counterpart of the partner country, which questions its migration and asylum authority (option A);
- through consultation with the national migration and asylum authority, which queries the counterpart service of the partner country in which the application for international protection has been lodged, for example via the Dublinet<sup>4</sup> information exchange system (option B).



As these channels are not institutionalised or legally regulated, they are based on voluntary and informal contacts. Information exchanges are often very long, with uncertain results, and are not suitable for emergency situations involving a potential terrorist threat.

4. The Dublin units of the different Member States exchange information with each other via a secure messaging system called "Dublinet". This is an information exchange system for the implementation of the Dublin III Regulation, which allows for the transmission of information on an application for international protection. In practice, the response time, which should be five weeks according to the Regulation, differs between Member States. Furthermore, the information transmitted in response varies in the absence of a harmonised response form. This situation and possible improvements are being discussed by the Presidency in the "Asylum Working Party".

In order to meet this operational need, strengthening the follow-up of the state of progress of procedures would allow to better understand the administrative path of **only those individuals whose behaviour represents a terrorist threat** (this need would only concern a small number of cases at EU level). Thus, it seems desirable to develop a common and structured solution, notably by facilitating exchanges between immigration and asylum authorities and investigation services. The reflection on the best way to proceed should be conducted in the dedicated fora and with the competent actors, in connection with the TWP.

Such an approach would be:

- strictly limited to the timetable and the state of progress of the procedure; it will thus be neutral for the migration and asylum services, which will retain exclusive access to the files of applicants for international protection (application form, interview reports, documents attached to the files, *etc.*) ;
- independent of the ongoing negotiations on the texts constituting the Pact on Migration and Asylum, in particular the "Screening"<sup>5</sup> Regulation and the "Eurodac III" Regulation, or the recast of the Schengen Borders Code;
- neutral for the services in charge of the enforcement of removal or return measures that may be taken following decisions by the migration and asylum services.

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5. Proposal for a Regulation of the European Parliament and of the Council establishing a screening of third-country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817.

## Questions

1. How do the counter-terrorism authorities in your country proceed when they need information about the steps taken by an applicant for international protection who poses a terrorist threat?
  2. What kind of information do you think the counter-terrorism authorities would need to know about the state of progress of an international protection procedure submitted in another Member State (excluding information on the substance of the case)?
  3. Do you have any suggestions for improvements or proposals for a method to solve the stated problem? Should a specific procedure for exchanging information be put in place?
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