Briefing

Counter-terrorism: what the EU is discussing after the Paris attacks

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A recent note distributed to a whole host of national officials provides more details on the security measures interior ministers will discuss at the emergency EU Justice and Home Affairs Council meeting on Friday: border control, surveillance, firearms control and countering terrorist financing.

The note (dated 16 November) was written by the Luxembourg Presidency of the Council of the EU and Gilles de Kerchove, the EU Counter-Terrorism Coordinator, and raises a number of issues for discussion on what further counter-terrorism measures to pursue following the attacks in Paris on Friday.

> The document: Follow-up to the recent terrorist attacks in Paris (LIMITE, 14122/15, 16 November 2015, pdf)

Key demands in the document are:

- For the proposed biometric "smart borders" databases to include EU nationals as well as non-EU nationals, requiring fingerprinting, face scans, systematic database searches and entry and exit logging for everyone entering the EU;

- Increased border checks on EU citizens and others with the right to free movement in the EU, at a time when numerous Schengen states have reinstated controls;

- Ensure that forthcoming new Frontex legislation gives the border control agency powers to deal with crime and terrorism;

- Increase information-gathering and exchange by national border and police authorities and ensure they provide data to EU policing agency Europol, which should have greater access to databases and cooperate more closely with the border control agency Frontex;

- Revise EU laws on firearms and introduce more measures to deal with terrorist financing, beyond those contained in the Anti-Money Laundering Directive agreed in May 2015.

The note is marked for the attention of EU Member States' delegations in the Council dealing with justice and home affairs, foreign, security and defence policy, internal security,

policing, law enforcement, policing, counter-terrorism, education, the Schengen Information System database, border control, and justice.

It follows a joint statement issued on Sunday 15 November by Bernard Cazeneuve (French Interior Minister), Etienne Schneider (for the Luxembourg Presidency) and EU Home Affairs Commissioner Dimitris Avramopoulos, in which they "underlined the urgent need to take rapid and operational decisions and to put them into practice in a short timespan."

Many of the demands in the Luxembourg Presidency and CTC document are for the swifter implementation of initiatives agreed after terrorist attacks in France, Belgium and Denmark earlier this year.

A recent cautionary word from Amnesty International to the G20 heads of state could equally be directed to the EU's interior ministers:

> *"The tragic events in Paris have sickened and stunned the world and our hearts and thoughts go out to all those affected by this atrocious attack. The threat of terrorism must always be responded to resolutely, with the utmost regard for security and respect for human rights…*
>
> *"Now is… the time for world leaders to show true statesmanship and refuse to bow to the conflated anti-refugee rhetoric which is already emanating from some quarters. We have to remember that many of those trying to gain sanctuary have fled violence, fear and conflict, and indeed often by the very same group known as the Islamic State in both Syria and Iraq."*

Whatever new measures are taken in this time of "urgent need" will add to a vast amount of existing law and policy. Research by *Statewatch* concluded that many of the measures already in place are highly problematic:

> *"[T]he vast majority… has not been subjected to the kind of scrutiny that should be expected of laws that can have such a significant impact upon individuals and public and private institutions. Indeed, the fact that so much counter-terrorism legislation across Europe stems from the European Union, coupled with the limited mechanisms for ensuring democratic accountability in decision-making, national transposition and ex-post review appears to have compounded the problems that have become synonymous with the protection of fundamental rights in this field."* (From: 'Taking stock of EU Counter-terrorism policy and review mechanisms: Summary of Statewatch's findings for SECILE project', pdf)

Border control and surveillance

Tucked away in the note is a demand for the proposed biometric "smart borders" databases to "also include EU nationals to address the foreign fighters threat", repeating a demand made by France two months ago for fingerprinting, face scans, systematic database searches and entry and exit logging for everyone entering the EU.

No mention is made of the Passenger Name Record Directive despite it being highlighted in the Cazeneuve-Schneider-Avramopoulos statement. The Directive is currently being finalised in secret "trilogue" meetings between the Council, Parliament and Commission.

The demands from the Presidency and CTC come thick and fast, with calls for:

- An increase in database checks on people with the right of free movement within the EU (at a time when [a number of Schengen countries have reinstated border controls](#));

- the insertion into the Schengen Information System database of more information on foreign fighters;

- moves towards a common approach on the use of the data;

- the "coordinated implementation" of Frontex's new "Common Risk Indicators" as "a priority"; and

- giving Europol "automated and systematic access to the SIS II to enable systematic cross-checking with Europol databases."

Specifically noted is the use of "immediate reporting" under Articles 36(2) and (3), the latter which allows people to be put under "discreet surveillance or specific checks" at border crossings. Projects aimed at upping the use of these alerts have been ongoing for some time and [their use increased during 2014](#).

The note also calls for all Member States to upgrade their border crossing points so that they can be connected to Interpol's databases as "a matter of priority". The [international policing agency's databases](#) cover lost and stolen travel documents, and information on "firearms and dangerous materials", amongst other things.

Money is no object: "the necessary updates in budget, operational plans and work programmes should be made," the Commission "should consider financial support," and the Presidency and CTC hope to see budget proposals from the Commission at the December JHA Council meeting.

The Commission has said that French spending on security following Friday's attacks will be "not be treated as ordinary spending under EU rules," and the EU Commissioner for Economic and Fincial Affairs, Pierre Moscovici was [quoted by Reuters as saying](#): "We will reevaluate all possible budgetary expenses of these new developments." Italy has called for similar special treatment; Eurozone finance ministers due to meet next week to assess the 19 draft budgets of the Eurozone countries.

Terrorism and migration: join the dots

The note calls for Europol and Frontex to "work closely together". The two agencies are currently negotiating an "operational cooperation agreement" that will allow them to exchange personal data. This is [expected to begin in March 2015](#).

In December 2015 the Commission is due to propose new legislation governing Frontex, and the Luxembourg Presidency and CTC say this should explicitly mention "the contribution of Frontex to fight cross border crime… including access to all relevant databses."

Furthermore: "Cooperation with Eurojust is important too," and: "The hotspots approach should be used to the maximum extent."

The Luxembourg Presidency/CTC note says that in its cooperation with Europol, "Frontex should be associated to WG Dumas," a working group within Europol that provides support to Member States "in combatting the phenomenon of 'foreign fighters'." It is led by Italy but [there are five sub-working groups](#):

- "Alert List", headed by Austria: "harmonisation of SIS II, Europol Information System";

- "Outreach", headed by Spain and Hungary: "securing partner agencies in third countries";

- "Best Practices", headed by UK and France: "identification of best practices and lessons learnt";

- "Facilitators", headed by Spain and the UK: "operational analysis of facilitator networks"; and

- "Indicators", headed by Germany and Luxembourg: "generation of indicators to detect Syria travellers."

Developing Europol

The note calls for the Commission to provide "adequate resources" to fund Europol's Internet Referral Unit (IRU), where police officers search the web for "terrorist content" and request that service providers remove it.

The IRU also need staff to be sent from Member States, as does the forthcoming European Counter Terrorism Centre, which will start work on 1 January 2016: "Member States are encouraged to send their experts". Member States should "participate actively in the various platforms" at the Centre, and the EU's judicial cooperation agency, Eurojust, "should also be involved".

For the IRU to function as intended, there is a "crucial" need to ensure that Europol's new legislation permits "information exchange between Europol and the private sector", a subject currently under debate amongst EU institutions as they quietly prepare the new Europol Regulation in another set of "trilogue" meetings.

The Luxembourg Presidency and CTC say that: "Europol may consider setting up a specific platform at Europol on the issue of FTF [foreign terrorist fighters] that allows the relevant national police authorities to work together," although there is no detail on what relation this would have to WG Dumas.

The note also calls for expanding Europol's communications network (SIENA, Secure Information Exchange Network Application) to national counter-terrorism authorities that are not yet connected; and for an increase in contributions to the Focal Point (FP) Travellers file – especially from "those who are currently sharing less". FP Travellers aims at "collecting, analysing and sharing information at EU level on the recruitment and travel facilitation of suspected individuals".

Two questions are posed in the note in relation to border controls, Frontex and Europol:

- *What can be done at Member States level?*

- *Which measures should be taken at EU level?*

Gun control

The Presidency/CTC note invites Member States to "agree to the draft implementing regulation on common deactiviation standards" for firearms, which was subsequently adopted on the morning of 18 November by the College of Commissioners.

The Commission and Member States began negotiating on the provisions Member States in April 2015 "in the context of the comitology procedure, with discussions intensifying in the last few weeks," the Commission said on 18 November.

The Presidency and CTC note says due to the "exceptional circumstances, it is of critical importance" that the Commission bring forward its proposal on revised EU firearms legislation, from early 2016 to "the end of 2015". The French delegation, in a separate note obtained by *Statewatch*, says this acceleration is "necessary and urgent".

Operational police cooperation should be increased, particularly in the EU Policy Cycle which is overseen by Europol and the Council's internal security committee, and which has an "Operational Action Plan" on firearms. The Presidency and CTC call for a "particular focus" on the Western Balkans "with regard to border controls to detect smuggling of firearms and cooperation to decrease the amount of weapons used."

Deutsche Welle reports:

> *"The EU's proposals include a ban on certain semi-automatic firearms, tighter laws on buying weapons online, common rules to mark and trace weapons throughout the EU and better information sharing between member states."*

The German website also notes the intention to add new terrorism offences to the statute book: "traveling for the purpose of carrying out a terrorist act, facilitating travel or receiving training to carry out an attack," which will continue a process begun some time ago to implement obligations stemming from UN Security Council Resolution 2178.

National delegations are asked to consider the question: "*How best can operational cooperation be increased?*"

Terrorist financing

In June this year the fourth EU Anti-Money Laundering Directive came into force, bringing with it provisions aimed at dealing with both money laundering and terrorist financing:

> *"[N]ew customer due diligence checking requirements, together with new obligations to report suspicious transactions and maintain records of payments. Businesses subject to the rules will also have to install internal controls to combat money laundering and terrorist financing activities under the framework."*

The note proposes a number of "additional measures to counter terrorist financing", for which the Commission should make proposals "as soon as possible".

These include freezing the assets and funds of "internal terrorists" by putting in place new powers based on Article 75 of the Lisbon Treaty. The provisions have been under consideration for some time.

There is also a call:

> *"[T]o strengthen the control of anonymous payments instruments, to ensure a better access of FIU's to banking data in centralised and registers [sic] and to curb more effectively the illicit trade in cultural goods (prevent cash payments for artefacts)."*

FIUs (Financial Intelligence Units) are national bodies responsible for examining and exchanging information on money laundering and terrorist financing.

Member States are asked: *Which of these measures should be tackled as a matter of priority?*

Everything at once

The note concludes:

> *"In addition, however, it will be important to work on implementation of all areas of the statement of HoSG of 12 February 2015 and implement the five priorities for action agreed by the October Council (JHA) until the end of the year, as planned. The EU CTC will issue a report ahead of the Council (JHA) on 20 November covering state of play of implementation of all aspects."*

The five priorities agreed at the October JHA Council meeting were:

> *"Operationalization of the common risk indicators by FRONTEX*
>
> *Reinforcing border checks by better using SIS II [Schengen Information System II] and SLTD [Interpol's Stolen and Lost Travel Documents database]: a report with concrete statistical data*
>
> *Information exchange: improving contributions to Europol*
>
> *Prevention of radicalisation on the internet: continuing financial and other support to the Europol Internet Referral unit and to SSCAT [Syria Strategic Communications Advisory Team]*
>
> *Internal/external link: improve the use of Justice and Home Affairs tools in the Counter-terrorism assistance to third countries"*

Previous official updates on the implementation of the 12 February 2015 anti-terrorism measures (pdfs):

- [October 2015](#)

- [September 2015](#)

- [March 2015](#)

Statewatch is a non-profit-making voluntary group founded in 1991. It is comprised of lawyers, academics, journalists, researchers and community activists. Its European network of contributors is drawn from 18 countries. Statewatch encourages the publication of investigative journalism and critical research in Europe the fields of the state, justice and home affairs, civil liberties, accountability and openness.

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