



EU anti-terrorism action plan: "operational measures"

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The "Anti-terrorism roadmap" - analysis of "operational measures"

The EU's plans post-11 September concerning justice and home affairs and civil liberties have been set out in a number of documents.

The general plan was set out in the "Conclusions" of the special meeting of Justice and Home Affairs Ministers on 20 September. This was followed an "Anti-terrorism roadmap SN 4019/01" dated 26 September which was revised SN 4019/1/01 on 2 October. The overall plan was then brought together as "Coordination of implementation of the plan of action to combat terrorism", first as 12579/01 (12 October) then as 12800/01 (16 October) and 12800/1/01 REV 1 (17 October).

This report analyses the "operational" measures in 12800/1/01 and "Conclusions" (20.9.01), as distinct from the new legislative measures proposed. For new measures see: Analysis no 6.

The term "intelligence services" is used confusingly in the documents. In most cases this means internal security agencies (like MI5) and external intelligence agencies (like MI6 and GCHQ).

Many of the "operational" initiatives in the Conclusions and the "roadmap" (set out in 12800/1/01) concern the creation of ad hoc, informal, groups, targets and cooperation.

There is little or no mention of accountability to the European parliament or national parliaments. No mention at all of data protection or to recourse to courts for individuals who might be affected. Moreover, there is a real danger that these "temporary" arrangements will become permanent leaving a whole layer of EU inter-agencies informal groups, information and intelligence exchanges and operational practices quite unaccountable.

ANALYSIS of operational measures

[AR=12800/1/01 CON=20.9.01 Conclusions]

1. Cooperation between military intelligence agencies (AR pt 12)

Under the EU General Affairs Council there is to be: "Cooperation and information exchange between Member States' military intelligence services". Mr Solana, the Secretary-General of the Council is to report back to General Affairs on 19 November.

This was in 12800/01 and was deleted from 12800/1/01 REV 1 - which does not mean it is not happening, rather that the Council does not wish to draw attention to it.

2. Joint investigation teams, police, magistrates and Pro-Eurojust (AR pt 33 CON pt 2)

Joint investigation teams of officers and officials from EU member states are to be set up to: "coordinate current investigations into terrorism which are in any way linked". The teams will be

comprised of:

- Police officers and magistrates "specialising in counter-terrorism"
- representatives of Pro-Eurojust
- Europol officers (to the "extent allowed by the Convention")

In addition the Provisional Cooperation Unit, Pro-Eurojust, is asked to call a meeting of "magistrates specialising in counter-terrorism" to put forward observations on any "obstacles" to mutual legal cooperation.

3. Pro-Eurojust cooperation (AR 29)

Under Pro-Eurojust there is to be the strengthening of "cooperation between anti-terrorist magistrates". The first such meeting was held on 10 October. There are no data protection provisions for Pro-Eurojust despite request by the European Parliament.

4. Europol/Pro-Eurojust and Police Chiefs Task Force (AR 34)

The Article 36 Committee is to convene a meeting between Europol, Pro-Eurojust and the Police Chiefs Task Force to ensure better coordination - report to be prepared.

5. Police Chiefs Operational Task Force: Heads of counter-terrorist units to meet (AR 28 CON pt 8)

It should be noted that this report refers throughout to the "Police Chiefs Task Force" whereas it has been called the "Police Chiefs Operational Task Force" (PCOTF) since early in 2000. It is presumed to be the same body.

PCOTF is charged with organising high-level meetings of the "heads of EU counter-terrorist units" starting in October.

These meetings will sometimes involve cooperation with "third countries" (non-EU states) and:

"consider missions to be entrusted to the team of counter-terrorist specialists within Europol"

"Missions" in EU-parlance can mean liaison meetings, tasks or operations. It is likely that the results of the Europol analysis files and assessments will pass back to this ad hoc group of Heads of counter-terrorist units where they concern a threat within the EU.

The first meeting was held on 15 October.

6. Counter-terrorist specialists "within Europol" (AR pt 32, AR 27 CON pt 9 & 10)

Europol is to be given two major new tasks:

a) to open and expand "analysis files" on terrorism based on information (hard facts) and "intelligence" (supposition and suspicion) provided by police forces (ordinary police, criminal investigation and Special Branches) and by intelligence services (internal security agencies and external intelligence agencies).

b) "Within Europol, for a renewable period of six months, a team of counter-terrorist specialists" is to be set up. These "liaison officers" from police, internal security and intelligence agencies specialising in terrorism will: i) collect and analyse information and intelligence and provide operational and strategic analysis and ii) "draft a threat assessment document" including "targets, damage, potential modi operandi", consequences for security and preventive measures.

There is no mention of the logical actions which might be undertaken as a result of these analyses, ie. surveillance or action against individuals or groups inside and outside the EU. It can only be presumed that these would be decided and undertaken via the PCOTF sub-groups.

The issue of whether security and intelligence agencies will hand over all information and data to Europol is considered below.

7. Inventory (AR 39)

An inventory of national measures and alert plans is to be compiled by the Council's Working Party on Terrorism and the Police Chiefs Task Force.

8. Europol is to update the Directory of Specialised Counter Terrorist Competencies, Skills and Expertise (AR 36 CON pt 11)

Document 12800/1/01 refers to: "Implementation of a common action".

9. Role for Article 36 Committee (AR 31 CON pt 12)

The Article 36 Committee (comprised of senior officials from Home and Interior Ministries) is given the job of ensuring the "closest possible coordination between Europol, Pro-Eurojust and the EU Police Chiefs Task Force".

The Committee is also to hold a "policy debate" on "strengthening cooperation between police services, including Europol and intelligence services".

10. SIS access (AR 37 CON pt 13)

Access to the Schengen Information System, which is based in Strasbourg, may be extended from police, immigration and customs officials "in the context of counter-terrorism". According to 12800/1/01, will be built in SIS II (the upgrade of the Schengen Information System to cover all EU members). It may in addition refer to the planned access by national vehicle licensing by the security and intelligence agencies.

11. Coordinate efforts between security and intelligence agencies (AR 30 CON pt 14)

The Heads of the security and intelligence agencies in the EU are to "meet on a regular basis" starting in October.

The heads of these agencies are expected to include heads on internal security agencies (like MI5 in the UK) and external intelligence agencies (like MI6 and GCHQ in the UK). It is also expected that on-going work will be delegated to "expert" meetings under the same umbrella - and reporting back to the senior group. It is likely that assessment compiled by Europol concerning threats emanating from outside the EU will pass straight to this new ad hoc group.

In theory this group will stand alongside the Police Chiefs Operational Task Force but in practice it will be the senior group. This is because it is extremely unlikely that the security and intelligence agencies will pass on all their data and intelligence to Europol - this will be passed on a "need to know" basis.

This new group has no legal standing, no provision for data protection, and no mechanism for parliamentary scrutiny or accountability.

The first meeting was held on 11-12 October.

12. New evaluation mechanism (AR 38 CON pt 15)

A mechanism is to be set up for the "evaluations" (of one member state by another) of a "legislative, administrative and technical" nature. The examples given are "telephone tapping" and the ability to "draw up a list of terrorist organisations". Experience from the mutual evaluation reports on police cooperation suggests that "best practice" is taken to mean procedures which leave law enforcement agencies unhampered in their work (eg: removal of judicial checks) are usually recommended.

This procedure - like the similar one running on crime - given great power to officials to influence and write policy.

In addition, the General Secretariat of the Council to have two national experts on counter-terrorist seconded to it.

Procedure to start in October.

13. Exchange of information on incidents (CON pt 18)

A mechanism for the rapid exchange of information when a terrorist attack occurs in one or more member states was already in the pipeline.

What is of interest is that this report, dated 23 August, clearly defines "terrorist" acts in a more limited way than the draft Framework Decision on combating terrorism. For example, it would not include the "unlawful seizure or damage to state or government facilities..." (Article 3.f) unless it involved bombing, an armed attack, hijacking, hostages or biological or chemical weapons.

Not mentioned in 12800/01 or 12800/1/01.

14. List of proscribed groups (AR 26)

This was only mentioned as a possibility in the "Conclusions" in 12800/01 it becomes:

"Identification of presumed terrorists in Europe and of organisations which support them in order to draw up a common list of terrorist organisations"

Those charged with drawing up the list are: Europol, anti-terrorist units and intelligence agencies. List to be discussed by the intelligence chiefs and the Council Working Party on Terrorism.

This will be, in effect, a list of proscribed organisations.

Measures at borders

15. PCOTF: strengthening of external borders (AR 42 CON pt 24)

The Police Chiefs Operational Task Force is charged with preparing measures to "strengthen controls at external borders" and to report back to the December meeting of the Justice and Home Affairs Council.

This is termed "Urgent" in 12800/01. Chair of Police Chiefs Operational Task Force and of "Immigration Services" are asked to report need for new measures to Justice and Home Affairs Council on 6-7 December. Report also expected on "Operation HIGH IMPACT" which was conducted on 2-3 October.

16. Schengen Convention Article 2.3 (CON pt 24)

The Conclusions calls on all member states to "strengthen immediately the surveillance measures provided for in Article 2.3" of the Schengen Convention. It calls for police, immigration and other officials to step up identity checks within their countries by using this power. The associated Article 22 of the Convention says that an alien who has legally entered a Schengen country must tell the authorities within three days of entry.

No mention in 12800/01.

17. Checks on issuing ID cards and residence permits (CON pt 25)

Another internal measure concerns "the utmost vigilance when issuing identity documents and

residence permits (particularly in the case of duplicates)". Every year hundreds of thousands of lost or stolen documents (passports, identity cards etc) are recorded on the Schengen Information System.

Not mentioned in 12800/01.

18. Issuing of visas (AR 44 CON pt 26)

The issuing of visas is to be conducted with "maximum vigour" and the Commission is asked to prepare, by March 2002, a proposal for a "network of information exchanges concerning visas issued", effectively a visa database.

An associated Commission proposal, updating a 1995 Regulation on a standard format for visas refers to the creation of a database (see COM(2001) 577 final, 9.10.01).

19. Systematic use of Schengen "alerts" (AR 45 CON pt 27)

The Conclusions call for member states to use the Schengen Information System (SIS) to provide "more systematic input into the system of alerts" under Article 95 (people wanted for extradition), Article 96 (people to be refused entry who believed to be a threat to public order or national security) and Article 99 (people or vehicles to be placed under surveillance).

20. Re-imposition of border controls (AR 43 CON pt 28)

Arrangements to be studied to put in place a "coordinated recourse" to the imposition of border controls by all member states in the event of a "terrorist threat of exceptional gravity" (Article 2.2 of Schengen).

Document 12800/1/01 states that:

"The Police Chiefs Task Force will be responsible for making operational the decision to re-establish internal border checks".

21. Re-examination of international commitments (AR 46 CON pt 29)

Perhaps one of the most extraordinary "Conclusions" is that the European Commission is asked to: "examine urgently the relationship between safeguarding internal security and complying with international protection obligations and instruments"

This is a clear reference to, at the least, the 1951 Geneva Convention.

Document 12800/1/01 says the need for a Commission proposal is "Urgent".

Cooperation with the USA

22. Assessment and joint meetings (AR 49 CON: pt USA.1 + pt USA 4)

The EU is to carry out with the US an immediate assessment of terrorist threats "including in particular the identification of terrorist organisations" - this suggests that input from the US may influence the proposed EU list of proscribed organisations.

Four times a year there is to be joint meetings of the COTER (counter-terrorism under the "second pillar", defence and foreign policy) and the JHA Working Party on Terrorism "Troikas". Their reports and assessments will be fed into "high-level Transatlantic Dialogue meetings".

23. EU-US police cooperation (AR 53 CON: pts US 4 & 5)

US experts on counter-terrorist measures are attended the planned meeting of experts under the PCOTF (see point 2 above).

The Director of Europol is instructed to conclude an "informal" agreement, pending a formal one, to be

concluded by 16 November. This agreement is to provide for: "the exchange of liaison officers between Europol and US agencies that are active in the policing sector" (emphasis added). The Director of Europol is also to:

"open negotiations with the United States on the conclusion of an agreement which includes the transmission of personal data"

Europol has concluded a number of agreements to exchange personal data and a number are in preparation - the US is not on this agenda. Moreover, a broad agreement covering policing in general would raise major questions as to the level of data protection afforded under US law.

24. Agreement on penal cooperation on terrorism (AR 54 & 55 CON: pt USA 7)

The Council agrees in principle to an agreement with the US, under Article 38 of the Treaty on European Union, covering "penal cooperation on terrorism". The big barrier here, apart from legal standards, is the use of the death penalty in the majority of US states (there is also a federal death penalty).

25. Cooperation on illegal immigration (AR 56)

This is not mentioned in the "Conclusions" and is introduced in 12800/01. It calls for measures to:

"intensify cooperation with the United States in field of illegal immigration, visas and false documents"

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