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Conclusions adopted by the Council (Justice and Home Affairs)

Brussels, 20 September 2001

- I -

In the light of the attacks in the United States on 11 September and following on from the decisions taken since the Tampere European Council, the Justice and Home Affairs Council met on Thursday, 20 September 2001 to take the necessary measures to maintain the highest level of security and any other measure needed to combat terrorism.

The Council has decided to harness all the measures already adopted at European Union level to combat these heinous acts, in particular:

- the 1995 and 1996 Conventions on extradition between the Member States;
- the setting up of Europol and Pro-Eurojust;
- the Convention on Mutual Assistance in Criminal Matters of 29 May 2000;
- the setting up of the EU Police Chiefs Task Force.

Nevertheless, the seriousness of recent events has led the Union to speed up the process of creating an area of freedom, security and justice and to step up cooperation with its partners, especially the United States.

To this end, the Council has adopted the measures set out below:

Measures to be taken in order to step up the fight against terrorism within the European Union

Judicial Cooperation

1. Following on from the conclusions of the Tampere European Council, the Council has set itself the objective of replacing extradition with a procedure for handing over perpetrators of terrorist attacks on the basis of a European arrest warrant. In this context it held an in-depth discussion on the two proposals for Framework Decisions forwarded to it by the Commission, one on the approximation of Member States' criminal laws with a view to establishing a common definition of a terrorist act and laying down common criminal sanctions, the other on the creation of a European arrest warrant. It emphasises:

- the urgent need for a common understanding, not only politically but also legally, of what terrorism means in order to facilitate transborder cooperation, and
- the need to overcome the requirement of double criminality in terrorist cases.

The Council welcomes these initiatives, which give form to the European Council's wish to afford its citizens a high level of protection in an area of freedom, security and justice.

The Council is instructing the Committee of Senior Officials set up under Article 36 of the Treaty on European Union to take steps immediately to examine the two proposals thoroughly so as to enable the Council to achieve significant political agreement on both proposals at its meeting on 6 and 7 December 2001. In the meantime the Council urges Member States to take all the necessary steps for the two conventions on extradition to enter into force on 1 January 2002.

2. The Council urges that all measures be taken to ensure that the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union is ratified as soon as possible, and in any event in the course of 2002. In accordance with point 43 of the conclusions of the Tampere European Council, the Council invites the competent authorities of the Member States to set up one or more joint investigation teams without delay consisting of police officers and magistrates specialising in counter-terrorism, Pro-Eurojust representatives and, to the extent allowed by the Convention, Europol representatives, in order to coordinate current investigations into terrorism which are in any way linked.
3. Furthermore, the Council welcomes the draft Framework Decision covering, inter alia, acts of terrorism, submitted by Belgium, Spain, France and the United Kingdom with a view to allowing the advance entry into force of Article 13 of the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between Member States, which defines the conditions for setting up joint investigation teams. This instrument would enable the investigating and prosecuting authorities to coordinate their fight against terrorism. The Council will adopt this draft Framework Decision at its meeting on 6 and 7 December 2001.
4. The Council requests the European Commission to submit proposals for ensuring that law enforcement authorities are able to investigate criminal acts involving the use of electronic communications systems and to take legal measures against their perpetrators. In this context, the Council will be making a particular effort to strike a balance between the protection of personal data and the law enforcement authorities' need to gain access to data for the purposes of criminal investigations.
5. The Commission, Council and European Parliament, in drawing up all EU legislation, should ensure that the potential impact on the fight against crime and terrorism is fully considered. The Council calls on the Commission to review EU legislation to ensure that it contributes to law enforcement efforts.

6. The Council welcomes the work carried out by the Provisional Judicial Cooperation Unit, Pro-Eurojust, since its establishment six months ago, particularly in the coordination of investigations in the area of terrorism. It invites the Provisional Cooperation Unit, Pro-Eurojust, to take, at the earliest opportunity, and by 15 October 2001 at the latest, the initiative of bringing together Member States' magistrates specialising in counter-terrorism in order to examine any measure whereby current investigations into terrorism can be properly coordinated, and to forward to it any observations on obstacles encountered in the context of mutual assistance in criminal matters between the Member States. Moreover, the Council confirms its determination to finalise the draft Decision setting up Eurojust at its meeting on 6 and 7 December 2001 so that it may become operational at the beginning of 2002.
7. The Council has decided to speed up the linking of the European Judicial Network's contact points to the secure electronic network. It is asking the Secretary-General of the Council to study the practical details.

Cooperation between police and intelligence services

8. The Council requests the Police Chiefs Task Force to organise an ad hoc meeting of the heads of EU counter-terrorist units as soon as possible, and at the latest by 1 November 2001, in order to further discussions to:
 - improve operational cooperation between Member States and third countries;
 - coordinate measures implemented in the Member States to guarantee a high level of security, including in the field of air safety;
 - consider the missions to be entrusted to the team of counter-terrorist specialists within Europol.

9. The Council would reiterate how important it is for the quality of Europol analyses that the police authorities and also the intelligence services of the Member States should quickly pass on any relevant information on terrorism, in accordance with the terms of the Europol Convention. On this point, the Council is instructing the Director of Europol to report back at its meeting on 6 and 7 December 2001 on the input provided by the Member States into the analytical work files opened on terrorism, together with an analysis of any problems.
10. The Council has decided to set up within Europol, for a renewable period of six months, a team of counter-terrorist specialists for which the Member States are invited to appoint liaison officers from police and intelligence services specialising in the fight against terrorism, without prejudice to the legislation by which they are governed. Its remit will include the following tasks:
- to collect in a timely manner all relevant information and intelligence concerning the current threat;
 - to analyse the collected information and undertake the necessary operational and strategic analysis;
 - to draft a threat assessment document based on information received. This study will in particular list targets, damage, potential *modi operandi* and consequences for the security of the Member States (description of possible situations) and identify those areas in which preventive measures must be taken (air traffic, official buildings, VIP protection, etc.).
11. The Council requests Europol to update the Directory of Specialised Counter Terrorist Competences, Skills and Expertise provided for by the Joint Action of 15 October 1996.

12. The Council requests the Article 36 Committee to ensure the closest possible coordination between Europol, Pro-Eurojust and the EU Police Chiefs Task Force.
13. The Council will examine whether to extend, in the context of counter-terrorism, SIS access to other public services.
14. The Council emphasises the important role of the Security and Intelligence services in the fight against terrorism. Their intelligence forms an invaluable asset for disclosing possible terrorist threats and intentions of terrorists and terrorist groups at an early stage. Therefore they have a crucial task in preventing terrorism. The cooperation and information exchange between those services must be intensified. In order to speed up this process the heads of those services of the Member States of the European Union will meet on a regular basis to start before 1 November 2001. They will take without delay the necessary steps to further improve their cooperation. Cooperation between the police services, including Europol, and the intelligence services will have to be strengthened.
15. The Council is instructing the Article 36 Committee to work out an easier and swifter form of the evaluation mechanism defined in the Joint Action of 5 December 1997 establishing a mechanism for evaluating the application and implementation at national level of international undertakings in the fight against organised crime, in order to define a procedure for the peer assessment of national anti-terrorist arrangements on the basis of considerations of a legislative (e.g. examination of the legislation in certain Member States making it possible to carry out administrative telephone tapping or to draw up a list of terrorist organisations), administrative and technical nature. The Council wishes to receive an evaluation report together with proposals by the end of 2002. The General Secretariat of the Council will accordingly be host to two national experts specialising in counter-terrorism and seconded from police and intelligence services.

16. The Council is already inviting the Member States to exchange information on the practical measures adopted at national level to combat terrorism (controls at airports, cross-border controls, controls on express roads, controls at the external borders of the European Union, etc.) and instructs the Working Party on Terrorism to draw up an inventory of such measures in collaboration with Europol and to work out alert and intervention plans to deal with any transfrontier terrorist acts.
17. The Council has decided to provide the European Parliament with an annual report entitled TE-SAT (Terrorism Situation and Trends) outlining the terrorist situation in the European Union over the last twelve months and analysing the trends established (8466/2/01 ENFOPOL 41 REV 2).
18. The Council has recorded its agreement to the procedure for rapid exchanges of information on terrorist incidents described in 10524/5/01 ENFOPOL 69 REV 5.
19. The Council invites the Member States to step up cooperation within the European Union on methods of detecting explosives and arms and on surveillance of the production, storage, transfer and trafficking of arms and explosives. It also invites the Commission to examine the measures to be taken to harmonise further the legislation in this field where necessary and with regard to the issue of firearms licences.

Financing of terrorism

20. The Council invites Member States to ratify as soon as possible the relevant conventions to prevent and combat the financing of terrorism and, in particular, to ratify the United Nations Convention for the Suppression of the Financing of Terrorism, and to take the implementing measures necessary. After receiving the Opinion of the European Parliament, the Council will adopt the Protocol to the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union.

21. The EU and the Member States will review the relevant EC and EU instruments in order to achieve greater coherence and effectiveness as well as ensuring that banking systems do not allow for the facilitation of the generation and transfer of terrorist funds including those resulting from drugs-related criminal activities. They will decide to rapidly adopt provisions for extending mechanisms for automatic exchanges of information between national financial intelligence units to data concerning all sources of terrorist funding.
22. The Council will adopt, as soon as possible after receiving the Opinion of the European Parliament, the draft Framework Decision on the execution in the European Union of orders freezing assets or evidence, the scope of which must be extended to terrorist-related crimes and the draft Directive on prevention of the use of the financial system for the purpose of money laundering.
23. At its meeting on 16 October 2001 (joint JHA/ECOFIN Council), the Council will examine the measures to be taken vis-à-vis non-cooperative courts and territories identified by the FATF in order to intensify the fight against the financing of terrorism.

Measures at borders

24. The Council invites the competent authorities of the Member States to strengthen controls at external borders and requests the Police Chiefs Task Force to examine without delay procedures for achieving this aim and report back to the December Council.

The Council invites the competent authorities of the Member States to strengthen immediately the surveillance measures provided for in Article 2(3) of the Convention implementing the Schengen Agreement.

25. The Council recommends the Member States to exercise the utmost vigilance when issuing identity documents and residence permits (particularly in the case of duplicates). It also recommends more systematic checking of identity papers in order to detect any falsification.

26. The Council requests the Member States to apply procedures for the issue of visas with maximum rigour and to this end step up local consular cooperation. It similarly invites the Commission to submit proposals for establishing a network for information exchanges concerning the visas issued.
27. The Council invites those States participating in the SIS to provide more systematic input into the system of alerts under Articles 95, 96 and 99 of the Schengen Convention.
28. The Council will study arrangements for coordinated recourse by the Member States to the possibilities made available by the Schengen Convention, particularly to Article 2(2) thereof, in the event of a terrorist threat of exceptional gravity.
29. The Council invites the Commission to examine urgently the relationship between safeguarding internal security and complying with international protection obligations and instruments.
30. The Council agrees to examine urgently the situation in relation to countries and regions where there is a risk of large-scale population movements as a result of heightened tensions following the attacks on the United States and asks the Commission, in consultation with Member States, to examine the scope for provisional application of the Council Directive on temporary protection in case special protection arrangements are required within the European Union.

Other measures

31. The Council welcomes the imminent adoption of the Commission proposal for setting up a Community mechanism in the field of the coordination of civil protection measures.
32. The Council invites Civil Protection Directors General to focus, at their extraordinary meeting in October in Knokke, on the response of civil protection authorities to major terrorist attacks inside or outside the EU, in order to identify issues for further work, areas requiring increased cooperation, etc.
33. The Council recommends immediately embarking on work to increase security standards at airports and on board aircraft in conjunction with the work of the Transport Council. The safety of aviation must be of the highest possible standard.

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Measures designed to improve cooperation with the United States:

1. The European Union is prepared to carry out immediately, together with the United States, an assessment of the terrorist threat from all aspects, including in particular the identification of terrorist organisations, which will benefit from both the US contribution and an in-depth analysis by the Union concerning regional situations and thematic issues. In addition, meetings with the US authorities will be intensified by proposing the holding, twice every six months, of joint COTER/JHA Working Party on Terrorism Troikas. An assessment of progress made in developing these exchanges could be made at high-level Transatlantic Dialogue meetings.

2. Plans should be made for increased cooperation and closer consultations with the United States in all competent international fora and especially a more active role for the Union within the United Nations.
3. Furthermore, a more coordinated approach with regard to the global fight against the financing of terrorism is necessary. In this framework, the EU will maintain international pressure on countries whose banking systems and traditions facilitate the generation and transfer of terrorist funds.
4. The Council will invite representatives of the United States to participate in the relevant discussions of the heads of European Union counter-terrorism units meeting at the instigation of the Police Chiefs Task Force in order to develop and share best practices in counter-terrorism areas, e.g. human screening and detection device technology, and contingency planning against major terrorist attacks, including on IT systems. Such pooling of knowledge might also help to identify gaps that could be filled together.
5. As regards relations between Europol and the United States, the Council invites the Director of Europol to take all the measures necessary to make use of the possibilities afforded by the Europol Convention and the relevant acts adopted by the Council to establish informal cooperation with the United States, pending the conclusion of a formal agreement. The Council also invites the Director of Europol to finalise the formal agreement with the United States as quickly as possible so that the Council may authorise its conclusion at its meeting on 16 November 2001. This agreement will provide, inter alia, for an exchange of liaison officers between Europol and US agencies that are active in the policing sector. At the same time, the Director of Europol is invited to take the necessary steps to open negotiations with the United States on the conclusion of an agreement which includes the transmission of personal data.

6. The Council is inviting the team of counter-terrorism specialists to be set up within Europol to establish relations with the United States counter-terrorism authorities as quickly as possible in order to make a joint evaluation of the terrorist threat and exchange information on the measures adopted at national level to combat terrorism. This team will be designated as the European contact point for exchanges of urgent information, without prejudice to bilateral contacts.
7. The Council agrees on the principle of proposing to the United States that an agreement be negotiated between the European Union and the United States, on the basis of Article 38 of the TEU, in the field of penal cooperation on terrorism.
8. The Council invites Pro-Eurojust, and in future Eurojust, to examine together with United States magistrates specialising in counter-terrorism any measure likely to improve judicial cooperation in this area.

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The Ministers for Justice and Home Affairs will inform their counterparts in the candidate countries of the content of the above conclusions when they meet in the margins of the Council meeting on 27 and 28 September 2001 with a view to identifying measures to be taken jointly.

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