

FULL TEXT

8784/02

LIMITE

JAI 81

NOTE

from : German delegation

No. prev. doc. : 13176/01 JAI 120

Subject : Additional measures to combat terrorism

Delegations will find attached a note from the German delegation dated 19 February 2002 on the campaign against terrorism.

Note from the German delegation

1. The action plan adopted by the Justice and Home Affairs Council at a special meeting on the prevention of terrorism held on 20 September 2001 (12156/01 JAI 99) is an important contribution by the Member States towards preventing international terrorism. The progress made so far in implementing the adopted measures demonstrates the determination of all Member States to continue their fight against terrorism. Germany takes the view that in addition to these measures, preventive information gathering in the fight against terrorism needs to be significantly improved. At the meeting of the Justice and Home Affairs Council on 27 and 28 September 2001, Germany tabled further proposals for anti-terrorism measures in order to take this aspect into due consideration. The Belgian Presidency forwarded these proposals to the Member States and to the EU Commission in 13176/01 JAI 120. It announced that these measures would be examined by the Council's subordinate bodies, if necessary on the basis of a Commission proposal.
2. Considerable progress has already been made on the individual proposals. A number of proposals – in particular those relating to visa security and the development of a uniform European visa identification system – were included in the draft action plan submitted under the Spanish Presidency of the Council with a view to fighting illegal immigration and trafficking in human beings. (5398/02 JAI 5 REV 1).

3. The German delegation specifically proposes taking the following steps:

a) Uniform visa and security norms

The Commission has presented proposals on the themes "Security of EU Visas" as well as "EU residency statuses" respectively, which foresee the integration of photos. The regulation on uniform EU visas was passed by the Council on 18 February 2002. The Council (Justice and Home Affairs) had agreed on the matter in December 2001. The integration of photos in EU residency permits is currently being discussed in the relevant working parties. The regulation on the integration of photos should be concluded as quickly as possible, so that first visas with an integrated photo can be introduced by the beginning of 2003.

The inclusion of photos in EU residency permits as well as the introduction of a provision, which leaves open the possibility for the integration of biometrics, is currently being discussed in the relevant Council working parties. At first, a provision leaving open the possibility for the future use of biometrics should be added to the EC regulation on residency statuses. Germany has already presented a proposal on this matter (Doc 5867/02 VISA 15, Annex 1) which is already being discussed in the relevant Council Working Group Visa. The consultations should be carried out swiftly, not least because investigations carried out in relation to the attacks in the US showed that the alleged attackers were registered under different nationalities and slight variations in their names. They used several identity documents. Through the collection of features, which cannot be changed by the person, it would be possible to identify a person through the collection of information, even if different personal data is being used. This averts the hiding of an identity at visa issuing and the issuing of residency statuses.

b) Development of a European visa identification system

The feasibility study for the creation of a common EU Visa data bank has to be initiated as soon as possible. This necessitates that Member States clearly define the aims, which

are actually realisable, the scope and the structure of such a data bank. In line with the draft action plan to combat illegal immigration and trafficking, the proposed data bank is not only supposed to hold information on the visas issued, but also on those applied for and those refused, in order to enable a fast and effective consideration of the legality of the residence of third country nationals. In an area without internal borders, such checks have to be possible Schengen wide. In the case of visa applications, it would also be possible to check through representations in foreign countries if the applicant has been refused a visa through another representation. The feasibility study of the Commission should also examine the creation of a European wide central register on all third country nationals present in the EU.

- c) Independent from the global action plan for the prevention of illegal immigration and trafficking in human beings, a **harmonisation of the list of countries who require consultation in the visa procedure** should take place. This would represent a considerable security gain for all Member States. The freedom of movement within the relevant Member States connected to the issuing of visas also requires common procedures in relation to the examination of aspects relevant to security. The Council Working Group Visa has already taken up work on the matter, which should be concluded by the end of the first half of year 2002.
- d) In order for the **security services to use the intelligence gathered through the visa consultation procedure** a change in law is unavoidable. According to the Schengen Implementation Agreement, the consultation only takes place within the framework of the examination of a visa application. This implies, that currently the result of the investigations are only used in relation to the question if a visa is issued or refused. The "extension" of this procedure according to Article 17 (2) Schengen Implementation Agreement, for policing reasons with the aim of gaining more indications for investigations in the field of criminal investigations, necessitates the passing of a regulation on the use of the visa consultation procedure. This would enable a better concentration of information with the security services and it would be possible to identify security risks earlier. The Commission should advance with the proposal they have announced already and extend the remit therein.

Other anti-terrorism measures are also being implemented outside the global action plan for the prevention of illegal immigration and trafficking in human beings, that are closely associated with this plan in terms of their content. Germany considers it vital that progress be made specifically in the following areas:

e) **The use of the data soon to be stored in the central EURODAC database for policing reasons**

The inclusion of the EURODAC database would enable the allocation of police intelligence to fingerprints of persons, who are resident in other Member States as asylum seekers. Criminal prosecutions would hereby be made considerably easier, but it would also enable the early identification and removal of security risks at a preliminary stage. Up to now, use of the data for criminal investigations is not possible because of the functional restriction of the EURODAC Regulation to the Dublin Agreement. The data could so far only be used for the clarification of the responsibility of Member States in asylum procedures. The COM should present concrete proposals for change as soon as possible.

f) **Giving EUROPOL, Eurojust, national public prosecutors as well as Foreigners' and Asylum Authorities powers to have online-access to data stored in the Schengen Information System (SIS)**

Enabling online-access to SIS data for Europol, Eurojust, national public prosecutor's offices as well as Alien and Asylum Authorities will create a better information situation and support the collection of necessary starting points for their work as well as further starting points in the field of criminal prosecution. Germany has already presented a note on the access by Europol, public prosecutor's offices, asylum and aliens authorities to the SIS (11895/01 SIS 81 COMIX 631, 14.09.01, Annex 2), the proposals are currently discussed at Working Group level. Germany proposes to discuss the extension of access to the SIS in a package, where the termination in the Council Declaration on the creation of Eurojust should be taken into consideration. The question of access by Europol as well as the public prosecutor's offices and other authorities can be examined and swiftly implemented separate to the functionality of SIS II.

g) Enabling European wide profile search operations

The UN resolution 1317 obliges all states to avert the committal of terrorist crimes (prevention) and to prosecute terrorist criminals (repression), without proscribing specific investigative methods. Here it is useful to point to profile searches, which entail a special form of computerised comparison of personal data from public or private institutions by security services. Germany uses this measure under certain conditions in order to avert dangers and for criminal prosecution. Due to the European wide mobility of terrorists, the application of this measure is considerably more effective if it is carried out at the same time and with the same criteria by other EU Member States.

The German delegation is of the view that the higher priority should be attached to dealing with these issues and tasks in the field of the prevention of terrorism. The proposals ensure that:

terrorists can be identified before they enter the country (measures taken in the visa-issuing procedure),

identification documents are protected and cannot be misused,

the exchange of information on terrorists, their movements and on falsified and forged documents is expedited,

and

the misuse of refugee status for terrorist activities is prevented.

The German delegation requests the Presidency, the Member States and the Commission to ensure that the issues currently in the pipeline are brought to a speedy conclusion. With this in mind, the German delegation kindly asks the Commission to table relevant proposals, insofar as this is necessary. The German delegation wishes to thank the Spanish Presidency for tackling the issues of visa files, visa consultation procedures and the use of biometrics.

The German delegation also requests the Presidency to intensify discussions on access to the SIS and to submit drafts of the necessary legal texts as soon as possible.