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From:	Presidency
To:	Council
Subject:	Effective criminal justice response to the phenomenon of foreign fighters = Lunch discussion of the Ministers of Justice

Providing effective criminal justice response is among the 4 priority areas together with prevention of radicalisation, detection of suspicious travel and cooperation with third countries, where the European Council in August 2014 called for accelerated implementation in order to build up a comprehensive response to the phenomenon of foreign fighters across the EU.

On 9-10 October 2014 in Luxembourg, the JHA Council approved a list of specific measures and agreed on the need to implement them as a matter of priority. Those measures include such related to the assessment of the effectiveness of the Framework Decision 2008/919/JHA on combating terrorism to address the phenomenon of foreign fighters through criminal law, in particular in the light of the UNSC Resolution 2178(2014) adopted on 24 September 2014 and calling upon the members of the UN to reinforce their engagement against terrorism, by, inter alia, making it a criminal offense to travel abroad for terrorist purposes.

Investigations have to encompass different objectives: prevent criminal activities among terrorist organisations operating abroad, prevent criminal activities after return, dismantle logistic supports, neutralize capacities of recruitment and eventually prosecute and convict individuals and organisations. The criminal justice response has also to avoid neglecting targeting organised crime such as illegal weapons trade, immigrant smuggling, etc.

Building on those assumptions, the Italian Presidency brought the issue of providing effective criminal justice response to the phenomenon of foreign fighters to the attention of CATS on 21 October 2014, where a debate took place on the basis of a paper submitted by the EU Counter-Terrorism Coordinator¹. A majority of delegations informed on that occasion that they are presently evaluating their national legislation in the light of the requirements of the UNSC Resolution. Some Member States informed that they have already adopted new legislation specifically designed to address the phenomenon of foreign fighters. As a follow-up to this discussion, at CATS on 11 November 2014 the Presidency invited delegations to submit information about the existing national measures that are already in compliance with the requirements of the UNSC Resolution, or that have been adopted in its implementation, or to inform about their plans to do so.

At CATS, Member States have also referred to the Eurojust Report on this issue which was under preparation, as an useful tool in order to assess adequately the necessity to further review the existing Council Framework Decision 2002/475/JHA on combating terrorism, as amended by Framework Decision 2008/919/JHA with regard to the UNSC Resolution. In the meanwhile the Report "Foreign fighters: Eurojust's Views on the Phenomenon and the Criminal Justice Response" has been adopted by the College of Eurojust in November 2014.

Furthermore, the discussions highlighted the recurring challenges and in particular the collection of necessary evidence to open and conduct successful criminal investigations on alleged terrorist activities that have taken place in foreign jurisdictions as well as addressing the serious security concerns prior to departure to and upon return from a foreign jurisdiction by means of criminal law. It should be noted that although new investigations on cases involving foreign fighters activities were opened over the past year and some of them already lead to the convictions of nine persons, this is not the only way to assess the efficiency of the response of ongoing judicial proceedings considering the scale of the problem associated with the phenomenon of foreign fighters.

¹ doc. 14188/14

Another important aspect that could be considered in this respect is to carefully assess where judicial cooperation could be improved as well as the establishment of disengagement and rehabilitation programmes of foreign fighters. Those programmes should supplement the judicial response and may be part of social reinsertion process accompanying prosecution and conviction.

These issues are developed in the Discussion paper by the EU Counter-Terrorism Coordinator on foreign fighters and returnees², which was submitted for consideration to the Council. The Eurojust Report on those matters is also made available to Ministers³.

Against this background, ministers are invited to express their views on the further steps that would be needed at EU level to advance the criminal justice response to the phenomenon of foreign fighters, in particular with a view to increasing the record of successful investigations resulting in effective final convictions of alleged perpetrators.

² doc. 15715/1/14 REV 1

³ doc. 16130/14 RESTREINT UE