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NOTE

from : Presidency
to : COREPER

Subject : 'New ideas' on Counter-Terrorism from the July JHA Council: Next Steps

1. At the extraordinary JHA Council of 13 July the Presidency agreed to examine suggestions made by Member States for additional counter-terrorism initiatives. A list of measures to be examined was finalised by Coreper after the Council and a brief discussion of them was held at the Terrorism Working Group on 22 July. Coreper is now invited to agree the proposals set out below which explain how work will be taken forward.

The participation of additional Member States in the Treaty of Prüm. (Germany)

2. The Prüm Treaty, signed on 27 May 2005, covers a large number of areas of practical cross-border co-operation: information exchange, sky marshals, CT co-operation, illegal immigration, repatriation, joint cross-border policing operations and civil crisis management. Current signatories of the treaty are Austria, Germany, France, Spain, Luxembourg, Belgium and Netherlands.
3. Implementation of the Treaty by the current signatories is ongoing, and the Treaty is open to membership by additional EU Member States. Decisions on membership are for individual States to take forward (should 8 Member States sign the Prüm Treaty, it can then be brought to the EU as an area of reinforced co-operation).
4. However, specific elements of the Prüm Treaty may serve as a useful basis for work at EU-level. In particular, a 'Friends of the Presidency' expert group, working to the Multidisciplinary Group on Organised Crime, is examining the information exchange parts of the Prüm Treaty as part of its research into the best ways to implement the principle of availability. This work will also contribute to informing a Commission legislative proposal (expected October 2005) in this area. Other aspects of the Prüm Treaty will also be covered by the forthcoming Commission Communication on improved effectiveness, enhanced interoperability and synergies between European databases in the area of Justice and Home Affairs.

Feasibility study on appropriate methods to register entries and exits of third country nationals at the common external borders/ Developing the use of biometrics at entry and exit controls on the Schengen borders (Germany)

5. Schengen States have entry and exit controls (new / consolidating legislation on these will be adopted shortly in the form of the Schengen Borders Code) and are working on various databases (including SIS and VIS). But they currently have no way of matching up information about those leaving with those who entered and thus have no information on the numbers of those remaining illegally in the Schengen area.

6. There would be benefit in recording this kind of information. Such a system would need to be practical and not result in excessive delays at the borders. Technical details and data protection issues would need to be explored, including whether the data stored should include biometrics and whether existing databases could be used.
7. It is therefore proposed that the European Commission be invited to undertake a feasibility study. The study will need to balance the proportionality and practicality of additional checks at the borders against the potential advantages of recording and using the resulting information. The feasibility study should incorporate the suggestion to look into plans to introduce biometrics-supported exit controls at Schengen borders. The deadline for completion for this study would be December 2006.

Exploring law enforcement access to VIS, SISII, and Eurodac (Germany)

8. It is essential that EU information systems are used to their maximum potential in enhancing our collective ability to identify individuals who pose a serious threat to the internal security of Member States. In order to achieve this goal Member States law enforcement agencies must, subject to strict data protection provisions, have an appropriate form of access to European information databases that can play a role in contributing towards improving internal security and the fight against terrorism.
9. Following adoption in March 2005 of Council Conclusions on access to the VIS by Member State authorities responsible for internal security, and the July 2005 Council Declaration on the EU response to the London bombings, the Commission will present a proposal for law enforcement access to the Visa Information System (VIS) by November 2005. The Commission will also bring forward a Communication on enhanced effectiveness, interoperability and synergies between European databases in the area of Justice and Home Affairs.

10. The Council should explore the possibility for amending the Commission's proposals concerning SIS II to allow for wider law enforcement access to more of the data SIS II will contain. The approach would mirror the Commission's forthcoming proposal to give law enforcement authorities access to the VIS.
11. The possibility of law enforcement access to EURODAC should be examined in the context of the Commission's Communication on enhanced interaction between VIS, SIS II and EURODAC.

The Taking of Measures to Enhance Mutual Trust Between Member States' Law Enforcement, Intelligence and Security Services (Belgium)

12. Developing mutual trust between the officials of different Member States is essential to successful operational co-operation. The Coreper discussion on 20 July made clear that operational co-operation between security and intelligence services in Europe is strong, including in the area of information exchange, and relies heavily on the application of the third party rule, which ensures that the balance between the protection of highly sensitive intelligence material and the passing of this material to those that need it.
13. Enhanced mutual trust between law enforcement authorities in support of information exchange and joint investigations is important. Many Member States already undertake exchanges of staff between police or law enforcement organisations bilaterally, seconding officers to other EU Member States or embedding them within other countries' organisations in order to strengthen relationships.
14. At the pan-EU level, Europol and CEPOL deliver training relating to counter-terrorism for law enforcement officials from around the EU. There are significant benefits in training officers together: it helps develop common approaches to policing across the EU and develops contacts and trust between participants.

15. It is proposed that CEPOL, working with Europol, provide a report on what counter-terrorism related training they have so far provided and the outcomes of this training, as well as proposals for what more they might provide in this area. The deadline for this report would be December 2005.

Developing a common approach to the expulsion of terrorist suspects. (Italy)

16. It is clear that at present Member States take different approaches towards the expulsion of terrorist suspects and that there are no common EU wide arrangements in place for exchanging basic, factual information on terrorist-related or wider criminal deportations or expulsions. There would be value in exchanging such information to support Member States' activities in fighting terrorism and serious crime. The Presidency is considering how best to take this forward and will offer more specific ideas shortly.

Exploring the potential to offer residence permits to foreign nationals who co-operate with Member States' counter-terrorism investigations. (Italy)

17. This question is in effect part the wider issue of witness protection. At present Member States grant residence to witnesses in exchange for evidence given or negotiate with other Members on reciprocal residence of witnesses. There is existing co-operation between European and international police forces and other law enforcement bodies on witness protection programmes but practices vary across Europe and there is scope for exchanging good practice.

18. It is proposed that the European Commission include the issue of granting residence permits in the work they have already planned on witness protection, in order to establish best practice in this area. The deadline for this work would be July 2006.

Community Funding for Joint Investigation Teams (JITS)

20. JITs are currently funded by Member States. The Framework Decision (FD) on JITs was adopted by the Justice and Home Affairs (JHA) Council on 13 June 2002. It was the aim of the initiative to bring into advance effect Article 13 of the 2000 Convention on Mutual Legal Assistance. This Framework Decision would cease to exist when the Convention comes into full effect. The Framework Decision enables Member States to establish JITs - (ie. teams of officers and officials from several countries) - more rapidly by providing for certain arrangements which would, otherwise, require lengthy negotiations. The Council has also agreed a model agreement for establishing JITs.
21. The Article 36 committee in July 2005 approved a proposal to set up a network of national experts on JITs in each Member State. The reason for this is to facilitate the use of JITs by disseminating information about the legal basis and the options available to practitioners. The Council Secretariat has asked Member States to designate a national expert on JITs by 1 September 2005. The Council Secretariat has also invited Member States to send general information about existing JITs by the same date. Europol and Eurojust have agreed to host the first meeting of the experts on 22 and 23 November 2005.
22. The Security Framework Programme (prevention and fight against crime) proposed by the Commission for the period 2007-13 aims to make Community funds available to Member States for joint operational activities such as JITs. Further discussions on Community funding for JITS will be taking forward within the framework of negotiations on that Programme.

Better exchange of information on victim identification (Latvia)

23. The Article 36 Committee agreed earlier this year that a database for the identification of disaster victims was needed and that the Interpol database should be used for this purpose. It then asked for work to be done to examine how the Interpol database could be used for all cases (ie also those not relating to a disaster) of missing persons and unidentified bodies.

24. Follow-up work is currently being undertaken in the Police Co-operation Working Group (PCWG), balancing the advantages of exchanging and compiling such information against data protection safeguards. Interpol are fully involved in this work.
25. The PCWG is also considering two further options: whether to issue a joint statement from the Member States of the EU offering support for Interpol's victim identification efforts in response to the tsunami disaster and a common position on the way forward, or whether to bring forward a legislative instrument requiring Member States to share their missing persons data with Interpol more fully in the future. PCWG will report back to the Article 36 Committee on these options.
26. The Commission's Communication on effectiveness, interoperability and synergies of EU databases will also touch on the issue of victim identification.

Improve Co-Operation on Monitoring the Use of Internet for Terrorist Purposes (Italy)

27. Effective monitoring of the Internet is an important part of effective counter-terrorism work, in particular given the recent growth of extremist internet sites aimed at motivating or facilitating terrorist attacks. In this context, building co-operation between national monitors is important. This work will form an important part of the EU Strategy on Radicalisation and Recruitment to be presented to the December European Council.
28. In addition, Europol's workstream on the monitoring of internet sites for terrorist purposes is already in place. Europol has a well-established project involving monitoring the Internet for sites relevant to terrorism. It produces useful reports for Member States, who should be encouraged to support and participate in the project.
29. Finally, on 13 September the TWG will consider a confidential SitCen assessment on "Terrorists' use of the internet". The group will be invited to submit policy recommendations on the basis of that assessment, which might for example include points for inclusion in EU CT Action Plan when reviewed at the end of the year.
