



**COUNCIL OF
THE EUROPEAN UNION**

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5824/07

LIMITE

**ASIM 7
ENFOPOL 12**

NOTE

from : Presidency
to : Working Party on Migration and Expulsion

No. prev. doc. : 5424/07 ASIM 3 ENFOPOL 3

Subject : **Draft Council Resolution on information exchange on the expulsion of third-country nationals due to behaviour related to terrorist activity or inciting violence and racial hatred**

In view of the consultations within the Strategic Committee on Immigration, Frontiers and Asylum (SCIFA) on 23 January 2007 concerning the amended draft presented by the Presidency (Doc. 5424/07), the Presidency presents the following revised draft, with an introductory note as follows:

1. The information exchange is intended to inform the other Member States without delay about decisions to expel third-country nationals whose behaviour represents a serious threat to the public order and democratic values in the Member State providing the information. The information exchange will thus function to warn the other Member States about the expelled person – independently of incident-related Schengen Information System enquiries, which do not provide further information about the behaviour of the third country national concerned.

The information exchange therefore acts as an early warning system, thus providing added value. It is up to the competent departments in the other Member States to decide how to use the information provided, based on the relevant national law and procedures. The draft resolution is not intended to build up databases in the Member States.

2. In the Presidency's view, the information exchange will require a network to make the transmitted information available to the relevant competent departments in the Member States which will then be able to forward the information as appropriate. The Presidency is of the opinion that the bureau de liaison (BdL) secure network channel intended for the EU-wide exchange among the Member States' national situation centres or other competent departments of confidential information on terrorist incidents would be an appropriate medium for information exchange. The competent departments are involved in the national crisis response mechanism as national central units, ensuring their extensive availability. An argument against using the Schengen Information System for the information exchange is the fact that not all EU Member States participate in it currently or plan to do so in the future. Further, the departments to which the information would be sent, i.e. the national SIRENE offices, are not part of the crisis response mechanism mentioned above.
3. Prior to its assessment (see No. 5 of the Resolution), the Presidency proposes restricting information exchange to those cases in which an expulsion decision has been issued in the Member States. The assessment should then raise the question whether it is appropriate to expand the information exchange to additional cases (such as planned expulsions).

Revisions to the following draft have been noted in bold type.

Draft Council Resolution on information exchange on the expulsion of third-country nationals due to behaviour related to terrorist activity or inciting violence and racial hatred

THE COUNCIL OF THE EUROPEAN UNION,

CONSIDERING:

- (1) The European Union action plan on combating terrorism, as amended and approved by Coreper on 16 February 2006 (5771/1/06 JAI 34), and in particular point 3.1.12 thereof calling upon the Council to develop "a common approach to the exchange of information on deportations and expulsions related to terrorism".
- (2) The European Union action plan for combating radicalisation and recruitment to terrorism ~~(14782/05 JAI 453), and more specifically, in particular the task contained~~ in measure 36 ~~thereof stating that "Member States should, where possible, share information on terrorist-related deportations or expulsions, including radical imams inciting terrorism, in order to prevent the re-entry of deported individuals into EU territory",~~

HAS ADOPTED THIS RESOLUTION:

1. Where the competent (administrative or judicial) authorities of a Member State have expelled a third-country national from its territory on the grounds of behaviour linked to terrorist activities or constituting acts of explicit and deliberate provocation of discrimination, hatred or violence against a specific individual or group of individuals, they will, **in accordance with their national legislation, systematically** inform the competent departments of the other Member States as soon as possible. **The information exchange will serve as an early warning system. It is up to the other Member States to decide how to use the information provided, based on the relevant national law and procedures.**

2. For this purpose, the competent departments of the Member States will use the bureau de liaison secure network channel.
3. This will be the procedure when **the competent authority has decided that** any third-country national referred to in paragraph 1 is **to be** expelled from the territory. Under this Resolution, a six-monthly summary will also be sent.
~~The transmission of information will comply with the principles of Directive 95/46/EC.~~¹
4. This Resolution does not create any requirement to harmonise the criteria governing the expulsion of individuals on the territory of an EU Member State.

It does not interfere with the discretionary power of the competent authorities of each Member State to authorise or refuse a foreign national residence, temporary or otherwise, on its territory.

~~The transmission of information referred to in paragraph 1 does not relieve the transmitting state of any obligations under Article 96 (3) of the Convention Implementing the Schengen Agreement of 14 June 1985~~ The transmission of information referred to in para. 1 is without prejudice to the application of the provisions of Article 96 (3) of the Convention Implementing the Schengen Agreement of 14 June 1985.²

5. The results achieved in the implementation of this Resolution will be assessed by the Council one year after its entry into force. The assessment will focus exclusively on the quantitative aspect of the exchanges and will have no access to nominative individual information, in accordance with legislation on data protection.
6. This ~~initiative~~ **Resolution** will enter into force three months after its adoption by the Council.

¹ ~~Directive 95/46/EC referred to in paragraph 3 is Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.~~

² Paragraph 4 has been expanded in view of the aim to prevent the re-entry of deported individuals into EU territory, stated in paragraph 2 of the recitals, above all by consistently sharing information on entry bans via the Schengen Information System. **In future, the provisions of EC Regulation 1987/2006 on the establishment, operation and use of the second-generation Schengen System, which has not yet entered into force, are to be observed.**