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ANNEX

**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 4 June 2004

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NOTE

from : General Secretariat

to : Working Party on Terrorism/Article 36 Committee

Subject : Evaluation of National Anti-Terrorist Arrangements
Report about the Evaluation of Ireland 13–14 November 2003

Evaluation of National Anti-Terrorist Arrangements

**Report about
the Evaluation of Ireland
13 - 14 November 2003**

Brussels, 04 May 2004

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Summary of the Report

1. Terrorism Situation

1.1 Domestic Terrorism

In Northern Ireland the current domestic terrorist campaign, known as the “Troubles” began around 1970. Over 3.700 people have died as a result of the conflict, most of those in Northern Ireland. One in every fifty of Northern Ireland’s 1.5 million people, some 30.000, were injured.

It is estimated that over 10.000 people passed through the ranks of the Republican paramilitary groups during the period. The Provisional IRA was the largest of the Republican groupings. Loyalists were capable of mustering twice that number to answer a call to arms at short notice.

Numerous successful investigations into the activities of those indigenous groups were mounted both domestically and abroad. The relationship between PIRA and the Libyan regime of Colonel Qaddafi was one of the most colourful of the “Troubles”. The Libyans supplied the 150 tons of modern sophisticated weaponry, which was aboard the MV EKSUND when it was captured in French waters in 1987. It is claimed that 150 tons had already been shipped into Ireland and successfully hidden away in bunkers throughout the countryside. This internationally renowned case is an example of investigations, which succeeded because of a high level of international cooperation between different law enforcement and intelligence agencies.

While the war was carried to the “enemy” (“the occupying forces”) in Northern Ireland, traditionally logistical support was provided by activists from the Republic. This included training, storage of weaponry, engineering and financing of operations through robberies. From time to time activists from the Republic crossed the border to perform active service in the North.

Currently domestic terrorism is at its lowest level for many years. Again cooperation between An Garda Síochána, the Police Service of Northern Ireland and lead agencies in the United Kingdom contribute to maintaining this downward trend. At the present time there are 25 members of the Real IRA in prison in this jurisdiction, 13 members of the Continuity IRA, 4 members of PIRA, 5 INLA and 23 persons who now claim to have non-aligned themselves from whatever terrorist group they were with.

1.2 International Terrorism

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Nevertheless close monitoring is conducted and strong liaison is maintained with external law enforcement and intelligence agencies. Reports issued following executive actions in other Member States have been received and appropriate responses made. Enquiries are still ongoing in an effort to identify any links to Ireland vis-à-vis individuals or networks.

2. Structure of the Authorities

2.1 General Structure

The institutions of the State were consolidated and a tradition of political stability established in the first two decades after the achievement of independence in 1922. Since then, 26 counties form the Republic of Ireland, the remaining 6 form Northern Ireland. The Constitution of 1937 and the Republic of Ireland Act 1948 severed Ireland's last formal links with Britain.

Ireland remained neutral during the Second World War and does not belong to any military alliance.

Ireland's population is about four million people. The State's first official language is Irish, the second English.

2.2 Political and Security Structure

2.2.1 Government

Ireland's parliamentary democracy is based on common law and legislation enacted by Parliament under the Constitution.

The Constitution of Ireland sets out the form of Government and defines the powers and functions of the President as the Head of State, both Houses of the Oireachtas (Parliament), which are the Dáil Éireann (House of Representatives) and Seanad Éireann (Senate), and the Government under the Taoiseach (Prime Minister). It also defines the structure and the powers of the Courts and outlines the fundamental rights of the citizens.

2.2.3 Local Government

The local government system is administered by elected local authorities. As the governmental part closest to the citizen it provides an extensive range of essential infrastructure, social and community services.

There are eight regional authorities, whose members are nominated by local authorities, with a brief to promote public service coordination and to monitor and advise on EU structural and cohesion funding programmes.

2.2.3 Courts

The Constitution of Ireland provides that justice shall be administered in public by courts established by law. Summary offences and minor civil cases are dealt with by the District Court presided over by a District Judge. More serious cases are dealt with by the Circuit Court, presided over by a Judge who sits with a jury of twelve citizens in criminal cases. The most serious cases are heard by the High Court, presided over by a Judge; when trying criminal cases it sits with a jury and is known as the Central Criminal Court. The court of final appeal is the Supreme Court, which is also the final arbiter on the interpretation of the Constitution.

Irish law does not yet distinguish terrorist acts for the purpose of the criminal law. However, under the Offences against the State Acts, a Special Criminal Court has been established to try scheduled offences or where the Director of Public Prosecutions certifies that ordinary courts are inadequate to secure the effective administration of justice and the preservation of public peace and order.

2.2.4 Police

The national police force, An Garda Síochána comprises almost 12,000 men and women, divided in different units with specific tasks. The Commissioner of the Garda Síochána, appointed by the Government, is responsible to the Minister for Justice, Equality and Law Reform who in turn is responsible to Dáil Éireann. The police force is unarmed with the exception of some specialised units.

An Garda Síochána is the law enforcement agency as well as the intelligence service.

3. Summary of the Evaluation

3.1 Ireland is making efforts to ratify all international conventions on anti-terrorism.

Ireland has an enormous experience in fighting domestic terrorism, which, in particular since the 1970s, mainly manifested itself in Northern Ireland but impacted greatly on the Republic.

Owing to that, and although not being very much involved in international terrorism affairs, Ireland has developed some very effective tools in the fight against terrorism.

3.2 Examples of good practices to be found in Irish legislation:

- The use of the Special Criminal Court for terrorist and other serious cases assists in the preservation of public peace and order.
- The dual role of law enforcement and state security, of An Garda Síochána allows for a cohesive management of intelligence.
- Senior Garda Síochána officers (Chief Superintendents) can give evidence of membership of an unlawful organisations and this evidence can be considered by the Court in conjunction with other evidence in determining the guilt or innocence of the accused.
- **NOT DECLASSIFIED** This includes the immigration unit's database and the national drugs unit's database. All members of the Force have access to the Electoral register and National Vehicle file register through PULSE.
- The Criminal Assets Bureau can take immediate action in relation to the freezing of assets, which are deemed to be the proceeds of crime.

3.3 The following recommendations are made:

- Legislation should be introduced which would allow for the use of intrusive surveillance measures, under cover agents and simulated transactions, which are regarded as indispensable tools of an intelligence service in the fight against terrorism.
- Legislation should also be introduced which would ensure that Member States can be provided with produce of interception of communications in cases of requests under the Mutual Legal Assistance Convention.
- The absence of a mandatory national identity document might also bring disadvantages for cooperation at national and international level.

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Legal Framework of the Evaluation

- 1.1 On 20 September 2001, the JHA-Council¹ "in the light of the attacks in the United States of 11 September and following on from decisions taken since the Tampere European Council" among other measures instructed "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, administrative and technical nature."
- 1.2 The JHA-Council on 28 November 2002, approved a decision² "establishing a mechanism for evaluating the legal systems and their implementation at national level in the fight against terrorism".
- 1.3 On 19/20 September 2002, the Article 36 Committee agreed on a questionnaire³ on peer assessment of national terrorist arrangements.
- 1.4 Based on the analysis of the answers of the Member States⁴ four evaluation fields have been identified⁵.

¹ doc 12156/01 JAI 99 of 25 September 2001

² doc OJ L 349 of 24 December 2002

³ doc 11722/1/02 REV 1 ENFOPOL 113 CATS 52 COTER 44 of 23 September 2002

⁴ doc 5339/1/03 REV 1 ENFOPOL 2 of 14 March 2003

⁵ doc 5340/03 ENFOPOL 3 of 17 January 2003

1.5 The Article 36 Committee⁶ at its meeting of 23/24 January 2003, agreed to the following proposal for the first evaluation:

"To assess the exchange of information in all domains relating to terrorist activities between law enforcement and intelligence services and all other bodies dealing with various aspects of terrorism, including the coordination among those services and between these services and their counterparts in the other Member States on how best to exploit this information. The evaluation should mainly focus on information and coordination concerning Islamic extremist terrorist groups and their activities."

1.6 At its meeting of 24/25 March 2003, the Article 36 Committee agreed on an additional questionnaire⁷ on "the exchange of information relating to Islamic extremist terrorist groups and their activities between law enforcement and intelligence services and all other bodies". Military structure or intelligence excluded as not being subject to the evaluation.

⁶ doc 5838/03 ENFOPOL 8 of 5 February 2003

⁷ doc 6337/2/03 REV 2 ENFOPOL 11 RESTREINT UE of 02 April 2003

Agenda of the Visit / Participants

1.1 The frame given by the different decisions and the answers⁸ of Ireland to both questionnaires led to a list of authorities to be met as well as items and structures to be discussed. This list has been discussed with the Irish preparation team as the basis of the agenda of the visit.

1.2 The visit took place from 13 to 14 November 2003, the agenda was as follows:

Thursday, 13 November 2003

- Department of Justice, Equality and Law Reform
- International Terrorism Unit participants:

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- An Garda Síochána
- Crime, Policy and Administration Unit
- Security and Intelligence Branch participants:

NOT DECLASSIFIED

⁸ attachment of 21 October 2002 to doc 11722/1/02 REV 1 ENFOPOL 113 CATS 52 COTER 44 and attachment of 10 July 2003 to doc 6337/2/03 REV 2 ENFOPOL 11 RESTREINT UE

Friday, 14 November 2003

- Public Prosecution Office participants.

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- Security and Northern Ireland Division participants:

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- 1.3 The visit was well prepared and organised and thus gave a complete overview regarding the responsibilities and competencies as well as the structure of the fight against terrorism in Ireland.

During the visit all responsible authorities have been present with highly engaged and excellently informed high-ranking representatives. The presentations were provided in a professional manner and assisted by handing over all necessary documents. The information given has been complete and instructive.

Discussions about the responsibilities and the way the services operate ran perfectly open. Questions on all matters were answered most transparent and thus helped to work out not only good practices but also problems.

- 1.4 Due to the very friendly behaviour of all participants and the cordial hospitality of the Irish hosts the evaluation visit was not only effective but ran in a very pleasant atmosphere.

The evaluation team would like to thank the Irish authorities for the preparation, cooperation and realisation of the evaluation visit and, moreover, for their cordial hospitality.

Full version of the Report

1. Prime Minister

At the governmental level an **Interdepartmental Committee on National Security** - chaired by the **Department of the Taoiseach (Prime Minister)** - is comprised of representatives of the **Department of the Taoiseach, the Department of Foreign Affairs, the Department of Justice, Equality and Law Reform, the Department of Defence**, the Commissioner of **An Garda Síochána** and the Chief of Staff of the **Defence Forces**. At regular intervals (nine times last year) it discusses issues which impinge on national security.

In addition, two other groups deal with issues which could arise from terrorist activities:

The **National Civil Aviation Security Committee**, which is chaired by a senior official of the **Department of Transport**, includes representatives from the **Departments of Defence and Justice, Equality and Law Reform, the Garda Síochána** and the **Airlines and Airport Authority**, and discusses (three meetings last year) inter alia issues relating to airline security.

The **Emergency Planning Task Force** is an interdepartmental multi-agency task force, chaired by the **Minister for Defence**, which met nine times last year coordinates approaches for dealing with the matters arising from emergency situations, including possible terrorist incidents.

2. Department of Justice, Equality and Law Reform

2.1 Competencies

The internal security of the State is primarily the responsibility of the **Ministry for Justice, Equality and Law Reform** with its national police force **An Garda Síochána**.

The Ministry itself usually does not play a role in the exchange of information and in the coordination but is involved in the mutual legal assistance procedures and gives advice in more complex requests.

Day-to-day decisions and operational matters are the responsibility of the **Garda Síochána Commissioner**, who is responsible to the Minister, who in turn is responsible to **Dáil Éireann** (the Lower House of Parliament) for the activities of the force.

The competencies of the Ministry include the preservation of law and order and the security of the State through the development of policy and support for the workings of the courts, prisons and the Garda Síochána.

2.2 Irish Legal Framework on Terrorism

Irish law does not as yet define terrorism or distinguish terrorist acts for the purposes of the criminal law. Terrorist acts fall to be dealt with by reference to the relevant offences under the general criminal law, eg. murder, explosives, firearms. Likewise the provisions of the criminal law governing conspiracy, aiding and abetting, and attempting to commit offences in addition to substantive offences are relevant to the preparation for particular terrorist acts. Crimes committed in the course of terrorist activity accordingly are dealt with as offences under the criminal law. The criminal law, however, contains dedicated provisions in the Offences against the State Acts, 1939-1998 which make provision in relation to activities calculated to undermine public order and the authority of the State and for the suppression of unlawful organisations and which can have application to those who engage in terrorism.

Ireland's criminal law also establishes as offences the criminal acts referred to in a number of the anti-terrorism international conventions as follows:

- Air Navigation and Transport Act, 1973⁹,
- Air Navigation and Transport Act, 1975¹⁰,
- Radiological Protection Act, 1991¹¹,
- Air Navigation and Transport Act, 1975,
- Air Navigation and Transport Act, 1988¹².

2.3 Universal Jurisdiction

The general principle in Irish law is that jurisdiction is territorial. There are exceptions, however, when extraterritorial jurisdiction can be exercised in accordance with law.

With regard to the prosecution of terrorist crimes committed outside Ireland, these exceptions include:

- the offence of murder, manslaughter and other offences¹³,
- scheduled offences when committed in Northern Ireland¹⁴ (where corresponding legislation is in effect in Northern Ireland.),
- offences within the scope of the European Convention on the Suppression of Terrorism¹⁵,
- offences against civil aviation and aircraft security¹⁶.

⁹ Convention on Offences and Certain Other Acts Committed on Board Aircraft (1963);
Convention for the Suppression of Unlawful Seizure of Aircraft (1970);

¹⁰ Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation (1971);

¹¹ Convention on the Physical Protection of Nuclear Materials (1980);

¹² Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Aviation, complementary to the Convention for the Suppression of Unlawful Acts Against the Safety of Aircraft (1988);

¹³ under sections 2 and 3 of the Explosive Substances Act, 1883 when committed by an Irish citizen,

¹⁴ for the purpose of the Criminal Law (Jurisdiction) Act, 1976;

¹⁵ European Convention on the Suppression of Terrorism Act, 1987; in certain circumstances, by virtue of sections 5 and 6 of the Extradition Amendment Act 1987;

¹⁶ within the scope of the Convention on Offences and Certain Other Acts Committed on Board Aircraft, the Convention for the Unlawful Seizure of Aircraft, the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation and the Convention on the Protection of Nuclear Materials under the relevant legislation;

2.4 Pending Legislation

The position as regards the definition of terrorist crimes will change when legislation, which is in the course of preparation, is enacted to give effect to the EU Framework Decision on Combating Terrorism¹⁷ and to enable Ireland to ratify certain UN anti-terrorism conventions which have not yet been ratified.

This legislation will, in accordance with the Framework Decision,

- provide for a common definition of terrorist offences and offences related to terrorist groups and for the criminal sanctions which will be available for dealing with such offences,
- extend the circumstances in which terrorist crimes committed outside Ireland may be prosecuted in the State,
- enable Ireland to ratify the International Convention for the Suppression of the Financing of Terrorism¹⁸, which Ireland signed in October 2001,
- accordingly make provision for a terrorist financing offence with extraterritorial effect and for the freezing and confiscation of the funds used, or intended for use, in financing such acts,
- give effect to three additional UN anti-terrorism conventions: the Convention for the Suppression of Terrorist Bombings¹⁹, the Convention Against the Taking of Hostages²⁰, and the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons²¹.

The legal provisions applying to the area of interception of communications, cybercrime, legal obligations for internet providers/telecom operators, list of terrorist organisations, fight against the financing of terrorism and CBRN terrorism are under review with a view to strengthening them and making them more effective.

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The extent of legislative provisions required to give effect to the European Cybercrime Convention is currently being examined.

And legislation is being drafted in order to require operators providing telecommunications services to retain information concerning the use made of services provided by them and to enable Ireland to ratify the International Convention for the Suppression of the Financing of Terrorism.

2.5 An Garda Síochána

The **Garda Síochána** is responsible for both law enforcement and the internal security of the State. To that end, it is the national police service and the sole law enforcement agency in the State but also has an intelligence function. No other intelligence or security service exists. The role of the Garda Síochána includes ensuring the security of the State, preventing crime (including terrorist crime) and detecting and investigating crime.

Within its structure there are different units under the **Deputy Commissioner Operations** who has three assistant commissioners for his support. Under the authority of the **Assistant Commissioner Crime and Security** who in case of terrorism plays the key role there are the

- Security and Intelligence Unit,
- Crime Policy and Administration Unit with its Mutual Assistance and Extradition Section,
- Special Detective Unit,
- National Surveillance Unit,
- Criminal Asset Bureau,
- Bureau for Fraud Investigations,
- Liaison and Protection Unit and
- International Cooperation Unit.

He is also responsible for the assessment of threat and plays an important role in the decision on the threat level (1 - 5).

Best practice

Senior Garda Síochána officers (**Chief Superintendents**) play an important role in criminal procedures. They can prosecute minor offences and, moreover, can give statements in court, which are considered as evidence. Thus neither sensitive information nor its source need to be disclosed to the defence. This is a unique instrument to protect the identities and lives of sources, witnesses and law enforcement officers, and provides for the non-disclosure of future law enforcement or intelligence operations.

2.5.1 Security and Intelligence Unit

Headed by a Detective Chief Superintendent the **Security and Intelligence Unit** is responsible for all terrorist cases. Its core activity being the monitoring of trends in subversive and criminal activities in the State, particularly all intelligence relating to terrorist attacks and terrorist matters, it is responsible for coordinating all operational and intelligence matters.

Threat assessments are provided for a number of fora, including the Minister for Justice, Equality and Law Reform and the Government as required but do not include personal data.

The threat from Islamic Extremism is included in the general threat assessment.

The unit is structured in several desks **NOT DECLASSIFIED**.

At the operational level the Security and Intelligence Unit maintains close contacts with the other units of the Garda Síochána which are involved to counter the threat of both domestic and international terrorists.

It also maintains close links with the **Security and Northern Ireland Division** and with officials of the **Revenue Commissioners** who are responsible, inter alia, for customs matters. Ongoing operations are discussed on bilateral basis with other services (for example the **Police Service of Northern Ireland** and the **Metropolitan Police Special Branch**) directly involved in the operations.

Moreover, to discuss matters of mutual interest regular meetings take place with the **Intelligence Branch of the Defence Forces**.

As refers to special aspects of national coordination, particularly in urgent cases, any warning of a terrorist attack or the threat of such an attack immediately is reported to the Security and Intelligence Section, where it is analysed in the first instance and disseminated to all interested and affected bodies.

On a national level there is a common police database (PULSE) utilised by all sections of the Garda Síochána. **NOT DECLASSIFIED** To complement this database continuous interaction with regular mutual exchange of information takes place with other sections of the Garda Síochána engaged on investigations.

Best Practice

NOT DECLASSIFIED the Garda National Immigration Database, the Garda National Drugs Database and the PULSE National Database which contains all details of reports of crime, registered owners of cars and firearms. This allows for a complete overview and structured investigation and thus helps to thoroughly analyse the information given.

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Informants are generally not identified. However witnesses are required to go into Court and give evidence and have their credibility tested in open Court. If witnesses are deemed to be at risk because of their testimony they are assessed for entry to the Witness Protection Programme. However their identity is revealed and they can play no further role as a criminal informant.

Investigation of crime is a matter for the Gardaí, who compile files on cases which are forwarded to the Director of Public Prosecutions who decides what charges if any are brought and against whom. Once charges are brought the DPP's Office is in charge of the case. Nevertheless the Gardaí still maintain an element of influence over what evidence can be given and by whom. For instance, if evidence to be presented in a case were likely to affect the security of the State or cause risk to someone's life, then "privilege" would be claimed, meaning that that evidence would not be given or it would be given in a certain way.

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Recommendation

Particularly in fighting international terrorism, the Irish authorities should reflect about creating a legal basis for the Garda Síochána Security and Intelligence Unit to use intrusive surveillance measures, under-cover agents and simulated transactions.

The Security and Intelligence Unit cooperates with a lot of foreign services and organisations and represents Ireland in various international fora **NOT**

DECLASSIFIED, Counter Terrorism Group, Police Working Group on Terrorism, Terrorism Working Party, Europol and Interpol Fusion Task Force.

On the strategic level, the international information provided is analysed in an effort to identify any possible links to Ireland or Irish nationals, and disseminated as appropriate on a regular or ad hoc basis.

The co-operation between the various units is very close but due to international requirements the Security and Intelligence Unit does not share information in a joint database with the other units and obeys strictly the third party rule in regards of information sharing.

2.5.2 Mutual Assistance and Extradition Unit

Within the **Crime Policy and Administration Unit** the **Mutual Assistance and Extradition Section** deals with every form of mutual legal assistance. It closely cooperates with the central authority in its Ministry and handles cases without legal advice as well as cases, which require legal advice.

2.5.3 Special Detective Unit

While the Security and Intelligence Unit is doing the intelligence investigation the **Special Detective Unit**, being the operational part in the fight against terrorism, is carrying out the more traditional law enforcement investigations with a national remit which includes the monitoring of suspected terrorist sympathisers.

Based in Dublin but being competent for the whole country, they do surveillance as well as searches. To achieve best results they closely cooperate with all the involved parties and also support the Security and Intelligence Unit. Its role encompasses preventative and operational aspects.

It provides regular updates on both operational and intelligence matters to the Security and Intelligence Unit, where it is analysed and disseminated as appropriate.

There is a regular information exchange between the Special Detective Unit and other Member States, forwarded through the Security and Intelligence Unit, primarily indicating details of suspects or persons arrested.

2.5.4 National Surveillance Unit

The **National Surveillance Unit** provides all kinds of surveillance for all Garda Síochána Units especially for Security and Intelligence Unit and the Special Detective Unit. It has a responsibility for the whole territory.

2.5.5 Criminal Asset Bureau

Regarding the fight against the financing of terrorism Ireland has chosen a multi-agency approach, which resulted in the forming of the Criminal Assets Bureau. It deals with suspicious transactions and the prevention and investigation of money laundering and financing of terrorism. It can be seen as the Irish FIU.

The Criminal Assets Bureau consists of officers belonging to different parts of the Irish administration like the Revenue Commission, the Welfare Office and the Taxation Office. As these organisations do not act like typical law enforcement agencies, their procedures fall under civil law. This has the effect that assets can be frozen in a very early stage of the investigation and a suspect has to prove what he is claiming and not vice versa, a reverse burden of proof.

2.5.6 Bureau for Fraud Investigations

This office carries out all fraud investigations and is important because it also investigates cases of financing or funding of terrorism. In contrary to CAB this is a typical law enforcement structure conducting all law enforcement powers.

2.5.7 CBRN Threats

To respond to CBRN attacks or incidents is the competence of the **Military**. Investigations are carried out by An Garda Síochána after the Military has secured the area and agent or substance. Forensic evidence is gathered by the **Technical Bureau** which hosts the **Forensic Science Laboratory**, an independent unit with the expertise to be accepted as experts in court cases.

All parties are aware of the threat, and regular and frequent contacts take place. To be prepared for any CBRN incident a national alert system exists with five levels and contingency plans for every region or high profile target in Ireland.

2.5.8 EU Coordination

The timely sharing of information and intelligence not only on the EU-level is vital in the fight against terrorism. To that end in Ireland analysis from other Member States is read to identify areas of mutual interest and to learn from the experiences of other agencies.

The information requested by other Member States is usually in the form of forecasting potential targets for disaffected groupings and assessing their potential to achieve their aims. The receipt of such information being concise, timely and easily understood can often dictate the course of an operation. To that end the Garda Síochána Security and Intelligence Section is responsible for the exchange of information with Europol and agencies in the other Member States, be they law enforcement agencies or intelligence services. The exchange of information takes place at regular meetings, some are bilateral whereas others are part of a structured agenda, such as those organised at Europol.

Intelligence is shared with other intelligence agencies on the basis that it is provided for intelligence purposes only and not for use in any judicial proceedings.

If an operation is ongoing intelligence will initially be shared with the appropriate agencies in other Member States directly affected by the operation. On termination of an operation all relevant details will be shared. Until such time as a person is convicted of an offence personal data will only be shared on an intelligence basis. On conviction personal details will be freely shared.

If information is required for use in judicial proceedings it must be obtained by means of a Mutual Legal Assistance request.

There is no special domestic legal basis governing the sharing of information in Ireland. It is based on the decision of the Ministers of Justice and Home Affairs of the EEC, which agreed in June 1976 that all security services in the EEC should cooperate on a multilateral basis to control escalating international terrorist activity.

Cooperation at European level is developed through the law enforcement and intelligence channels (Europol, Interpol, **NOT DECLASSIFIED** and the Police Working Group on Terrorism, etc.).

2.5.9 Liaison Officers

As refers to liaison officers they have an important role to play in the exchange of intelligence particularly where time is of the essence. As people on the ground they are in a position to evaluate the situation and request pertinent information from their national services.

Irish liaison officers are members of the Garda Síochána and attached to the Irish Embassies in some Member States. Their primary function lies within the criminal aspects of law enforcement and intelligence exchange; they are expected to report any matter that should be incorporated in a threat assessment.

3. **Customs Service**

Customs have some law enforcement powers and are responsible to combat drug trafficking and other smuggling activities. Because Irish terrorist groups often are involved in such activities this is seen as one of the most important sources of their income. Consequently Customs is very engaged in this kind of investigation.

4. **Director of Public Prosecutions**

The **Director of Public Prosecutions** plays an important role in the Irish legal system. He is responsible for the overall direction of serious criminal proceedings, which includes making the decision whether to prosecute, and for what offence. He also decides on the withdrawal of proceedings or to accept pleas to lesser offences, and to bring appeals in relation to points of law or seek review of unduly lenient sentences. In his function he is perfectly independent. Against this decision only an appeal to the High Court is possible.

Irish law does not as yet distinguish terrorist acts for the purposes of the criminal law. However, under the Offences against the State Acts a **Special Criminal Court** has been established to try persons charged with scheduled offences, or where the Director of Public Prosecutions certifies that the ordinary courts are inadequate to secure the effective administration of justice and the preservation of public peace and order. The offences, which have been scheduled, include many which are committed by terrorists. While the Court consists of three judges and sits without a jury, it applies the ordinary procedures and rules of evidence. There are no specific procedures or substantive provisions with respect to the prosecution of persons accused of terrorist-type offences.

The **Director of Public Prosecutions** brings all prosecutions in indictable cases, i.e. cases other than those brought in courts of summary jurisdiction, and is responsible for the conduct of prosecutions, which are brought.

The Irish judicial authorities do not have an investigative role. The investigation of criminal offences is, primarily, the responsibility of the Garda Síochána. Besides there exists also other specialised investigation authorities. The Director of Public Prosecutions co-operates regularly with these authorities during the course of investigations, particularly in furnishing relevant legal and prosecution advice.

The Garda Síochána's investigative function regarding criminal investigations is entirely independent of the Director of Public Prosecution. They also make the decision whether to prosecute in respect of most minor offences and bring these cases to court. When Garda Síochána prosecutes in the name of the Public Prosecutor they are subject to the directions he may give in respect of prosecution.

The overall direction of serious cases after the decision to prosecute rests with the Public Prosecutor. He will take major decisions, such as whether to accept a plea of guilty to a less serious charge or whether to appeal a decision.

When decided to prosecute the Chief State Solicitor, who represents the Attorney General, prepares the book of evidence, is responsible for the general preparation of indictable cases and the attendance of counsel at the hearing, and the conduct of summary prosecutions on the Public Prosecutor's behalf.

Despite all his powers, against the decision of a judge he has no right to appeal. Only in the case that the judge has exceeded his jurisdiction he can complain to the High Court.

5. Security and Northern Ireland Division

The **Security and Northern Ireland Division** acts as an interface between the political level and law enforcement. It overviews and coordinates the Irish Northern Ireland policy as required. The division acts also as an advisor especially in regard to the peace process and follows closely the overall terrorist threat from indigenous groups. The work of the division is based on the conclusions of the Patton report²² which recommends sweeping changes to the policing of Northern Ireland and includes important recommendations for the reorganisation of the Police Service of Northern Ireland and cross border cooperation.

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Regarding CBRN threats the unit is involved in the emergency planning together with other Irish authorities such as the Ministry of Justice, Equality and Law Reform, Garda Siochana, the Ministries of Maritime Affairs, Aviation, Health and Defence.

6. Conclusions

Ireland due to the fact that it had suffered and still suffers from domestic terrorism, has a highly developed system to combat terrorism. Some instruments like the Chief Superintendents statement in court are unique but obviously necessary to succeed in the fight against terrorist groups.

Regarding international cooperation Ireland benefits from having only one law enforcement organisation and no separate security or intelligence service. That makes international co-operation easy and does not create problems on the national level.

²² The Independent Commission on Policing in Northern Ireland was set up as part of the Agreement reached in Belfast on 10 April 1998. The report of this Commission is known as the Patten report.

On the national level cooperation within Garda Siochana is seen as excellent. Nevertheless, the obligation of Security and Intelligence to strictly adhere to the 3. Party rule is a disadvantage in that information can not be shared or used in a maximal way.

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The absence of a mandatory national identity document might also bring disadvantages for cooperation at national and international level.

Expert Team

- 1.1 According to the Council Decision of 28 November 2002 the Presidency presented a list of national experts²³ designated by Member States to take part in the evaluation.
- 1.2 The assignment of these experts to Member States and the order of the evaluation visits was presented to the Article 36 Committee at its meeting of 23 June 2003²⁴.
- 1.3 Subsequently the team for the evaluation of Belgium was composed of

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²³ doc 7717/03 COR 1 (en) LIMITE ENFOPOL 20 of 26 March 2003

²⁴ doc 10239/1/03 REV 1 LIMITE ENFOPOL 49 of 04 August 2003

1.4 According to the decision the Article 36 Committee took at its meeting of 19 and 20 February 2003²⁵, to involve Europol's expertise in the evaluation exercise, the evaluation team was assisted by

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1.5 The expert team has been provided in advance with all necessary documents.

1.6 This report has been drafted in cooperation of the expert team members

- in line with the conclusions of 20 September 2001 in which the JHA-Council emphasised "the important role of the Security and Intelligence services in the fight against terrorism" and that the "cooperation between the police services, including Europol, and the intelligence services will have to be strengthened",
- within the framework of the remit of the evaluation as laid down in the decision of the Article 36 Committee,
- on the basis of the documents mentioned above, particularly the Irish answers to both questionnaires,
- on the basis of the presentations and additional documents given during the visit on site and as result of the discussions.

The evaluation team focused on cooperation and coordination aspects and the exchange of information between bodies on all national and EU levels. Ireland's legal framework and especially the implementation of the EU-Framework Decision on Combating Terrorism formed part of the discussions as far as it was necessary to understand organisational arrangements.

²⁵ doc 7239/03 CATS 17 COMIX 150 of 10 March 2003