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**NOTE**

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From:	Presidency
To:	Working Party for Schengen Matters (SIS/SIRENE) / Mixed Committee (EU-Iceland/Norway and Switzerland/Liechtenstein)
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Subject:	Foreign fighter and returnees from a counter-terrorism perspective

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1. At its meeting on 7 and 8 June 2013, the Council agreed to instruct the Working Party for Schengen Matters to make suggestions by November 2013 for an increased and harmonised use of the SIS alert system in the context of jihadists travelling from Europe in great numbers to Syria and other hotspots, which constitutes a serious problem for European internal security.
2. Under the legal framework of Decision 2007/533/JHA<sup>1</sup> on the establishment, operation and use of the second generation Schengen Information System (hereinafter "SIS II Decision"), several types of alerts on persons can be entered in SIS, namely: alerts in respect of persons for arrest for surrender or extradition purposes (Chapter V); alerts on missing persons (Chapter VI); alerts on persons sought to assist with a judicial procedure (Chapter VII); and alerts on persons and objects for discreet checks or specific checks (Chapter VIII). This allows Member States a vast scope of autonomy, with different criteria and aims, when entering alerts on persons who have been pursuing terrorist activities abroad and can be considered a threat to public security.

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<sup>1</sup> OJ L 205, 7.8.2007, p. 63

3. However, despite the existence of mechanisms to counter the risks for the European internal security of the increased jihadist travelling from Europe to Syria and other hotspots, the use of the SIS for the proposed objectives would require a common and coordinated policy approach.
4. The criteria for the insertion of such alerts and for possible flagging (under Article 24 of SIS II Decision) in this context should be harmonised, in order to avoid discrepancies as regards to (i) target individuals and (ii) the action to be taken and the subsequent effects. In fact the criteria for entering such an alert are those specified in the national law of each MS. Hence the need for a common approach. In fact, a different approach in using the SIS for this purpose in a country, could lead to a possible deviation of routes, which would undermine the added-value of the system.
5. A priori Chapter VIII seems to be offering most suitable solution for "early on" tackling the issue at hand. In fact Chapter VIII of SIS II Decision allows Member States to insert in SIS alerts on persons and objects for discreet checks or specific checks (Article 36) for the purposes of prosecuting criminal offences and for the prevention of threats to public security: (a) where there is clear indication that a person intends to commit or is committing a serious criminal offence, such as the offences referred to in Article 2(2) of the Framework Decision 2002/584/JHA on the European Arrest Warrant and the surrender procedures between Member States; or (b) where an overall assessment of a person, in particular on the basis of past criminal offences, gives reason to suppose that that person will also commit serious criminal offences in the future, such as the offences referred to in Article 2(2) of the Framework Decision 2002/584/JHA.

Furthermore, an alert may be issued in accordance with national law, at the request of the authorities responsible for national security, where there is concrete indication that the information referred to in Article 37(1) is necessary in order to prevent a serious threat by the person concerned or other serious threats to internal or external national security. The Member State issuing the alert pursuant to this paragraph shall inform the other Member States thereof. Each Member State shall determine to which authorities this information shall be transmitted. Alerts on vehicles, boats, aircrafts and containers may be issued where there is a clear indication that they are connected with the serious criminal offences or the serious threats referred above.

6. SIRENE Manual<sup>2</sup>, on the other hand, specifies the procedures for exchange of supplementary information to be carried by the SIRENE Bureaux in case of alerts for discreet and specific checks, as well as the procedures following a hit (Article 36 of SIS II Decision). In point 7.4 – informing other Member States when issuing alerts requested by authorities responsible for national security (Article 36(3) of SIS II Decision), the SIRENE Bureau of the issuing Member State, when entering an alert at the request of an authority responsible for national security, shall inform all the other SIRENE Bureaux about it. The confidentiality of certain information shall be safeguarded in accordance with national law, including keeping contact between the SIRENE Bureaux separate from any contact between the services responsible for national security.
7. In light of the above, Member States are kindly invited to send comments and suggestions with a view to increasing and enhancing the use of the SIS to respond from a counter-terrorism perspective to a growing number of foreign fighters and returnees, in particular with regard to Syria and other hotspots.

In this respect, Member States are invited to indicate also any specific aspects which they consider that might hinder or limit the use of SIS in this context and possible ways to remove them.

The replies should be sent to [sis.sirene@consilium.europa.eu](mailto:sis.sirene@consilium.europa.eu) by 6 September 2013 at the latest. Based on the contributions the Presidency will prepare a set of suggestions to be present to the joint meeting of COSI/PSC in November 2013 and followed by COREPER and Council.

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<sup>2</sup> OJ L 71, 14.3.2013, p. 1