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NOTE

From: Presidency
To: Delegations

Subject: Observations of the Presidency on strengthening Information
Exchange/Information Systems, especially SIS

Please find below the primary observations of the Presidency, based on earlier discussions, on strengthening Information Exchange/Information Systems, especially SIS. Interoperability is not addressed in this note as this will be one of the main issues in the Communication of the Commission on better information systems for borders and security, due for 6 April.

1. Improving existing instruments – quantity, quality and timeliness

1.1 SIS

| No. | Action | Competent body | When | Reference |
|--------|--|-----------------------|------|-------------------|
| 1.1.1a | Agree on criteria for inserting terrorism related alerts | SIS VIS Committee, MS | | Milan Conclusions |

The lack of common criteria defining foreign fighters in the Member States is a concern, especially with regards to the upload of alerts and action by the end user on a hit. Differences in national procedures for adding ‘terrorism-related activity’ as a type of offence make it difficult to establish any clear typology. In order to provide clear expectations of actions to be taken and necessary response, indicative criteria should be drafted regarding exchange and sharing of information on individuals involved in travelling to and from jihadi areas of conflict.

The Group of Most Affected Member States agreed on a list of criteria in an Annex to the Milan conclusions of July 7th 2014 (attached to this note).

| No. | Action | Competent body | When | Reference |
|--------|-------------------------------------|----------------|------|-----------|
| 1.1.1b | Create alerts once criteria are met | MS | | |

Alerts on persons will be made on the basis of these criteria in the above mentioned annex. Meeting even only one of the criteria listed will be reason to share the information on the person and enter an alert in the SIS. Any transmission and sharing of information about the persons referred to remains of course submitted to safeguards provided in national law. Member States will share insights into interpretations of legal standards or national operational practices to strengthen mutual understandings and possible good practices.

| No. | Action | Competent body | When | Reference |
|-------|--|--------------------------------|------|-----------|
| 1.1.2 | Set minimum standards for data quality | MS, SIS/SIRENE, EC, SIS-VIS CM | | |

Member State authorities need insight into the validity/reliability of information which is shared in order to follow up effectively after a hit. Absence of common standards between Member States diminishes the impact of information sharing and follow-up actions. This is valid for information uploaded in the Schengen Information System (SIS) and in the Europol Information System (EIS) as well as for information shared with Europol's Focal Point Travellers and Hydra. The SIRENE manual will be amended to describe commonly agreed operational and technical requirements on data quality. Proposals to this end will be made, detailing for example, the importance and the exact purpose of provided and received data, data transfer in a commonly agreed language, and enabling prioritising actions. Technical solutions in the SIS to support compliance are explored by including predefined multiple choice fields in the M-form providing at least minimum information on the reasons and circumstances for which information is shared. This will be added to the existing predefined fields and free text areas and they should be filled-in to be able to finalise the M-form.

| No. | Action | Competent body | When | Reference |
|-------|--|---------------------------------|------|-----------|
| 1.1.3 | Insert identifiers included in alerts (copy passport, digital photo, biometrics) mandatory; enable searches on fingerprints and provision of facial image feedback in case of a hit. | MS, SIS/VIS Comité, eu-LISA, EC | | |

Better identification of persons upon a hit will be possible by mandatory upload of additional information with the alert, such as biometrics, warning markers, fingerprints or (digital) photographs. Also searching on fingerprints through the (further) implementation of the AFIS in the SIS will aid rapid identification. Member States will improve national processes to enable the addition of such identifiers with an alert.

| No. | Action | Competent body | When | Reference |
|-------|---|-----------------|------|-----------|
| 1.1.4 | Commonly define 'immediate action' upon a hit | TWP, SIS/SIRENE | | |

The nature of some articles such as Articles 24, 36 and 38 leave room for differences in action taken upon a hit. For example, persons subject to a travel ban will perhaps not be stopped based on an Article 36 alert even though they are in violation of their travel ban. The confiscation of documents pursuant to article 38 alerts is not always automatic but dependant on national legislation.

Next to this, the national procedures for adding the requirement for immediate action to an alert vary greatly. Authorities need clarity on why immediate action must be taken when time is a crucial element, and what that immediate action looks like. The criteria for using the new 'immediate action' option should be harmonised and it should be made clear in which cases this option should be used. The SIRENE Manual will be amended to set commonly agreed desired interventions and to support compliance. Further specifications to strengthen the practice for specific articles will be taken up where appropriate for that article.

| No. | Action | Competent body | When | Reference |
|-------|--|----------------|------|-----------|
| 1.1.5 | Initiate a new type of action within the alerts pursuant to the articles in the SIS legal framework. | EC, SIS/SIRENE | | |

The nature of Article 36 allows for no other types of action than discreet checks. Furthermore other types of alerts based on articles pursuant the SIS II regulation and decision do not fully meet the operational needs. Whilst maintaining the possibility of alerts under Article 36 a new type of action should provide the possibility of preliminary holding where sufficient (national) legal grounds are available.

| No. | Action | Competent body | When | Reference |
|-------|---|-----------------|------|-----------|
| 1.1.6 | Commonly agree on the meaning of Articles 36.2 and 36.3 | TWP, SIS/SIRENE | | |

There is a lack of harmonisation and common understanding among Member States regarding issuing Article 36.2 and Article 36.3 alerts. Harmonisation and common understanding among Member States regarding the use of Article 36.2 and Article 36.3 alerts and their content will be defined.

Suggestion by the European Commission: explore the possibility of only one category. As terrorism is also a criminal offence, it does not matter as such which authority enters the alert. Important is the distribution of sufficient information with the alert and the proper execution of the alert.

| No. | Action | Competent body | When | Reference |
|-------|--|----------------|------|------------------|
| 1.1.7 | Strengthen effective discreet and specific checks including through training | EC, MS, Cepol | | Good practice xx |

Carrying out a discreet or specific check without bringing this to the attention of the suspected person is also a matter of proper information and training. To support end-users the M form must be filled in with specific information, such as warning markers. Training activities including with the support of Cepol and technical support should facilitate Member States in carrying out a discreet or specific check.

| No. | Action | Competent body | When | Reference |
|-------|--|--------------------------------|------|-----------|
| 1.1.8 | Enable systematic diffusion of information after a hit or request for immediate action (mandatory transmission to Europol requires a legal change) | SIS VIS Committee, EC, Europol | | |

There is lack in receiving real time notifications by the SIRENE bureau if a terrorism related alert is consulted, especially for those bearing the indication of immediate action and 'terrorism-related activity'. The occurrence of a hit should be reported without any delay to the national SIRENE bureau having issued the alert. Automated diffusion/circulation of information related to the hit and communicated by the service, which has issued the alert, to Europol could be considered.

| No. | Action | Competent body | When | Reference |
|-------|---|-----------------------------------|------|-----------|
| 1.1.9 | Make recording of alerts under Article 24.3 mandatory | EC, co-legislators, follow-up MS. | | |

Making the recording of alerts under Article 24.3 mandatory will be included in the next proposal of SIS

| No. | Action | Competent body | When | Reference |
|--------|--|----------------|------|-----------|
| 1.1.10 | Enable direct inserts of alerts in the SIS for security services (possible national legal changes) | MS | | |

Member states will ensure that security services have the possibility of entering alerts into the SIS without interference of judicial authorities. Amendments of legal or policy frameworks allowing security services to enter alerts will be made.

| No. | Action | Competent body | When | Reference |
|--------|---|----------------|------|---|
| 1.1.11 | Enable automated and systematic cross-checks of Europol against SIS | Europol | | Council conclusions from 20 November 2015 |

Europol must have the possibility to systematically cross-match the EIS and its Analysis Working Files against the SIS instead of relying on case-by-case queries. Technical solutions within the existing legal possibilities are explored.

| No. | Action | Competent body | When | Reference |
|--------|---|-----------------------------|------|---|
| 1.1.12 | Extend Europol's access rights to SIS II (legal change) | EC, co-legislators, Europol | | Council conclusions from 20 November 2015 |

Europol must have the possibility to access alerts with regard to missing persons and on persons undesirable in or refused entry to the territory of a Member State.

1.2 SLTD

| No. | Action | Competent body | When | Reference |
|-------|--|---------------------|------|-----------|
| 1.2.1 | Automatically insert documents associated to alerts on persons into the SLTD | MS, third countries | | |
| No. | Action | Competent body | When | Reference |
| 1.2.2 | Make the SLTD nationally available for automated and systematic checks | MS | | |

1.3 PRÜM

| No. | Action | Competent body | When | Reference |
|-------|---|----------------|------|-----------|
| 1.3.1 | Ensure implementation of Prüm in all MS | MS | | |

1.4 Europol

| No. | Action | Competent body | When | Reference |
|-------|---|----------------|-------|-------------|
| 1.4.1 | Automatically upload information on FTF to the Europol Information System (EIS) | MS, Europol | Short | Link to 1.1 |

The EIS should be available to all competent CT authorities and be fully used by them; a data loader will be beneficial. If a data loader is not yet implemented, there is another way of uploading a large amount of data using so called 'Batch Upload' (done in such way by Austria, the Netherlands, Europol on behalf of Third Parties). Reference to SIS II alerts should be made when entering data in the EIS.

| No. | Action | Competent body | When | Reference |
|-------|---|----------------|-------|-----------|
| 1.4.2 | Make best use of SIENA as the preferred channel for the secure exchange of law enforcement information. | MS, Europol | Short | |

Europol has developed a specific SIENA solution for the counter-terrorism community, which will be upgraded to EU CONFIDENTIAL in 2016. Europol will promote and facilitate the further roll-out of SIENA to the law enforcement authorities in the Member States.

| No. | Action | Competent body | When | Reference |
|-------|---|----------------|-------|-----------|
| 1.4.3 | Ensure a consistent 3-tier information sharing approach by making optimal and consistent use of SIS, the Europol Information System (EIS) and the relevant Focal Points at Europol. | MS, Europol | Short | |

The EIS is used as a database to consistently store information on Foreign Terrorist Fighters and complementary information which is not available via the SIS II/SIRENE-System.

Terrorism related information in the SIS II and EIS should be synchronised wherever possible in order to ensure consistent data quality. Since this is not an automated process, the responsibility lies with the data owner.

Indicative criteria to be taken into consideration regarding exchange and sharing of information on individuals involved in travelling to and from jihadi areas of conflict

Any transmission and sharing of information about the individuals referred to below is submitted to limitations and safeguards provided in national law.

1. known to have the intention to leave the territory of a Member State to reach a jihadi area of conflict (such as Syria)
2. known to have left the territory of a Member State to reach a jihadi area of conflict (such as Syria) and in transit within the Schengen area
3. known to have left the territory of a Member State to reach a jihadi area of conflict (such as Syria) and in transit outside the Schengen area
4. known to have reached a jihadi area of conflict (such as Syria)
5. known to have the intention to leave a jihadi area of conflict (such as Syria)
6. known to be on his/her way back from a jihadi area of conflict (such as Syria) and in transit within the Schengen area
7. known to be on his/her way back from a jihadi area of conflict (such as Syria) and in transit outside the Schengen area
8. known to be back to stay or in transit in a Member State that is not his/her country of departure
9. known to be back to stay or in transit in a Member State that is his/her country of departure
10. known to be engaged in facilitating the activities of the 10 first types of individuals
11. known to have failed (resulted in arrest, KIA (killed in action))
12. known to have voluntarily cancelled their travel/intent to join battle