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NOTE

From: Presidency

To: Standing Committee on Operational Cooperation on Internal Security (COSI)

Subject: Travel movements of foreign terrorist fighters/returnees and persons involved in terrorism or terrorism related activities: Article 36, SIS II post-hit follow-up

- Exchange of views

I. Introduction

1. The terrorist threat to the internal security of the EU is evolving, and the challenges to be addressed by the Member States and the EU as a whole are increasing in number and complexity.
2. Internal security, which covers a broad range of issues, is one of the main priorities of the Bulgarian Presidency. In line with the Joint trio Presidency paper on the renewed ISS¹, the Bulgarian Presidency would like to initiate a discussion on the issues arising in the case of a hit in the SIS II for Article 36 alerts, and on the related follow-up actions.

¹ 11968/1/17, p. 4 presented at COSI in September 2017

II. Definition of the problem

3. It is now known that many of the terrorist acts carried out in recent years on EU soil were perpetrated or at least facilitated by persons with EU citizenship, who were born in the EU or had residence permits that allowed them to move freely within the EU. Many of these persons were detected while travelling to and from conflict zones in order to join terrorist organisations and acquire combat capabilities. The recent trend also covers many cases of so-called homegrown terrorism often involving travel between different Member States without leaving the territory of the Union.
4. The challenges that the competent law enforcement authorities face in this context are twofold: firstly, identifying and tracing the travel movements of the detected FTFs/returnees/persons involved in terrorism or terrorism activities, and, secondly, effectively prevent the travels of such persons, e.g. by taking other relevant measures, as necessary (like issuing an Article 26 SIS alert).
5. The SIS is the biggest and most widely used EU information system supported by the network of SIRENE Bureaux, providing significant added value in the field of international police cooperation and border control. It offers one of the most valuable tools in addressing these challenges. The SIS' capacities for dealing with foreign terrorist fighters (and individuals related to terrorism moving in EU territory) is expected to be further enhanced through the introduction of a new type of alert: an "inquiry check" under Article 36 of the draft Regulation on the use of SIS for the purpose of police and judicial cooperation, which is currently being negotiated with the European Parliament. This would complement the existing tools available to competent authorities for identifying and potentially interrupting the travels of foreign terrorist fighters, e.g. arrest, withdrawal of travel documents, discreet checks, specific checks, etc.

6. Moreover, as from 6 March 2018 the identification of persons on the basis of their fingerprints will be enabled under SIS. Each new alert created with fingerprint records will be checked against the existing fingerprint records to discover multiple identities. In addition, 10 Member States will start effectively using the system from that date to check individuals with their fingerprints.
7. Also, Regulation 2017/458 as regards the reinforcement of checks against relevant databases at external borders, provides for the performance, at the external borders, of systematic and coordinated checks on individuals enjoying the right of free movement against relevant databases including the systematic use of the SIS. The latter should further strengthen the relevance of the SIS in the context of counter terrorism measures.
8. The above measures are envisaged in the SIS/SIRENE environment. They therefore address only the exchange of information immediately after the check of a foreign terrorist fighter/returnee based on an Article 36 alert hit in SIS II, namely by informing the Member State which issued the alert. In this context, the positive impact of the "immediate reporting procedure" (immediate action with regard to Article 36 of the SIS Decision), introduced in the SIRENE Manual in 2015 for the most urgent cases relating to FTFs or individuals involved in terrorism activities, should be noted.
9. However, communicating the post- hit information only to the SIRENE Bureau of the Member State issuing the alert under Article 36 is sometimes insufficient for the purposes of following up the travel movements of the individuals or completing the relevant information in respect of such individuals, e.g. to ensure the early warning of other Member States that could be concerned. This would be the case, for example, where the person did not return directly to the Member State of origin or where s(he) was accompanied by nationals of another/other Member State(s) in respect of whom no alert had been issued since they remained unknown to the latter's competent authorities.

10. In any event, the collection and exchange of post hit information would not have any added value without an appropriate analytical capacity that in practice goes beyond the scope of the SIRENE Bureaux. This requires the involvement of other competent authorities and cross-checking against other databases and systems (national data bases, VIS, PNR, SLTD and the future Entry/Exit and ETIAS). It should also actively involve Europol capabilities and analytical tools and databases. In this context, the need for mapping of the travel movements of FTFs/returnees/ persons involved in terrorist activities based on SIS hits in order to gain a clear and comprehensive picture that can provide a basis for taking further measures has already been highlighted on several occasions, in particular by the SIS/VIS committee.
11. As noted above, another challenge faced by competent authorities is actually to prevent travel to a conflict zone or back to the EU following a hit on the person(s) concerned under an Article 36 alert. Based on the SIS legislation, such person shall be only subject of discreet or specific check. To protect effectively public interest, in principle the arrest and return of such persons to the Member State that issued the alert should be pursued. This can be done only using a European arrest warrant (EAW), e.g. communicated under an Article 26 SIS alert. However, the competent authorities of the issuing Member State would only be in a position to issue EAW if there was sufficient evidence to convert the alert under Article 36 into an alert under Article 26. The return of the individual to the country of origin could also be pursued, so as to enable the arrangement of specific measures in respect of that person, e.g. enrolling in resocialisation and rehabilitation programmes, applying administrative measures, launching criminal proceedings, etc. In this context the possibility for all Member States to issue EAW for known travels for terrorist purposes should be underlined².
12. However, the return procedure to the country of origin or the issuing Member State is a long process that requires the involvement and active cooperation of different stakeholders at national and EU level and above all requires clear legal base for the executing Member State. This cooperation goes beyond the scope of the interaction and legal framework of the SIRENE Bureaux and involves the active participation of other law enforcement bodies, security services, judicial authorities, embassies, etc.

² In accordance with Directive 2017/541 on combating terrorism, travelling to, from or within the Union for the purpose of terrorism has to be criminalised. The transposition period expires on 8 September 2018.

13. A certain amount of time is therefore required to fulfil the necessary procedural and legal requirements, including ensuring the legal basis for detaining the person concerned with a view to a subsequent return.
14. In view of the above, in the majority of the cases involving a hit in the SIS II for Article 36 alerts, the front-line competent authorities are not in a position to detain the person concerned (as the purpose of the alert is different), so that a return procedure can start. In such cases, the authorities are forced to allow them to proceed freely towards conflict areas or into the territory of the Union. Considering the current trend, which shows an increase in the number of radicalised persons returning to the EU, the Presidency considers it vitally important that adequate measures are put in place to enable the follow-up of the movements of such persons on the territory of the Union.

III. State of Play

15. In bringing this issue forward, the Presidency would like to build up on the discussions held on that matter and the results achieved so far. Under the Italian Presidency in 2014 a list of criteria regarding exchange and sharing of information on individuals involved in travelling to and from jihadi areas of conflict was agreed in an Annex to the Milan conclusions of July 7th 2014³. This formed a basis when discussions were launched on the objective 17 from the Roadmap to enhance information exchange and information management including interoperability solutions in the Justice and Home Affairs area⁴.
16. Account should be taken of the following main aspects under the Chapter 3 of the updated Roadmap to enhance information exchange and information management including interoperability solutions in the Justice and Home Affairs area⁵: improving the use of SIS (objectives 18, 19, 20 and 21); improving the use of other EU and of international instruments (in particular objectives 23 and 24 on making better use of SIENA); develop and share expertise and implementation of the EU PNR Directive.

³ Available under 7412/16

⁴ 9368/1/16

⁵ 14751/17; 14750/17

17. The question on the post-hit notifications was raised also during the meetings of the SIS/VIS committee, where the Member States discussed at large the issues on the possible workload of the SIRENE Bureaux, on the ownership of the information and the repository of the post-hits forms.
18. In this context, some Member States insisted on the need for intensified sharing of information but in a smooth way, so that there is no significant impact upon the workload of the SIRENE Bureaux. The need for discussion within TWP on the ownership of the information and the further exchange of this information with Member States other than the Member State issuing and Member State executing the alert was highlighted.

IV. Next steps

19. Building on the results achieved so far, the Bulgarian Presidency would like to submit for discussion the need for a common approach within the existing legal framework for follow-up actions in respect of FTFs movements following a hit for an Article 36 SIS II alert. The feasibility of implementing a "post-hit" information exchange mechanism that would enable all or at least Member States concerned to be informed of the hits generated by the movements of FTFs or persons involved in terrorism or terrorism related activities could be considered⁶.
20. In this context, making full use of Europol capabilities for performing immediate checks against its database and facilitating proper follow-up with the concerned Member State(s), including the necessary analytical capacity should be considered.

⁶ In light of the French proposal, presented to the Terrorism Working Party on 2 May 2017 (8610/17).

To guide future work on this matter, COSI is invited to exchange views on the following intended steps within the framework of the existing legislation at EU and national level:

- *To revisit and outline effective implementation practices relating to the existing SIS and SIRENE measures, e.g. displaying all information available in the alert, including photographs, details of the subject's travel documents, where available or the fact that the alert was issued by the national security service; the use of immediate reporting, the type of offence "terrorism related activity", use of alerts on invalidated documents, warning markers;*
- *To explore how to improve the information exchange on the FTFs and returnees based on the SIS post -hit procedures, including 'post-hit' notification, when monitoring the movements of FTFs/returnees or individuals involved in terrorism or terrorism related activities, while considering previous discussions on this matter;*
- *To identify how to use better the metadata information from the SIS "hits" and SIRENE forms in order to map patterns of movements of the FTF/returnees or individuals involved in terrorism or terrorism related activities;*
- *To identify ways to optimise the exchange of good practices in terms of follow- up procedures for hits under Article 36 SIS alerts and the possibility to integrate it into Good Practices Catalogue;*
- *With a view to ensuring a more efficient exchange of relevant information in relation to SIS hits under Article 36), to explore the possibilities for strengthening cooperation between the law enforcement authorities and security services at national and EU level.*

In light of the guidance provided by COSI, the issue will be submitted to the Working Party on Terrorism and the SIS/SIRENE Working Party with a view to identifying best practices and specific recommendations concerning the matters listed above. The outcome will be presented to COSI.