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NOTE

From:	Presidency
On:	26 February 2020
To:	Delegations

Subject:	Defining a process for entering information from trusted third countries on suspected non-EU terrorists in the Schengen Information System
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Background

The situation of foreign terrorist fighters (FTFs) and their families, including returnees, and the potential terrorist threat which they pose have become a major concern, both at political and operational level. Following the Turkish military action in north-east Syria and given the persistently volatile situation in that region, concerns regarding the potential undetected return of suspected FTFs and their families have become more acute. Measures have been taken to enhance border security in order to prevent terrorist travel to and from conflict zones and detect terrorist suspects at the borders. Those measures include:

- 1) **Information exchange:** entering available information on suspected FTFs in the Schengen Information System (SIS) under the most suitable alerts, as well as in Interpol and Europol databases;
- 2) Ensuring **systematic checks** at the external borders, including by using PNR (passenger name record) and API (advance passenger information).

It is estimated that since the start of the conflict, 50 000 persons have travelled to Syria/Iraq to join Da'esh. European FTF suspects represent just 10 % of the estimated total. It is therefore critical that

non-European FTFs be detected should they try to cross EU borders. Much of the information on non-European FTFs is held by third countries.

Legal framework for entering alerts in the SIS based on information from a trusted third country

Only EU Member States and Schengen associated countries can create alerts in the SIS. The SIS Regulations do not prevent Member States from creating alerts on the basis of information provided by a third country as long as the conditions for entering alerts, as defined in the legislation, have been fulfilled.

The SIS Regulations explicitly prohibit the sharing of SIS data with any third countries. There is, however, an exception to the general prohibition on sharing data with third parties which applies to Europol. On that basis, onward transmission of SIS data to third countries is only allowed under the SIS legal framework where it occurs through Europol, under specific conditions and in accordance with the applicable rules on external relations set out in the Europol Regulation. The new SIS Regulations introduce a reinforced role for Europol in the use of the SIS: Member States will be obliged to share hit information on terrorists with Europol as soon as Europol is technically ready to receive this information.

The choice of measure in the SIS is very important for effectively preventing the undetected entry of suspected FTFs into the EU¹.

Recent experiences

EU Member States and agencies have access to biographic and biometric data of suspected non-EU terrorists received from selected trusted third countries. The relevant information has been entered in the SIS by willing Member States, after having been duly verified. Important work has been carried out as part of a project established by Europol and a number of Member States in the framework of the Counter-Terrorism Programme Board (CTPB), with the aim of agreeing on a procedure for creating new Article 36 alerts (discreet checks) based on FTF lists coming from Western Balkan countries, and a post-hit information flow².

1 Article 26 (European Arrest Warrant) and Article 24 (refusal of entry) alerts are particularly important in the context of non-EU FTFs. This guidance was recalled in a letter that the Commission sent to the Ambassadors of EU Member States on 28 November 2019.

2 Czechia agreed to enter in the SIS information on FTFs received from the Western Balkan countries. After conducting all the necessary verifications, Czechia entered 243 previously unknown individuals in the SIS. The encouraging results of this project were presented by Europol and Czechia at the TWP meeting on 16 January 2020.

This was done on an *ad hoc* basis: there is no agreed approach/process for entering those individuals in relevant databases. During the meeting of the Terrorism Working Party (TWP) on 16 January 2020, Member States, the Commission, the EU Counter-Terrorism Coordinator and Europol agreed that there was a need to discuss possible solutions.

EU institutions, agencies and Member States are invited to share their views on a procedure for entering information from trusted third countries on non-EU terrorist suspects in the SIS.

Guiding questions:

- 1) At the TWP meeting on 16 January 2020, two Member States³ presented their procedure for entering information on non-EU FTF suspects in the SIS. Could their experience serve as a basis for a possible commonly defined way forward for entering information received from trusted third countries in the SIS?
- 2) At least four Member States have expressed a willingness to cooperate in entering information on non-EU FTF suspects in the SIS. Would other Member States be willing and able (logistically, legally) to contribute? Would it be possible to agree on a division of labour between Member States? And can we agree on a timeframe for this process?
- 3) What role do you see for Europol in this process? For instance, Europol acting as a coordination hub to ensure that all information is shared efficiently among willing Member States, to ensure that there is no duplication of efforts and to provide support in processing the information (e.g. using facial recognition capacities)?
- 4) Which other information systems should also be used to detect terrorist suspects, including suspected FTFs, at the EU's external borders? How can we ensure that all relevant available data on non-EU terrorist suspects is entered in these systems?

3 Czechia and Italy