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NOTE

From:	Presidency
To:	Delegations
Subject:	Draft Council conclusions on dealing with persons regarded a violent extremist/terrorist threat ("Gefährder")

One of the German Presidency's priorities for the Working Party on Terrorism (TWP) is to work on EU Member States' approaches to dealing with persons considered a potential terrorist or violent extremist threat (who are referred to in German as 'Gefährder') and to identify potential needs as regards the operational and strategic cooperation of Member States' competent authorities. The background to this is that in a Europe without internal borders we must ensure that, within the framework of existing legal powers, information is shared reliably and fast when such persons travel or connect/communicate with individuals or networks in other Member States.

Much has already been achieved, for example with regard to foreign terrorist fighters and the storage of data on such persons in European information systems. Nevertheless, it has become apparent that in our operational cooperation we sometimes do not know how individual Member States assess that a person poses a potential terrorist/extremist threat, and what consequences this has.

For this reason, on 3 July 2020, the Presidency distributed a questionnaire asking the Member States about their approaches to classifying and dealing with persons regarded as a terrorist or violent extremist threat ('Gefährder') (CM 2927/20). The questionnaire was intended to help compile a comparative overview of how Member States record information on persons who, on the basis of an assessment by the security authorities, are regarded as a terrorist/extremist threat, and how they deal with such persons.

The enclosed draft Council conclusions are based on the Member States' responses to that questionnaire (10421/20), on the discussion at the TWP meeting on 11 September 2020 and on the expert meeting on 'Gefährder' on 24 September 2020 that was organised by the European Commission with the support of the Presidency. This draft will be discussed in the online meeting of the TWP on 13 October 2020.

Member States will also have the opportunity to submit written comments to TWP.DE2020@bmi.bund.de and twg@consilium.europa.eu by 20 October 2020.

Disclaimer

These draft Council conclusions on dealing with persons regarded as a terrorist/extremist threat ('Gefährder') are presented to the TWP for discussion. The German Presidency would like to point out that this topic will most probably not be addressed in separate Council conclusions but rather – in condensed form – as part of more comprehensive Council conclusions on internal security. As soon as a final political decision has been made, the Presidency will inform the TWP of the next steps.

DRAFT

**COUNCIL CONCLUSIONS ON DEALING WITH PERSONS REGARDED AS A
TERRORIST OR VIOLENT EXTREMIST THREAT ('GEFÄHRDER')**

[Version of 9 October 2020]

Introduction

1. The Council of the European Union finds that the terrorist threat to the Member States remains high. This threat emanates both from persons acting from religious motives and from persons acting from political motives. The Council emphasises that the threat emanates not only from persons who have left their home countries to join terrorist groups abroad and possibly return later; persons who have become radicalised within the EU may engage in home-grown terrorism, and individuals acting alone also pose major challenges for the security authorities of the Member States.
2. The Council emphasises that persons assessed to be a terrorist or violent extremist threat (henceforth referred to as 'Gefährder') by one Member State can also endanger the citizens of other Member States. For this reason, coordinated action and effective information-sharing at European level are essential.
3. The Council is therefore resolved, in a Europe of open borders and within the existing national and European regulatory frameworks, to ensure that security authorities share information quickly and reliably so that Member States are able to recognise, at an early stage, public security threats emanating from 'Gefährder'.

Current situation

4. The Council emphasises that a reliable analysis of the potential threat posed by an individual is an important basis for the targeted use of Member States' resources. The Council notes that the Member States apply different methods in their individual risk assessment, which then also lead to different classifications.
5. The Council respects the fundamental separation between law enforcement and intelligence activities in some Member States. The Council underscores the fact that the present initiative will not affect cooperation between intelligence services, which takes place outside the institutional framework of the European Union.
6. At the same time, the Council points out that further improving the sharing of information on 'Gefährder', within the existing national and European regulatory frameworks, will help to identify threats earlier, prevent crimes and target resources better.
7. The Council is convinced that it is necessary for the Member States' security authorities to continually improve their understanding of each other's approaches to dealing with 'Gefährder'. It is necessary to gather knowledge as to how the Member States arrive at their assessment that a person is a terrorist or violent extremist threat and the degree of threat involved.
8. At the same time, the Council notes that, apart from the specific category of foreign fighter,¹ there are no standards or criteria for examining information on 'Gefährder' and coordinating the entry thereof in European databases and information systems. The Council believes it is necessary, as permitted by Member State and EU law and taking into account international standards for sharing operational information, to enter in European databases and information systems information on at least those persons who pose a particularly serious threat and who meet the conditions for the entering of such information.

¹ 13777/1/16 REV 1

9. The Council therefore believes it is necessary to develop a shared understanding of which persons are to be regarded as ‘Gefährder’ and in which European databases and information systems (in particular the Schengen Information System (SIS), the Europol Information System (EIS) and Europol analysis projects) information on them is to be entered and under what conditions, without affecting national systems or national law. The aim is to develop a practice of entering such information in the relevant European databases and information systems so that persons who, according to the assessment of a Member State, pose a serious terrorist threat can reliably be found in the databases and information systems and identified as such.
10. The Council notes that constantly striving to further improve the practice of entering and using information in the cross-border information systems that are most important in this context, namely the SIS and the EIS, as well as Europol’s relevant analysis projects, must be an ongoing task.
11. The Council emphasises the importance of fundamental rights and the appropriate protection of personal data in this context.

Need for action

12. Against this background, the Council asks the Member States, within their own national regulatory frameworks and with regard to all forms of violent extremism and terrorism, to fully utilise the existing instruments for sharing information on ‘Gefährder’, in particular the SIS and Europol databases.
13. The Council calls on the Member States to ensure that examining whether to enter information on ‘Gefährder’ in European information systems is standard practice in every individual case.

14. The Council asks the European Commission, in consultation with Europol and the Counter-Terrorism Coordinator, to look into Member States' current practices of entering information on 'Gefährder' in European databases and information systems by surveying the Member States.
15. In order to ensure continuing understanding among the Member States' security authorities of how the security authorities of the other Member States assess persons as being 'Gefährder' and deal with them, the Council asks the European Commission and Europol, within the framework of their respective mandates, to establish a regular, long-term strategic exchange of experience on this issue, including an exchange on risk assessment tools.
16. The Council also asks the European Commission, in close cooperation with Europol, to provide the Member States with a compendium of Member States' approaches to assessing persons as being 'Gefährder' and dealing with them. In this context, the Council asks Europol to compile a statistical overview of persons considered a potential terrorist threat.
17. The Council believes it is necessary to develop a shared understanding and common criteria for examining information on 'Gefährder' and coordinating the entry thereof in European databases and information systems, to ensure that information is entered on at least those persons who pose a particularly serious threat if the relevant legal prerequisites are met. The Council asks the Presidency to draw up, within the Terrorism Working Party and based on existing instruments for counter-terrorism cooperation, proposals for developing a shared understanding and common criteria for examining information on such persons and coordinating the entry thereof in European databases and information systems, and to present its proposals to the Standing Committee on Operational Cooperation on Internal Security (COSI) for approval.

18. The Council emphasises that standard terms developed in this way for the purpose of shared understanding and common criteria for examining information and coordinating the entry thereof in European systems should not be accompanied by attempts to establish equivalents in national law. They are intended to add a European practice to existing and effective systems, not replace them.
19. The Council also recognises the potential added value of operational meetings and information boards on individual ‘Gefährder’. The Council asks Europol to make an appropriate platform available for this purpose.
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