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NOTE

From: EU Counter-Terrorism Coordinator
To: Council

Subject: Input by the EU Counter-Terrorism Coordinator to the discussion on the EU response to the recent terrorist attacks at the JHA Council on 13 November 2020

The recent terrorist attacks in Dresden, Conflans-Sainte-Honorine near Paris, Nice and Vienna underline that the threat from jihadist terrorism in the EU remains high.

Most of the jihadist attackers in recent years are homegrown. Their radicalization has taken place in the EU. However the internet, often with external sources, plays a big role and some of the attackers have a migration background. Thus, there are internal and external aspects to the threat.

Since 2015, the EU has significantly stepped up counter-terrorism action. The new Security Union Strategy 2020-2025 issued by the Commission in July 2020 is an excellent basis for future work. The European Police Partnership promoted by the German Presidency will be an important step forward.

In response to the latest string of attacks, it would be important for the EU to send a strong political signal that it will further step up and speed up its counter-terrorism efforts in an ambitious way, especially in areas relevant to the characteristics of the latest attacks. This note aims to contribute to the debate in preparation of the JHA Council of 13 November 2020 by proposing a set of measures in three priority areas: the internet (1.), increasing security in the Schengen space (2.) and Islamist extremist ideology (3.). The note also suggests external activities (4.).

1. Internet

Although the EU has worked intensively on this since 2015, the online space continues to play a major role as an incubator of radicalization. This has been a factor also with regard to recent attacks. Additional action is necessary and urgent:

(1) Finalize legislation

Timely adoption of the **terrorist content online (TCO) regulation** is a priority and would send an important political signal. Progress has also been slow on the **e-evidence legislation**, which is key for investigations and prosecutions in the terrorism context. Hence a political message to the European Parliament to speed up and take responsibility would be important.

(2) Dialogue with the internet companies

Cooperation with internet companies is crucial to fight terrorism online and offline.

Algorithmic amplification of terrorist and illegal hate speech content before take-down and of borderline material also needs to be addressed, including in the EU's dialogue with internet companies. Gaming platforms play a growing role in the context of radicalization and strategic communications. Several attackers have communicated on such platforms¹. Therefore, the EU should address **online gaming** in its dialogue with internet companies in the framework of the EU Internet Forum and include the relevant gaming companies.

¹ See the EU CTC paper on online gaming in the context of the fight against terrorism (document 9066/20 of 6 July 2020)

Given the increased convergence between terrorist content, hate speech and disinformation, merging the three existing dialogues with the companies or at least closer coordination should be considered.

(3) Digital Services Act (DSA)

The DSA to be tabled in December will adapt regulation that addresses current and future aspects in dealing with providers of information society services. The DSA will provide an opportunity to be ambitious with regard to **liability** of the internet companies for illegal content and algorithmic amplification, and to create a duty of care against the prevalence of legal harmful content. It could set up a compulsory transparency framework and an oversight mechanism. As the companies are driven by profit, serious financial penalties would create incentives for them to adjust their **algorithms**² and invest more in preventing terrorist content and illegal hate speech to be uploaded or at least to automatically detect this content much more quickly.

The DSA should also clarify the legal framework and provide a clear legal basis and legal certainty for voluntary measures to automatically detect harmful and illegal content.

(4) Access to data

A strong political signal is necessary for recognition of the importance of data retention, data collection and data analysis, as well as the development of new artificial intelligence tools in the area of big data and internal security³.

Encryption is a necessary means of protecting fundamental rights and the digital security of governments, industry and society. At the same time, the European Union needs to ensure the ability of competent authorities in the area of security and criminal justice, e.g. law enforcement and judicial authorities, to exercise their lawful powers, both online and offline. It will be key to find a legislative solution with regard to law enforcement and judicial access⁴ to encrypted content⁵. The Presidency is currently working on a Council declaration on encryption, a good first step.

² See the upcoming EU CTC paper on algorithmic amplification (doc 12735/20).

³ See the Contribution of the EU CTC regarding the Commission communications of 19 February 2020 on digital, data and artificial intelligence: Proposals on internal security and criminal justice (doc 9185/20 of 8 July 2020)

⁴ Similar challenges may also arise for security services. However, this paper focuses only on law enforcement and judicial authorities.

⁵ See the EU CTC paper on law enforcement and judicial aspects of encryption (document 7675/20 of 8 May 2020)

2. Increasing security in the Schengen space

The development of the Schengen acquis aims at determining the security measures which are necessary to compensate the lifting of internal border checks to avoid a security deficit (paradigm of flanking measures). The adoption of these compensation measures is a continuous process so as to cope with the evolution of the threats for internal security of the EU and Member States. The rise of homegrown terrorism in the EU requires the adoption of additional measures and rigorous implementation of existing measures and tools.

(5) Gefährder

It is key to exchange more information and have common criteria for inserting data on persons assessed by Member States to pose a serious terrorist or violent extremist threat into EU databases and information systems. Such work has been done for foreign terrorist fighters (FTF) who traveled to Syria, but not yet for homegrown persons. In this context, the initiative of the Presidency to set out the way forward is crucial.

(6) Entering third country information into the SIS

Work is progressing to find a solution for entering information received from trusted third countries in the SIS. The Presidency is working to find a compromise for how to handle such situations in the future, which it would be important to adopt as soon as possible.

(7) Systematic check of the Schengen Information System (SIS) at EU external borders

To prevent that FTF or other persons posing a terrorist threat cross the external Schengen borders, it is important that the SIS is systematically checked at the external border in accordance with the provisions of the Schengen Borders Code (SBC). However, exemptions to SBC are used to the extent that a significant number persons (EU citizens and third country nationals) entering the EU are not checked against the SIS. This needs to be addressed.

(8) Strengthen biometric checks of the SIS

It would be important to increase the use of biometric checks at the external borders, as well as feed more biometric data into SIS. It is key that Member States implement as soon as possible the Automated Fingerprint Identification System (AFIS) to have a possibility to perform fingerprint searches in the SIS and roll it out to the end-users, notably at the external borders.

(9) More intense border and security checks of arriving migrants

Stronger border and security checks of arriving migrants are proposed in the draft migration pact, the new draft border screening regulation, on which work has started as a priority. It could be explored by Member States to implement some of these measures in practice as soon as possible. The strengthened checks are similar to the existing approach in the hotspots, therefore, such checks could be carried out for irregular migrants and asylum seekers even prior to adoption and entry into force of the regulation.

(10) Return of persons posing a terrorist threat

It is often difficult to return irregular migrants, including those who pose a terrorist threat. In addition to reluctance from partner countries, national legal barriers such as requirements by the courts for diplomatic assurances from the origin countries or problems to identify the persons concerned could cause difficulties in the return process. As announced in the Pact on Migration and Asylum, the EU should step up efforts to **enhance returns**. Facilitating returns could be discussed with priority partner countries.

The **return directive** already allows placing such persons in **detention** on an individual basis in view of their return under certain conditions, e.g. if there is a risk of absconding. It would be important to explore how best this possibility can be implemented by Member States with regard to persons posing a terrorist threat.

Both measures would also help to prevent irregular migrants who are ordered to leave the territory of an EU Member State from entering another Member State.

(11) Europol / ECTC: budget and revision of mandate

It is a priority to further strengthen Europol, which is the EU tool that provides the most practical support to Member States in the context of law enforcement to prevent terrorist attacks, to share information and to investigate after attacks. However, Europol has difficulty to receive the necessary funding and staff. In addition, there have been obstacles related to data protection.

The upcoming initiative to strengthen the Europol mandate should clarify Europol's ability to process large and complex datasets and fulfil its tasks, in full compliance with fundamental rights. Europol has to provide its full support to counter-terrorism investigations, following the successful example of Taskforce *Fraternité*. Europol must also be able to cooperate effectively with private parties to counter terrorist activities online.

It will be important to ensure sufficient **financial resources** in the next Multi-annual Financial Framework (MFF) and to finalize the **2021 budget**, including to provide Europol with the necessary staff resources to continue key projects and declare commitment to the independence of the Agency and to the human resources sovereignty accorded to it – including contract agents.

The Commission plans to table an updated **mandate** of Europol in mid-December 2020. In their Declaration on the Future of Europol adopted on 21 October 2020, the EU Home Affairs Ministers have expressed collectively their wish to further develop Europol in line with Member States' interests and with a focus on its core tasks. They have highlighted, inter alia, the need for Europol to **promote innovation for law enforcement in the EU** and to be able to effectively **process different types of data, exchange data with the private sector and share personal information with third countries** which have a sufficient level of data protection, though not necessarily the same level as the EU. 24/7 capacity for the EU Internet Referral Unit needs to be explored.

(12) EU innovation hub for internal security⁶

The JHA Council decided to establish an innovation hub for JHA agencies at Europol one year ago, to help internal security to fully integrate and develop new technologies, including with regard to big data analysis. This is key to identifying and prioritizing persons posing a terrorist threat and links. Budget and staffing, including secondments from Member States and other EU agencies such as Frontex are needed.

(13) Strengthen support for protection of public spaces and the security of places of worship in the EU

Recent attacks have highlighted the vulnerability of public spaces and the need to continue support to public and private operators of public spaces.

Churches, synagogues and other faith-based buildings/activities have been targeted in recent attacks, for example in Nice. It is important to support protection for places of worship of all faiths, including mosques. EU regional funds for urban development should be mobilized to increase security. The EU has started to work with Member States and all faith communities, including the Jewish community⁷, on security related issues in the context of protection of public spaces, which should continue and be stepped up.

(14) Victims of terrorism

The Council conclusions on victims of terrorism from 2018 called on Member States to establish national contact points for victims of terrorism in order to facilitate the rapid exchange of information and assistance in the event of a terrorist attacks. The German Presidency has worked to establish a common understanding on the role of the contact points and how information can be shared with regard to data protection rules. On this basis, an amendment to existing EU legislation could create a legal basis for the mandate of the national contact points.

⁶ doc 5757/20 of 18 February 2020 and 7829/20 of 7 May 2020, *EU Innovation Hub for Internal Security*, approved by COSI. For a longer-term development, see the EU CTC note, *Embracing new and disruptive technologies in internal security and justice with an EU Innovation Hub* (doc 6158/20 of 19 February 2020). See also the EU CTC paper on *Disruptive technologies and internal security and justice* (doc 9069/19 of 8 May 2019).

⁷ Anti-Semitism originates in right-wing, left-wing and Islamist violent extremism and terrorism.

(15) Prison leavers

Given that a significant number of persons convicted for terrorism related offenses and persons convicted for other crimes but radicalized in prison will leave prison in the coming months, it is recommended that the Commission, on the basis of the work of the Radicalization Awareness Network (RAN), encourages the development of disengagement, rehabilitation and reintegration programmes and explores also possibilities of administrative follow-up with regard to the prison leavers posing the highest threat, in full respect of the Charter of Fundamental Rights.

3. Islamist extremist ideology

The spread of Islamist extremist ideology in the last decades poses a number of serious challenges for Europe. First regarding social cohesion, democracy, and integration, as the Islamist extremist ideology seeks to keep the Muslim population separate from society and its norms, placing religious rules above the law. Secondly, Islamist extremist ideology challenges fundamental rights, for example gender equality, minority rights, and freedom of religion. Thirdly, without negating the influence of social, psychological and economic factors, Islamist extremist ideology is for some terrorists a key driver for radicalization leading to violent extremism and terrorism. Finally, it poses geopolitical challenges to Member States, when third countries seek to influence the Muslim communities in the EU.

Islamist extremist voices assert that efforts to counter extremist ideology and to defend European values are "Islamophobic", while continuing their promotion of parallel societies, rejecting integration and human rights. Progress in addressing Islamist extremist ideology is needed to support the millions of European Muslims who want to enjoy their fundamental rights and freedoms in the EU, such as freedom of speech, equality of men and women, to facilitate integration and cohesion in our societies and to avoid harmful external influence.

(16) Accelerate consultations with Saudi Arabia on Islamist extremist materials and financing

In December 2019, the Council agreed that the EU could start consultations with Saudi Arabia on the promotion in Europe of Islamist extremist materials originating from Saudi Arabia and transparency of financing from sources in Saudi Arabia. Urgently, the priorities for the first round of consultations with Saudi Arabia regarding Islamist extremist ideological content should be discussed and agreed in the relevant Council working groups based on input prepared by the Commission⁸, and a date should be fixed for the consultations.

(17) Financing of Islamist extremism

The consultations with Saudi Arabia are one aspect of the more general issue of external financing. Joint EU action to stop the non-transparent financing of national civil and religious organizations negatively impacting our societies should be explored.

(18) Imam training/connecting scholars across the EU

In full respect of the separation between Church and State for those Member States where it is a constitutional requirement, the EU and Member States could explore ways to encourage, support and connect initiatives, which are independent of external funding and committed to European values, on capacity building for the European Muslim community and religious leaders and training for Islam scholars and imams across the EU, in full compliance with fundamental rights and the rule of law. In addition, connecting European universities where Islam is taught and other European centres of expertise related to Islam, conferences and exchanges could be supported. All this could be done for example in the context of the Erasmus Programme. Inter alia, the European university alliances⁹ could be a good basis.

Additionally, the involvement and advanced trainings of prison chaplains can be seen as an important supportive pillar to further develop exit and disengagement work in prisons particularly as it relates to extremists being released from prison.

⁸ On the basis of the expert workshop on Islamist extremist materials hosted by the Commission

⁹ https://ec.europa.eu/education/education-in-the-eu/european-education-area/european-universities-initiative_en

(19) Prioritize Islamist extremist ideology in the EU work plan on prevention of radicalization

The work plan which is currently under preparation should include addressing Islamist extremist ideology among the priorities to continue and step up work in this context. The EU could facilitate exchange of experiences and research aimed at gaining a better understanding of the vectors for the spread of Islamist extremist ideologies in EU Member States, and of best practices to protect and foster diversity, inclusivity and constructive debate within Muslim communities. Working with Muslim organizations on promoting fundamental rights and freedoms could be explored.

The EU should also continue to mobilize relevant EU instruments, including the RAN, about polarisation of our societies¹⁰.

(20) Islamist extremist materials online

More needs to be done to address online spread of Islamist extremist content. Efforts to identify **Islamist extremist materials online**, in particular those which are illegal hate speech or contain disinformation, should be stepped up. Expert knowledge and research may be necessary. This issue should be included more prominently in the relevant EU dialogues with the online companies.

(21) Counter-narratives

It would be important to explore how to equip the EU to be much **more proactive in counter-narratives** and communication of fundamental rights, our values and of the European way of life. Positive narratives are needed to increase resilience in our society and strengthen the feeling of belonging together, regardless of religion, ethnic or social background.

(22) Education

Education plays an important role on promoting our common values and fundamental rights, but it is also misused for the spread of Islamist extremism.

It will be important to continue to implement as a priority the "Declaration on Promoting citizenship and the common values of freedom, tolerance and non-discrimination through education" adopted by the EU education ministers in Paris after the Charlie Hebdo attacks on 17 March 2015 and the

¹⁰ UNESCO has carried out interesting work on the role of the media in this context <https://chaireunesco-prev.ca/les-medias-face-au-terrorisme/>

Council Recommendation of 22 May 2018 on promoting common values, inclusive education, and the European dimension of teaching.¹¹ The Commission could explore additional support.

There is a need to exchange experiences to **curtail Islamist extremist influence in schools** across the EU. The Youth and Education working group of the RAN has started to work on these issues. In the context of Commission supported Network of Prevent Policy Makers, France is leading project based collaboration on improving Member States capacity to prevent the promotion of extremist ideologies in supplementary schools, denominational schools and home-schooling.

The Commission could support additional exchange of experiences to address Islamist extremist materials and practices in all types of European schools, such as meetings of school supervisors from Member States. Government education officials and experts on Islamist extremism could also be involved, as appropriate.

Additional support to equip teachers and youth to deal with these issues on a daily basis could also be explored.

(23) Creating opportunities

The EU also needs to be strong in opposing racism, antisemitism, xenophobia and addressing marginalisation. Inadvertently creating breeding ground for violent extremism or terrorism, in any form or based on any ideology, needs to be avoided. Working together with all relevant sectors of our society is needed.

EU Erasmus, the Creative Europe programme¹², social and employment funding should be mobilized more to support initiatives in education, sports, culture to create opportunities for, inspire and support disadvantaged at risk youth, in particular in parts of cities with high immigration population.

¹¹ (2018/C 195/01)

¹² Its international dimension connects the European capitals of culture with their African counterparts.

4. External activities

(24) Western Balkans

Cooperation with the Western Balkans remains a high priority. During the Ministerial level videoconference in October 2020 the EU and Western Balkan partners agreed to continue implementing the Joint Action Plan on Counter-Terrorism beyond 2020. It will be important to actively engage all partners at the strategic and operational levels and strive for practical results to enhance the security in the region as well as in the EU.

(25) Engage partner countries on fundamental freedoms, the EU and Islam

In a number of third countries, actors are exploiting the response to the terrorist attacks and encourage violence to defend Islam. The EU should support engagement on this topic while upholding its values with partner countries, such as in North Africa and the Middle East. It would be important to re-launch the Counter-Terrorism dialogue with Turkey.

To increase tolerance and understanding the EU should invest in youth, for example continue and step up the Virtual Erasmus programme connecting virtually youth from both sides of the Mediterranean¹³.

(26) Spread of Islamist extremist ideology in the Sahel region

The Commission has carried out a study on this topic with worrying conclusions about the scale, impact and origins of the spread of Islamist extremist ideology in the Sahel. The EU should explore how to use its development assistance in a much more targeted way to address this phenomenon in the Sahel and other affected regions worldwide.

¹³ Implemented by Search for Common Ground and the Anna Lindh Foundation.

(27) Camps/prisons in North East Syria

FTF and their family members from the EU and third countries remain in prisons and camps in North-East Syria, most of which are under of the Syrian Democratic Forces (SDF) control.

Repatriation is handled by Member States on a case-by-case basis outside of the EU context, as are possible trials of the FTF in the region. However, the EU could support initiatives via international or non-governmental organisations to address radicalization in the camps as well as ensure better conditions and psycho-social support.
