SPAIN

Follow-up comments to the last LEWP meeting (22/02/2021)

SPANISH POINT OF VIEW REGARDING THE NEXT QUESTIONS:

1) Do you agree that there is an operational need to make verified third-country sourced information on terrorists and other criminals available to frontline officers (border guards and police officers) in order to detect those persons when they seek to cross EU external borders or when they are being checked within the EU? **YES**

2) If so, do you agree that the Schengen Information System is the right tool to make this information available to frontline officers (border guards and police officers)? If not, what alternative solution would you propose? **NO**

ALTERNATIVE PROPOSAL

Relating the fact that Europol could entry alerts in SIS with information on persons received from third countries, and international organisations on foreign terrorist fighters, but also on persons involved in organised crime or serious crime we are studying this issue, we don't see it very clear if this is the appropriate procedure to provide such information to the States and for meet the target pursued. And we keep studying it because, as we have already said several times, it is a new proposal that radically changes the system established so far, since we are facing a competence exclusively of the Member States.

Further, our experts informed us that the proposal may generate some issues as the following:

1. The Europol´s capacity to solve urgently the hit subsequent to an alert generate us many doubts a priori.

2. The ability to solve those hits is frequently based on the quality of the data or on the availability of biometric data. This should be required to Europol if it is the case.

3. Alert proposals would be limited to settings that may not imply coercive measures, namely, by only providing information to the officer receiving the alert and generating intelligence (via CE/CD - Art. 36 Decision). This means that subsequent actions to take are not specified.

4. In relation to the IO regulation, once the system becomes operational, EUROPOL should carry out the manual verification in case of a yellow link with its setting in SIS, like the rest of the SIRENE Offices. We believe that the resolution of the link will be complicated.

That aside, we are currently exploring another way to meet the target that EUROPOL proposes to eliminate possible intelligence gaps, for example, taking advantage of the capabilities offered by Interoperability, through the two EU Regulations that regulates it.

Thus, we could use **QUEST**, **EIS** or a specific database created "ad hoc" by Europol, which should be fed with the data contained in the Europol files about people whose "alerts" were intended to be included. The Agency would make it available to member states within the framework of Interoperability.

During our study, we have found several benefits over the inclusion by Europol of alerts in SIS, such as follows:

1. Costs or changes to be made in legislation, infrastructure or competences would be minimal.

2. With the full implementation of IO, the aim pursued (that the Police receives an alert or alarm upon identification both at the border and within the territory) would be resolved, giving rise to the operational actions required by the situation.

3. The introduction of data through QUEST does not generate identity links to be solved by IO.

4. The expiry date of an alert will not be pre-set by the SIS regulation (art 53 (4), which is so restrictive and establishes generally limits requested alerts to 1 year duration.

5. When a TCN is arranging ETIAS and VIS in order to be authorized to travel to the EU, a link would be generated which, depending of the further review, could lead to a refusal of authorization or visa, respectively.

6. We would not overload the SIS, which has a different nature linked to the Police action on the basis of verified information, with alerts created on information which not always will be verified.

7. The transmission of communication would be faster and lighter, because a communication intermediary would be erased. Regarding the Commission's proposal (alert in SIS), the communication of a hit must be directed from the discovering point to its national SIRENE Office which, in turn, must communicate the hit to Europol and the most logical would be that Europol informs to the law enforcement of that country.

At the same time, a potential boost of a closer collaboration agreement with **Interpol** could be considered, also in the access to the news that be generated.

Apart from that, at national level, It could be implemented that the automatic communication of a detected hit -based on the IO through QUEST by Europol,- requires a specific action to be carried out by the frontline officer.

Spain considers that this proposal is suitable with the development of a voluntary procedure in which MS can enter alerts in SIS on the base of FTFs lists provided by other States. Moreover, all these persons would be recorded in interoperability regardless of entries in SIS referring to some of them.

Finally, we believe that we should be encouraged to continue exploring other ways to achieve the proposed goals.

Regarding the creation of a working group, which focuses on the EUROPOL alerts on SIS, the handling of these matters should be under LEWP or IXIM, depending on the decision of Portugal Presidency.

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