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NOTE

From: EU Counter-Terrorism Coordinator
To: Delegations
Subject: The EU's Work on Battlefield Information: Stocktaking and possible next steps

1. Introduction

United Nations Security Council Resolutions 2178 (2014) and 2396 (2017) called on states to counter the foreign terrorist fighter (FTF) phenomenon by holding FTFs accountable for their participation in or support for ISIL/Da'esh, the Al-Nusrah Front and other affiliates of Al-Qaida, and to exchange information, including biometric data, to hinder FTF travel to and from conflict zones.

In line with these international obligations, on 22 and 23 June 2017 the Council decided to accelerate collective efforts to share knowledge on FTFs and to take forward policy and legal measures to manage the threat caused by returning and relocating FTFs. At the joint meeting of home affairs and defence ministers on 18 May 2017, Member States were encouraged to strengthen the availability, exchange and use of battlefield information in the EU. Based on this, in 2017¹ and 2019² the EU Counter-Terrorism Coordinator (EU CTC) suggested a series of measures to strengthen military, law enforcement and judicial information exchange in counter-terrorism (battlefield information³).

There have been considerable developments on battlefield information in the EU since the EU CTC's last update. This note takes stock of the progress made in the EU since 2019 and identifies possible next steps to further strengthen the use of battlefield information. The addendum sets out in detail the progress made since 2019: steps taken by EU agencies, cooperation with third states and work done in this area by other international organisations with which EU Member States or EU agencies cooperate.

2. Policy developments

The Council conclusions of June 2020 on EU external action on preventing and countering terrorism and violent extremism⁴ highlight the importance of battlefield information. They stress that wherever possible, efforts should be made to make battlefield information available for use by the competent authorities of the Member States to ensure effective border control and support effective prosecutions of terrorist perpetrators. Furthermore, in addition to important bilateral cooperation with key strategic partners, further cooperation and coordination should be developed with other relevant international partners as appropriate and with due respect for the EU institutional framework.

1 Strengthening military, law enforcement and judicial information exchange in counter-terrorism, 10880/17+ADD 1

2 Strengthening military, law enforcement and judicial information exchange in counter-terrorism, 6336/19 RESTREINT UE + ADD 1 RESTREINT UE + ADD 2 LIMITE

3 This document will refer to information and exploitable material collected in conflict zones and exchanged between military, intelligence, law enforcement and judicial authorities as 'battlefield information'. This term is broader than the term 'battlefield evidence'. It covers not only material and information to be introduced in court as evidence but also intelligence information, etc. that can serve as a link for possible criminal investigations or be used for border management purposes but is deemed too fragmented to serve as evidence in court. Therefore, the term 'battlefield evidence' is used in this document only when referring to evidence in the narrow sense of a judicial procedure.

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The Commission's new EU Security Union Strategy⁵ for the period 2020 to 2025, adopted in July 2020, focuses on priority areas where the EU can bring added value to support Member States in fostering security in the EU and highlights the importance of effective prosecution of terrorists, including FTFs. The Commission's EU Counter-Terrorism Agenda of December 2020⁶ affirms the significance of battlefield evidence for prosecutions in the EU. The Commission supports Member States' use of battlefield information to identify, detect and prosecute returning FTFs through the establishment of best practices, the exchange of information, and project financing. In addition, the EU will continue to support and strengthen cooperation with key third countries, such as the United States, and international organisations, including the exchange of information and ensuring the integration of battlefield information in the European security architecture and networks.

EU justice and home affairs agencies such as Europol⁷ and Eurojust⁸, and Member States, have made good progress in the sharing and use of battlefield information. EU agencies and Member States have, overall, more and better access to battlefield information and are more familiar with its use. This is, in particular, reflected in the end result of the use of battlefield information in the EU: FTFs and their affiliates are being held accountable for the crimes they have committed in conflict zones on the basis of evidence that originates from these zones and is shared with border management, law enforcement and judicial authorities.

5 Commission communication on the EU Security Union Strategy, 10010/20

6 Commission communication: A Counter-Terrorism Agenda for the EU: Anticipate, Prevent, Protect, Respond, 13967/20

7 Europol is receiving increasing amounts of battlefield information. In 2019, the European Counter-Terrorism Centre established and launched an ad-hoc Terrorist Identification Task Force (TITF). Europol provides active operational support to criminal investigations by Member States through its Analysis Project Core International Crimes (AP CIC) and Analysis Project Travellers (AP Travellers). The Commission's Counter-Terrorism Agenda of December 2020 underlines Europol's work to support Member States in their use of battlefield information to identify, detect and investigate returning or relocating FTFs.

8 The second Eurojust memorandum on battlefield evidence was published on 15 September 2020 (11219/20 + ADD 1). It identified three main challenges: obtaining battlefield evidence in a timely manner; (over-)classification of information; battlefield evidence consisting of statements by witnesses or defendants.

Battlefield information also facilitates detection at the EU's external borders and prevents undetected entry of FTFs and affiliates into the EU. The Commission's proposals to amend the Europol Regulation, adapting Europol's tools to new threats, and the Commission mandates to negotiate international agreements for Europol⁹ and Eurojust¹⁰ with Turkey and seven countries in the Middle East and North Africa (MENA) will enhance EU justice and home affairs agencies' work on battlefield information.

FTFs and their affiliates are being successfully prosecuted in more and more cases in the EU, in particular through cross-border cooperation among Member States' authorities, frequently supported and coordinated by Eurojust. Cumulative prosecutions¹¹ – namely prosecutions for terrorist offences together with core international crimes, the crime of genocide or war crimes – have led to better holding to account of Da'esh supporters and their affiliates in the EU and longer prison sentences, based on evidence originating from conflict zones.

This is particularly important as previously many of the convictions of returning FTFs and their affiliates were not based on battlefield information and were only for more general terrorism offences, which led to relatively short sentences. Recent attacks by prison leavers who were still radicalised show how challenging the risk assessment and surveillance of these persons after their release is. Cumulative prosecutions have led not only to better holding to account of perpetrators and greater justice for victims but also to longer sentences and prison terms, reducing the threat posed to the public by people who are still radicalised when they are released from prison.

There is a need to further improve the sharing and use of battlefield information, building on the progress made. The Global Coalition against ISIL/Da'esh is currently looking into the collection and exchange of battlefield information in Africa, given the increasing terrorist activity in the region. The threat posed by relocating or returning FTFs and their affiliates' remains significant. Access to and sharing of battlefield information for external border control and investigations and prosecutions remains key for detection and ensuring accountability.

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10 Opening of negotiations authorised by Council Decision of 23 February 2021, 6153/21 + ADD 1.

11 See also 12237/20: Report on the issue of cumulative prosecution of Foreign Terrorist Fighters for Core International Crimes and Terrorism-Related Offences (report by Eurojust's European network of contact points in respect of persons responsible for genocide, crimes against humanity and war crimes (the 'Genocide Network')).

3. Recommendations

Investigations and prosecutions in Member States

- (1) **Member States' law enforcement and judicial authorities dealing with counter-terrorism and core international crimes are encouraged to cooperate closely** and to make use of the existing judicial cooperation tools, including joint investigation teams. Member States are encouraged to facilitate prosecution for terrorist acts as well as war crimes, based on battlefield information, to ensure full accountability for crimes committed in conflict zones, longer sentences and greater justice for victims. Prosecuting core international crimes can be particularly relevant when addressing acts by women who travelled to conflict zones to support Da'esh and other groups but did not get involved in active combat. Member States are encouraged to consider practical ways to raise awareness and to promote a **cumulative approach** to prosecutions. Strong cooperation and coordination is needed between criminal investigators and prosecutors working on war crimes and counter-terrorism at national and EU level. Member States are encouraged to take advantage of the expertise of Eurojust and the Genocide Network in relation to counter-terrorism and core international crimes, in particular for cumulative prosecutions.
- (2) It is important that Member States' law enforcement and judicial authorities which have not yet done so establish a **regular dialogue with their military forces and relevant intelligence and security services**. Regular meetings between competent ministries and all other authorities working on FTFs, and the establishment of focal points within the competent authorities, will allow for better understanding and sharing of battlefield information, in compliance with national legal provisions. This will ensure that battlefield information is collected and processed in such a way that it can be used as evidence in criminal proceedings.
- (3) It is important that Member States and their international partners introduce procedures for the **timely and secure collection and delivery of battlefield evidence** ('authenticity and reliability of evidence') so that its admissibility and weight in proceedings is ensured. Delays in declassifying and delivering existing battlefield information for criminal investigations can lead to have serious effects on the outcome of criminal proceedings.

- (4) Where possible, information and material should be declassified and context for raw material should be provided to judicial authorities in a timely manner, as this is very important for the evidentiary value of the information as well as the possibilities for use in court. In the military context, Member States are encouraged to work together with their international partners on **establishing ways to enable the provision of declassified contextual information** to accompany the often fragmented raw battlefield material from the beginning, rather than following a request from the judicial authorities. Generic contextual notes accompanying the raw material with declassified information relevant to criminal proceedings could be introduced by military authorities and serve as a basis for subsequent analysis by the security services, with the aim of correctly identifying and further exploiting the information contained in the raw material.
- (5) The establishment of **regular exchanges between authorities and NGOs** with access to evidence in conflict zones may help with building trust. Authorities could inform NGOs about the legal requirements in order to overcome challenges faced by judicial authorities when using witness statements taken by NGOs active in conflict zones. Member States' authorities are encouraged to initiate or pursue such informal exchanges with NGOs.

Europol and Eurojust

- (6) The considerable challenges Europol and Eurojust face in their **cooperation and information sharing with international organisations and bodies**, such as the United Nations Investigative Team to Promote Accountability for Crimes Committed by Da'esh/ISIL (UNITAD), the International, Impartial and Independent Mechanism for Syria (IIIM) and the International Criminal Court (ICC), which play a crucial role in criminal investigations and prosecutions of FTFs and their affiliates, should be addressed. The Commission should propose international agreements on cooperation between Europol and Eurojust and UNITAD, the IIIM and the ICC as soon as possible. In the meantime, Europol should conclude working arrangements with UNITAD, the IIIM and the ICC so that Europol can cooperate with these crucial international bodies.
- (7) Europol and Eurojust should continue to engage further **with NGOs** to strengthen cooperation.
- (8) Europol should adopt a working arrangement with the European Union Satellite Centre (**EU SatCen**) to build a partnership on the use of imagery for law enforcement purposes in order to support investigations, analysis and incident management, including in the core international crime context.

- (9) It is important to enhance the efforts towards concluding the **international agreements** proposed by the Commission between Europol and Eurojust, on the one hand, and certain third states, such as MENA states and Turkey, on the other hand.

Border security

- (10) It is important that battlefield information on suspected terrorists received from trusted third states is properly processed and **entered into the Schengen Information System (SIS)** swiftly and in a systematic manner, based on the voluntary protocol agreed by the Standing Committee on Operational Cooperation on Internal Security (COSI) in November 2020¹².
- (11) Member States are encouraged to also **cross-check** battlefield information on suspected terrorists received from trusted third states with other relevant databases and information sources (PNR, EIS, Interpol, Eurodac, etc.) as much as possible.

External engagement

- (12) In the context of the Global Coalition against Da'esh, the multinational cooperation platform **Operation Gallant Phoenix (OGP)** has become a major source of information and evidence on FTFs and their affiliates for national authorities. With the increasing terrorist activity in Africa, Member States are encouraged to pursue similar cooperation **related to Africa** which could help to hold FTFs and other terrorists accountable for their crimes and to strengthen external border control.
- (13) The EU CTC, together with the European Commission, will work on a possible **follow-up to the workshop on battlefield information** of July 2019, which was organised in close cooperation with the US government.

¹² 13037/20: Defining a process for evaluating and possibly entering information from third countries on suspected Foreign Terrorist Fighters in the Schengen Information System. The process should be evaluated at the latest in November 2022.

- (14) The EU is encouraged to **further strengthen capacity building** with regard to battlefield information, including:
- i. in the context of CSDP operations and with Interpol and other international organisations;
 - ii. in the MENA region as a whole – possibly, although not necessarily – starting with the states identified as prioritised partners in Europol’s ‘Policing Partnership Project’.
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