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WORKING PAPER

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WORKING DOCUMENT

From:	General Secretariat of the Council
To:	Delegations
Subject:	Procedure on enhanced security checks on persons crossing or having crossed the EU's external borders following developments in Afghanistan

Delegations will find in Annex an outline of a procedure on enhanced security checks on persons crossing or having crossed the EU's external borders following developments in Afghanistan.

Procedure on enhanced security checks on persons crossing or having crossed the EU's external borders following developments in Afghanistan

1. Having regard to the Statement adopted on 31 August 2021 by the extraordinary EU Justice and Home Affairs Council on the situation in Afghanistan which, inter alia,
 - highlighted the potential implications of developments on EU internal security;
 - stressed that the EU and its Member States should do their utmost to ensure that the situation in Afghanistan does not lead to new security threats for EU citizens; and
 - emphasised that the EU's external borders should be effectively protected and unauthorised entries be prevented by carrying out, with the support of relevant EU Agencies, appropriate security checks, including through the full use of relevant EU databases and information systems, as well as registration in Eurodac, as already requested in relevant EU legislation;
 - underlined that the sharing of regular threat assessments and the exchange of information and intelligence, in line with national competences and also with trusted third countries, are of utmost importance; and
 - recalled that the timely performance of security checks of persons being evacuated from Afghanistan remains crucial.
2. Considering the Counter Terrorism Action Plan on Afghanistan, presented by the EU Counter Terrorism Coordinator (doc. 11556/21) that recommends that COSI develop a procedure on the implementation of the several layers of enhanced security checks on persons crossing or having crossed the EU's external borders to mitigate potential security risks stemming from the situation in Afghanistan.
3. Referring to the analysis produced by Europol, as requested in the Statement, which concludes that, "(...) against the backdrop of an expected increase in migratory flows from Afghanistan to the EU, the threat of terrorists using this as a way to enter the EU undetected, is to be considered. Furthermore, similar to the modus operandi used by irregular migrants, terrorists with other nationalities might pose as Afghan nationals to enter the EU".

4. Highlighting that the specific procedure set out in this document is legally non-binding, is building on ad hoc and ongoing work already carried out by the Member States' competent authorities, and is reflecting a political agreement by all Member States; that, therefore, it is without prejudice to existing legal obligations under international, Union or national law, notably under the Schengen Borders Code¹, as well as to the future Regulation for a general screening procedure for third-country nationals at the EU external borders².
5. Clarifying that the uniform three level procedure for enhanced security checks of persons crossing or having crossed the EU's external borders applies to all types of borders (air, land, sea) and to humanitarian evacuations from Afghanistan. First level security checks mainly build on already existing obligations under EU legislation, notably the Schengen Borders Code, while second and third level checks set out measures to be carried out by law enforcement agencies and other competent authorities, when appropriate in cooperation with Europol and the intelligence community.
6. Specifying that the procedure is not applicable to holders of valid Schengen visas, as well as to long term visa holders, entering the EU.

¹ Regulation (EU) 2016/399 of 9 March 2016, OJ L 77, p.1.

² Doc. 11224/20.

OUTLINE OF THE PROCEDURE

A. First level checks

All individuals crossing or having crossed the EU's external borders³, who are:

- Afghani nationals;
- declaring to be Afghani nationals; or
- believed to be Afghani nationals;

and

- arrived from Afghanistan or a neighbouring country where they resided immediately prior to their arrival

shall be subject to timely first level security checks by the competent national authorities at border crossing points, hotspots, or other dedicated premises. These first level checks shall serve the purpose (1) to establish the identity and nationality of the individual, and (2) to ascertain if, on the basis of the first level checks applicable to all individuals falling in the three afore-mentioned categories, the individual represents a potential risk for EU internal security.

These checks are carried out on the basis of and using

- (a) identity, travel or other documents;
- (b) data or information provided by or obtained from the individual concerned;
- (c) biometric data, including both facial images and fingerprints;
- (d) any identity discovered during the identification or verification.

To this end, the Member States' competent authorities shall carry out queries in relevant national, EU and international databases and information systems, consulting in particular the Schengen Information System (SIS), by using identity, travel document and fingerprint data⁴ (through SIS-AFIS), the Interpol Notices and Diffusions, Interpol Stolen and Lost Travel Documents (SLTD) Database, Interpol Travel Documents Associated with Notices database (TDAWN) and other relevant Interpol databases.

³ Including those who were intercepted or rescued on their way to the EU Member States

⁴ When additional EU databases and information systems aimed at enhancing security and border checks, such as the Entry/Exit System (EES) and the European Travel Information and Authorisation System (ETIAS) will be operational, they shall also be consulted in the framework of these first level checks.

Where relevant, the checks shall include also physically searching the means of transport and objects in possession of the individual and carrying out a search on the identifiable objects in the SIS.

In order to ensure the proper and full implementation of these checks, if the number of checks is exceeding administrative capacities, the Member States should request the assistance of the European Border and Coast Guard Agency (Frontex) in performing first level checks by deploying experts, including interpreters. Frontex experts deployed can assist with identification, documentary checks and debriefing tasks.

Member States' competent authorities shall ensure the necessary control and surveillance of individuals during first level security checks, and if applicable, during second and third level checks, to avoid absconding.

B. Second level checks

Where first level security checks do not allow a conclusion on the security threat posed by the individual or where there are elements pointing towards a potential threat to EU's internal security based on a risk assessment, the competent national authorities shall carry out second level checks, unless it decides to take any of measures listed in section D. The second level checks shall consist in:

- consulting further relevant Interpol and Europol databases (Europol Information System (EIS) and in the Organised Crime, Serious Crime and Anti-terrorism databases);
- consultation of CTG (Counter Terrorism Group) intelligence and security services through the sending of a trace request. The CTG intelligence and security services shall inform the competent national authorities of the results of this request.
- extracting and analysing information from mobile electronic devices in possession of the individuals, in line with national legislative provisions and procedures;
- holding in-depth security interviews.

The competent national authorities shall request Europol's assistance, in particular the deployment of guest officers, to carry out risk assessment of individuals and perform the second level checks, enabling direct and quick access to Europol databases.

The relevant data collected on site will be transmitted via SIENA to be introduced in Europol databases.

Member States should ensure, with the support of Frontex and/or Europol, if needed, that interpreters are made available for the security interviews.

C. Third level checks

Where, based on the information obtained and the analysis conducted during first and second level checks, duly justified security concerns subsist, the individual concerned shall be subject to additional security checks consisting in:

- Consultation of information shared by trusted third countries (e.g. on the base of evidence collected in Afghanistan on possible involvement in terrorist or other serious crime activities). Europol may be requested by the competent national authorities to support this process, as appropriate.
- Further consultation of CTG intelligence and security services and its foreign counterparts on the basis of initial results of the trace request. The CTG intelligence and security services shall share with the competent national authorities a consolidated outcome of this consultation.

D. Follow up in cases of confirmed security risks

In case security checks performed at one of the three levels reveal substantial security risks, Member States' competent authorities shall take the appropriate decision, in accordance with national, Union and international law, whether the individual should be:

- stopped, arrested and eventually prosecuted;
- subject to a refusal of entry (Art. 14 Regulation (EU) 2016/399) as a result of first level checks, issued an entry ban and an alert for refusal of entry and stay in SIS (Art. 24 Regulation (EU) 2018/1861) or returned in accordance with Directive 2008/115/EC and with national law transposing that Directive;
- subject to an alert introduced in SIS for discreet checks, inquiry checks or specific checks (Art. 36 of Regulation (EU) 2018/1862).

Member States' competent authorities shall keep the Presidency of the Council of the EU and Europol (ECTC) informed of cases where security risks were detected, and of their follow up. The Presidency in turn keeps the European Commission (DG HOME), the EU Counter-Terrorism Coordinator, the Terrorism Working Party and, if appropriate, other relevant Council working parties (e.g. COTER and the Working Party on Frontiers) informed without communicating any operational information or personal data regarding the cases or individuals concerned.

E. Voluntary application to other arrival situations

Member States may decide to retroactively apply this protocol also to humanitarian evacuations carried out from Afghanistan before the endorsement of this protocol.

F. Review clause

This procedure, and especially its effectiveness, shall be subject to regular review and could be extended to other nationalities.
