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LIMITE

CT 2
ENFOPOL 2
COTER 2
JAI 2
SIRIS 1
FRONT 2
IXIM 1
COSI 1
COMIX 2

NOTE

From: Presidency
To: Delegations

Subject: Improving the post-hit procedure in the Schengen Information System (SIS) for alerts related to terrorism

Courtesy translation

A serious threat is posed to European citizens by terrorist fighters regularly returning to Europe since the downfall of the Islamic State “caliphate” and by the difficulties encountered in the north-east of Syria, where many fighters are detained.

Recent developments in Afghanistan and the crisis at the EU-Belarus border have highlighted the need to conduct effective checks both at the EU’s external borders and inside the Schengen area, with the aim of **detecting potentially threatening individuals** likely infiltrated in migratory flows **as soon as they enter European territory**. Such opportunistic infiltration has already enabled the attackers who targeted Paris in 2015 and Brussels in 2016 to reach Europe undetected, taking advantage of population movements caused by the Syrian civil war.

1. A suboptimal situation in the context of a sustained serious threat

The Schengen Information System (SIS) is a valuable tool for addressing these challenges. However, even better use could be made of it, especially with regard to the sharing of information among Member States. To date, **only the “issuing” State** (which registered a specific individual into the SIS) **and the “checking” State** (where said individual was detected) **have access to information on the related SIS hit. Other Member States have no access to this data**, as there are no checks at the inner borders, although the same individual might eventually travel to their territories. Besides, terrorist fighters travelling to or from Europe often use **“fragmented routes”**, i.e. they go through several countries before returning to their country of origin or reaching their final destination.

Consequently, limiting to only two member States and Europol¹ the exchange of information on such individuals being in the Schengen area seems suboptimal. It would be pertinent for **all Member States** to be granted access to data allowing to disrupt the threat at the earliest stage by means of concrete measures against these individuals. It is indispensable to achieve such optimisation in terms of information sharing to conduct **precise transnational monitoring** of this type of individual (returnees, foreign terrorist fighters [FTFs]), including their travels. This information would be complementary to existing bilateral exchange channels, thus promoting an increased flow of information.

¹. Art. 48 of the regulation 2018/1862 on the establishment, operation and use of the Schengen Information System (SIS): “Member States shall inform Europol through the exchange of supplementary information of any hit on alerts related to terrorist offences. Member States may exceptionally not inform Europol if doing so would jeopardise current investigations, the safety of an individual or be contrary to essential interests of the security of the issuing Member State.” As a reminder, information exchange procedures have been included to the revised SIRENE manual adopted in February 17 2021(cf. C(2021)965 Commission Implementing Decision) and are operational since March 2021.

2. Upgrading the post-hit procedure for enhanced information sharing

Given the above, it could be appropriate to provide voluntary Member States with access to the exchanged information. This upgrade of the “post-hit” procedure would allow these Member States to be **automatically notified of hits** concerning the most dangerous FTF profiles (returnees, individuals who could leave to wage jihad), be they associated with the current Syrian-Iraqi networks or with future terrorist networks².

The “issuing” State owns the alert, whereas the “checking” State owns the information on the detection and adopts the necessary measures requested in the alert. Upgrading the procedure would lead the “issuing” State to automatically send a hit notification to the States which requested it, having first taken into consideration any restrictions placed by the “checking” State.

Europol already benefits from such a transmission, as Member States are required to share every terrorist-offence-related hit with the agency (art. 48 of the SIS regulation). Applying the proposed upgrade would therefore amount to **extending the list of recipients** of terrorism-related hits on the most dangerous individuals to the voluntary Member States, in addition to Europol³. Beyond sharing the SIS hit, the “issuing” State would send the complementary information from the discovery form.

The implementation of this new procedure may be exemplified as follows. A European citizen registered in the SIS under article 36 by Member State A returns from the Syrian-Iraqi area to Europe in order to conduct a violent action on European soil. This individual crosses the EU’s outer border via Member State B, then crosses several other borders until his/her identity is checked by Member State C, which notifies Member State A of the hit. Pursuant to the new mechanism, Member State A will share the information with the other Member States wishing to be notified; this will allow them to take the appropriate administrative hindering measures or to deploy resources with the aim of collecting information on this person and his/her contacts. If need be, further exchanges may occur among the relevant Services of the various Member States.

² This would concern: 1. Islamist terrorists released from prison and having links with Syrian-Iraqi networks; 2. FTFs reported by non-EU partners; 3. European citizens who left or intend to leave to the Syrian-Iraqi area.

³ Receiving information on alerts would be voluntary, but transmitting this information to the “issuing” State would be compulsory, as such transmission is already required for Europol.

3. Keeping the additional workload under control

Based on French statistics, it may be assessed that the proposed upgrade would not represent major additional workload, especially for SIRENE Bureaux, as it would regard only part of the individuals registered under article 36.

It was recently observed (August 2021) that France had issued 104,760 alerts under article 36, amounting to 66% of all individuals registered by the Member States. Additionally, in 2019, France received 26,562 “discovery forms” from “checking” States, **which suggests that the yearly “discovery rate” of French alerts amounts to a maximum of 25%**⁴.

Of all alerts issued by France under article 36, approximately **13,000 concern individuals connected to Sunni terrorism** and the others concern separate areas (e.g. organised crime). Among those, the individuals impacted by the new post-hit procedure would be:

- Islamist terrorists released from prison and having links with Syrian-Iraqi networks (in France, **about 60 individuals in 2020**, including 30 returnees and 30 individuals suspected of having intended to reach jihad areas);
- FTFs reported by non-EU partners (in France, about **500 each year**, depending on the information shared by partners⁵);
- European citizens who left for the Syrian-Iraqi area (in France, **about 300 returnees and 1,000 individuals who were or were suspected of being in the area in 2020**⁶).

4. The year 2019 is considered to have had a particularly high rate of discovery forms from other Member States (18,244 in 2017; 21,662 in 2018; 17,332 in 2020; 9,870 during the first half of 2021). Consequently, for 2020, the discovery rate of those French alerts amounted to only 17%.

5. Since the amount of information on FTFs shared by our partners may strongly vary and is related to lists (such as the 2,700-FTF list from the FBI) that are more or less long and exploitable, the estimate provided here was obtained by smoothing the data on a 1-year period.

6. French individuals who are detained or free in the Syria-Iraqi area, or who presumably died there.

This additional workload therefore concerns approximately 1,900 individuals among French alerts. Applying the yearly “discovery rate” for France results in an estimate of **475 alerts each year for these profiles of interest**. However, this is a very high estimate: it cannot apply to all the Member States because of the vast discrepancies in SIS alerts issued throughout Europe (countries are concerned by jihadism to various extents) and even the French figures tend to be overestimated (for example, individuals who presumably died in the Syrian-Iraqi area are most unlikely to trigger alerts, yet their identities remain in the SIS in order to prevent any “reappearance” of such profiles).

Consequently, an estimate based on 66% in the total of Europe-wide SIS alerts under article 36 would suggest **that the upgrade of the post-hit procedure for all Member States would trigger 710 alerts each year, i.e. a maximum of 2 per day**.

4. Questions

1. *Do you think that the upgrade of the “post-hit” procedure described above could contribute to effectively enhance the sharing of CT-related information?*
2. *Would your country agree to receive information on hits from other Member States, provided that the issue is further considered (see question 3)?*
3. *Are you in favour of the TWP looking into the matter further, in cooperation with the IXIM Working Group, to determine the legal and operational details of such a procedure?*