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NOTE

From:	Presidency
To:	Delegations
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Subject:	A shared understanding of when a person should be regarded as a potential terrorist or violent extremist threat (“Gefährder”)

The Standing Committee on Internal Security (COSI) is requested to endorse the attached criteria, called for by the Council Conclusions on Internal Security and European Police Partnership (13083/1/20 REV 1, points 67-69), and as agreed by the Working Party on Terrorism (TWP).

The criteria, strictly non-binding, serve to further strengthen the sharing of information about persons considered to constitute a potential terrorist or violent extremist threat, and to promote entering such individuals into the European databases and information systems by the Member States subject to the legal requirements governing these systems.

The following criteria represent a **shared understanding** amongst the law enforcement authorities of the EU Member States on when a person should be regarded as a potential terrorist or violent extremist threat (“*Gefährder*”). The criteria are strictly **non-binding** and do not affect the existing mechanisms and procedures already established at European and national level. Their goal is to promote entering such individuals into the European databases and information systems by the Member States subject to the legal requirements governing these systems.

Terrorism and violent extremism continue to threaten the security of Europe. We live in a territory without internal borders. This fact allows for travel without border checks between the member states of the Schengen Agreement. Therefore, it is crucial for competent authorities of the EU Member States to share reliable information swiftly on those persons who are regarded as a potential terrorist or violent extremist threat. Without prejudice to the legal bases governing the relevant European databases and information systems, information shared cannot be used for judicial proceedings, unless it is followed up or preceded by a request for mutual legal assistance. The existing European databases and information systems provide for different forms of this highly necessary exchange of information. The Schengen Information System (SIS) and the Europol Information System (EIS), and these systems’ inherent mechanisms may help to detect cross-border references that were previously unknown. Information exchange can also be facilitated by Europol Analysis Projects such as “Hydra” and “Traveller”.

With regard to the criteria listed below, the following *minimum materiality threshold* should generally be applied and considered a “red line”: the existence of (objective and verifiable) information suggesting that a criminal offence, or future criminal offence, has a certain degree of seriousness, either because of the nature of the offence in question — e.g. membership in a terrorist organisation — or, in the case of a lesser offence, because it is a repeated or ongoing activity.

Basic indicative criterion:

Persons about whom there is objective and verifiable information giving reason to believe that they will in the future commit, facilitate, support or engage in terrorist or violent extremist offences; this assessment may apply to persons who are accused or convicted of such offences, or for whom an arrest warrant has been issued.

Indicative auxiliary criteria:

- Persons who have threatened to commit, attempted to commit, or committed terrorist offences listed in Article 3(1) of the Directive on combating terrorism¹ with one of the aims listed in Article 3(2). The offences listed in Article 3 are:
- attacks upon a person’s life which may cause death;
 - attacks upon the physical integrity of a person;
 - kidnapping or hostage-taking;
 - causing extensive destruction to a government or public facility, a transport system, an infrastructure facility, including an information system, a fixed platform located on the continental shelf, a public place or private property likely to endanger human life or result in major economic loss;
 - seizure of aircraft, ships or other means of public or goods transport;
 - manufacture, possession, acquisition, transport, supply or use of explosives or weapons, including chemical, biological, radiological or nuclear weapons, as well as research into, and development of, chemical, biological, radiological or nuclear weapons;
 - release of dangerous substances, or causing fires, floods or explosions, the effect of which is to endanger human life;
 - interfering with or disrupting the supply of water, power or any other fundamental natural resource, the effect of which is to endanger human life;
 - illegal system interference, as described in Article 3(1)(i) of the Directive on combating terrorism.

¹ Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism (OJ L 88, 31.3.2017, p. 6).

- Persons who have threatened to commit, attempted to commit, or committed offences relating to a terrorist group listed in Article 4 of the Directive on combating terrorism, namely:
 - directing a terrorist group;
 - participating in the activities of a terrorist group, including by supplying information or material resources or by funding its activities in any way, with knowledge of the fact that such participation will contribute to the criminal activities of the terrorist group.

- Persons who have threatened to commit, attempted to commit, or committed offences relating to terrorist activities listed in Articles 5 to 11 of the Directive on combating terrorism, namely:
 - publicly provoking a terrorist offence;
 - recruiting another person for terrorism;
 - providing training for terrorism
 - receiving terrorist training;
 - travelling for the purpose of terrorism;
 - organising or facilitating travel for the purpose of terrorism;
 - financing terrorism.

- Persons who have disseminated to the public or shared any terrorist content².

- Persons subject to a refusal of entry into an EU Member State following Article 24 of Regulation (EU) 2018/1861 on grounds involving terrorism-related activities.

² For the definition of “dissemination to the public” and “terrorist content” we refer to Article 2(3) and (7) of Regulation (EU) 2021/784 of the European Parliament and of the Council of 29 April 2021 on addressing the dissemination of terrorist content online (TCO Regulation) (OJ L 172, 17.5.2021, p. 79).