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NOTE

From: Presidency
To: Standing Committee on Operational Cooperation on Internal Security /
Permanent Representatives Committee / Council

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Subject: Foreign Fighters - Enhancing the information exchange

Delegations will find attached the outcome of deliberations of the group of 13 Member States, together with Norway and Switzerland (G13), most affected by the phenomenon of foreign terrorist fighters (FTFs) on possible ways to enhance the information exchange on FTFs.

The note relates to Actions 17, 18, 19, 20, 22 and 30 of the Roadmap to enhance information exchange and information management including interoperability solutions in the Justice and Home Affairs area¹. The implementation report of that Roadmap, set out in 13554/16, does not yet take account of the outcome of the G 13 deliberations regarding these Actions.

The Presidency invites COSI to discuss the annex with a view to submitting the content thereof to the Council for endorsement.

¹ 9368/1/16 REV 1

Conclusions of the meeting
G13 – Foreign Terrorist Fighters –
Enhancing the information exchange

Senior officials and experts representing the most affected Member States, the CTC and representatives of the Commission met on 9 September 2016 in Brussels.

Delegations discussed the difficulties related to the feeding of the EU data systems (Europol and SIS). During the openhearted debate delegations shared national good practices, referred to the elimination of legislative and/or technical obstacles at national level, and highlighted remaining difficulties.

All delegations supported the importance to ensure a consistent three-tier information sharing approach (i.e. SIS II, EIS and relevant Focal Points (FPs) at Europol).

Most of the Member States reported that at national level both political impetus and specific operational instructions contribute to a more successful organisation of the feeding of the databases.

Further, delegations underlined the need to agree on a common definition of the scope of the Foreign Fighters groups to better target the information effort.

All delegations supported the periodic country reports on information sharing produced by the CTC. At the occasion of the senior officials meeting, the delegations exchanged more detailed information with regard to the information sharing and especially with regard to all categories of the SIS Alerts, the Europol Information System and relevant Europol Focal Points, which contributed to a better understanding of the national practices.

The delegations supported the idea that the Roadmap to enhance information exchange and information management including interoperability solutions in the Justice and Home Affairs area (9368/1/16 REV 1), as a response to the call to strengthen information exchange in the wake of the Paris and Brussels attacks and endorsed by the Justice and Home Affairs Council of 9-10 June 2016 defines a clear framework in the context of the problems that were discussed and that the implementation of the Actions is crucial. To this end, the delegations focused the discussions on the analysis of a number of Actions indicated in Chapter 3 of the Roadmap (Strengthen the collection, checking and connection of information for the detection of persons involved in terrorism and terrorism related activity and their travel movements) which require a swift implementation.

The following actions have been formulated during the meeting:

Action 17: Agreement on indicative criteria for inserting Foreign Fighter related information into the SIS and Europol databases

The group agrees that the situations below should be indicative of an individual being a foreign terrorist fighter and should be used to assess whether an individual's information shall be inserted in SIS or in Europol databases, unless there are genuine legal or operational reasons not to do so:

A foreign terrorist fighter is an individual who travels to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training, including in connection with armed conflict (as adopted by UNSCR 2178 when the UNSC underscored the "particular and urgent need" to prevent the travel and support for foreign terrorist fighters associated with the Islamic State in Iraq and the Levant (ISIL), Al-Nusra Front (ANL) and other affiliates or splinter groups of Al-Qaida).

The group agrees that the following indicative criteria will be used in the assessment regarding exchange and sharing of information on individuals:

1. Individual suspected to have the intention to travel or known to have travelled to or from an area of conflict with the intention of associating with terrorist groups.
2. Individual known to be engaged in facilitating the activities of these types of individuals.

Based upon the ongoing investigations following recent attacks, the members of the group agreed that special further reflection is needed on the following category:

“Individual known to be engaged in the process of radicalisation (active/passive), including all extremist speakers with or without visa obligations, who are deemed to pose a threat to public order and who intend to visit the EU”.

Action 18: Setting-up alerts once criteria for inserting terrorism related SIS alerts are met

The European Council Conclusions called for systematic entry of data on foreign terrorist fighters into SISII.

The members of the group will continue to make sure that competent national authorities systematically insert alerts in the SIS in relation to the issue of foreign fighters on the basis of the indicative situation developed under Action 17. While these criteria are not legally binding and are non-limitative, meeting these criteria should lead to the insertion of an alert unless a Member State determines that are genuine legal or operational reasons not to do so; any transmission and sharing of information about the persons referred to remains, of course, subject to safeguards provided for in national and European law. Member States will ensure due consideration is given when an alert after meeting the criteria is not inserted. Member States will share insights into interpretations of legal standards or national operational practices to strengthen mutual understandings and possible good practices.

Action 19: Use of marker ‘terrorism related activity’ where applicable

The members of the group agree that the marker ‘terrorism related activity’ is added with an alert issued on persons to whom this marker is applicable. The default setting will be that when discreet or specific check alert under Article 36 of SIS II Decision is entered on a person involved in terrorism or terrorism-related activity, the ‘type of offence’ should always be added to the alert (i.e. by selecting the value ‘terrorism related activity’). By using the marker, clarity and consistency in practice can be ensured. In addition to issuing an alert on a person based on the criteria, the use of the marker will provide SIRENE Bureaux and end-users with even more insight and assurance as to what is expected of the actions based on the alert. Member States will ensure that due (operational) consideration is given when this marker is not added to the alert. Any transmission and sharing of information about the persons referred to, remains of course subject to safeguards provided for in national and European law.

The European Commission announced its intention to propose a technical change in SIS to make the “type of offence”, where "terrorism related activity" is one possible value, a mandatory field concerning all alerts for specific checks and also concerning alerts for discreet check when immediate reporting of the hit is required.

Action 20: Setting of minimum standards for data quality required by SIS which should be respected by Member States

The members of the group support the initiative to hold regular discussions, detailing, for example, the importance and the exact purpose of data provided and received, of data transfer in a commonly agreed language, and of enabling prioritising actions.

The members of the group encourage eu-LISA to produce regularly data quality reports. The members of the group are committed to implement at the national level the recommendations made in these reports and support the idea that the EU relevant parts of these reports will be presented and debated at the level of the Terrorism Working Party (TWP) and Working Party for Schengen Matters (SIS/Sirene).

In the meantime Member States should provide in the M-form at least minimum information on the reasons and circumstances governing the sharing of information. Simply sending an almost empty form does not match the operational needs. This will be added to the existing predefined fields and free text areas and they should be filled in to be able to finalise the M-form. Regarding the systems under the competence of eu-LISA, these actions are covered by the action plan on information management and exchange in the area of law enforcement.

Action 22: Common definition on when ‘immediate reporting’ should be required and clarification on the type of action to be taken

The members of the group agreed

- that the immediate reporting is of high relevance for, but should not be limited only to the Foreign Terrorist Fighters representing a high threat, taking into account that also other alerts based on Article 36 of SIS II-Decision require an immediate reporting. It should include returnees,
- the alerts on Foreign Terrorist Fighters should always contain the marker “terrorist-related offence”. The default setting will be that the marker “terrorism-related activity” should be added to the alert when a discreet or specific check alert under Article 36 of SIS II Decision is entered on a person involved in terrorism or terrorism-related activity (in line with the principles described in Action 19).

II. Europol

The European Council called for law enforcement and judicial authorities to step up information sharing and operational cooperation through Europol. Using the agency’s systems to the fullest extent of its operation and strategic possibilities is key, hereto clear agreement on the following actions related to the exchange of law enforcement information is needed:

- Better feeding / use of the Europol Information System.

Action 30: Ensure that information on FTF is consistently and systematically uploaded to European systems and platforms, and synchronised where possible

The members of the group agree to feed FTF-related information (cf. Action 17) into the EIS and to stimulate the use of the EIS at national level unless there are genuine legal or operational reasons not to do so.

- Better feeding / use of the Europol Focal Point Travelers

The members of the group agree that individuals corresponding to the indicative situations identified in Action 17, including all the available information corresponding to the ad hoc Europol Data Collection Plan, should be covered unless there are genuine legal or operational reasons not to do so.
