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NOTE

From: EU Counter-Terrorism Coordinator
To: Permanent Representatives Committee/Council
Subject: JHA agencies' role in counter-terrorism

Several EU agencies contribute to the implementation of EU policies in the field of justice and home affairs and support cooperation between the EU and national governments by pooling technical and specialist expertise. Over the past three years, since the Charlie Hebdo terrorist attacks in January 2015, EU JHA agencies have been mobilized much more in the fight against terrorism in support of Member States. This is a positive trend across the agencies and it proves the added value of European cooperation in this field¹. The agencies are also increasingly working together. This note sets out the state of play of the contribution to the fight against terrorism by Europol, Eurojust, the European Border and Coast Guard Agency (Frontex), the European Union Agency for Law Enforcement Training (CEPOL) and the Fundamental Rights Agency (FRA) and possible future direction².

¹ As identified in the Comprehensive Assessment of EU Security Policy carried out by the Commission, *Ninth progress report towards an effective and genuine Security Union*, COM(2017) 407 final, 26.7.2017

² The note does not cover stronger cooperation between JHA agencies and CSDP operations as this is dealt with separately.

Ministers are invited to

- *share their experiences with the use of the agencies*
- *provide strategic direction for the way ahead.*

The discussion points and the background set out in the addendum could be taken into account when reflecting on a future direction.

Points for discussion

1. Given the increasing role of the agencies in counter-terrorism, sufficient **budget** is needed³. Do ministers agree that substantial financial support for the agencies is needed in the next Multiannual Financial Framework, as well as in the budget for 2018 and 2019, and will ensure that this is reflected in the position of their respective Member States?
2. More **systematic cooperation among the JHA agencies** working on CT to develop joint approaches and synergies could be encouraged. For example, regular joint meetings of all the key agencies could further develop joint work on CT and increase synergies with their liaison officers in delegations.⁴ Cooperation could also be strengthened with European Migration Liaison Officers (EMLOs) and CT experts in EU delegations, respecting the respective mandates.
3. JHA agencies need to **engage with priority third countries that directly influence the security of the EU**. As advocated in the Foreign Affairs Council Conclusions on Counter-Terrorism (June 2017), this is desirable, although clear prioritization is required.

³ In its Communication on the MFF of 15 February 2018 (6229/18), the Commission suggests to align financing with political priorities, including a Europe which is safe and secure, which includes countering terrorism and addressing cyber threats.

⁴ While there is a regular meeting of the Heads of all EU JHA agencies, this is not specifically dedicated to CT and includes more agencies. This existing JHA Agencies' Network was established in 2006, is composed of nine agencies (CEPOL, EASO, EIGE, EMCDDA, eu-LISA, Eurojust, Europol, FRA and Frontex) and serves as a forum for agencies to identify collaborative opportunities to improve their operational and technical support to Member States and EU institutions, including in migration and security, and to develop synergies in areas of common interest, such as operational work, training and external relations. The network has developed a multilateral JHA Agencies Scorecard 2016 which defines areas for operational cooperation or operational priorities and specific fields of action such as counter-terrorism and counter-radicalisation.

4. **COSI** could play a more proactive role to provide input to the operational work of the agencies on CT.
5. **Increasing the number of Seconded National Experts** with CT background to agencies would ensure a representation of Member States needs and allow the agencies to have the necessary expertise in the CT field, in the context of their mandates.

Europol

6. To maintain the high level of CT engagement with Europol, it should not be "conditioned" by attacks, but should also increasingly include preventive investigations. It would be important for Member States to use Europol services to support **investigations** from the **earliest possible stage** and to reflect upon how best Europol can use its capabilities to support the Member States' investigations of **homegrown terrorist fighters**.
7. **Direct connectivity** of Member States law enforcement CT services (beyond federal/central level) to Europol's services could be promoted.
8. The **sharing of contextual information** and **quality of information** needs to be considerably increased, as already discussed during the High-level Expert Group on Interoperability. Sharing of names is not enough. In particular, Europol generally does not have information about which of the FTFs shared in the EIS have returned to the EU nor additional elements about the returnees, which would be needed both from an operational and strategic perspective. How should this be taken forward? As outlined in the Presidency paper on FTF travel movements and post-hit activities in relation to Article 36 SIS⁵ II alerts, Europol's capabilities, databases and analytical tools should be utilized as much as possible.⁶
9. Europol should fully develop **biometric capacity** as soon as possible, it would be important for Member States to increasingly share biometric information with Europol.

⁵ Schengen Information System

⁶ Travel movements of foreign terrorist fighters/returnees and persons involved in terrorism and terrorism related activities: Article 36, SIS II post-hit follow-up, Council Secretariat file 5635/1/18 LIMITE COSI 14

10. Using the expertise of Europol in discussions on **interoperability**⁷, data retention (Europol will host workshops to develop a matrix of data categories that need to be retained) and e-evidence will be key.
11. As a matter of priority, **Europol's capacities to support cyber investigations** (important for CT but also other fields), should be further stepped up (encryption, dark web etc.), as suggested by the Commission in its cyber security package. Sufficient resources will be key⁸. The possibility to hire non-police IT experts at market rates will be necessary. Such capabilities, building on the European Cybercrime Center EC3 and the IRU, would allow for pooling and sharing of cyber expertise. Upgrading of IRU-related software to allow for real-time data exchange between relevant actors could be explored.
12. Member States and Europol's support and contribution to the **watch list to be developed for ETIAS** as well as cooperation between Europol and Member States for the purpose of an **assessment of visitors applications** prior to their arrival at the external borders crossing points will be key.
13. Europol to negotiate **working arrangements for strategic cooperation with priority international partners**, on the basis of the model arrangements adopted by the Management Board⁹.
14. Member States to adopt decisions authorizing the negotiations for agreements on the **exchange of personal data between Europol and the eight proposed countries**¹⁰. Europol prioritize engagement with third countries in line with political priorities and operational needs.

⁷ A considerable budget will be necessary to upgrade Europol's IT systems for interoperability Proposal for a Regulation establishing a framework for interoperability between EU information systems (police and judicial cooperation, asylum and migration) – Page 20: “The total budget required over nine years (2019-2027): ... Budget of EUR 48.9 million for Europol to cover the upgrade of Europol's IT systems to the volume of messages to be handled and the increased performance levels”

⁸ The Commission announced that it would amend the 2018 Europol budget with an additional EUR 5 million to reinforce Europol's capabilities to decrypt information lawfully obtained in criminal investigations. (13th status report on implementation of the Security Union p. 6)

⁹ In February 2018. First tier priorities are: Algeria, Egypt, Israel, Jordan, Lebanon, Morocco, Tunisia and Japan.

¹⁰ Algeria, Egypt, Israel, Jordan, Lebanon, Morocco, Tunisia and Turkey.

Eurojust

15. In the case of **Daesh or AQ inspired terrorism** could ministers consider that information about all investigations, prosecutions and convictions is relevant for all other EU Member States, hence may affect two or more EU Member States¹¹, and therefore should be shared with **Eurojust**? This interpretation could considerably increase information sharing via Eurojust and make it much more effective, allowing to identify links and proactively support ongoing investigations and prosecutions.
16. National authorities could be encouraged to **systematically involve Eurojust** in their counter-terrorism investigations and prosecutions with a cross-border dimension and make efficient use of Eurojust's coordination tools.

European Border and Coast Guard Agency (Frontex)

17. Frontex needs to regularly **receive strategic information on CT related to the border dimension** from the Member States and EU bodies, such as Europol and INTCEN. This should also include feedback after second line security checks and information related to document fraud.
18. In order to get a more systematic overview of travel movements of suspected FTF at EU external borders, the initiative of the Bulgarian Presidency to explore making available more systematically **metadata from SIS hits** is worth exploring further.
19. Given the increased role of Frontex in border related CT, it would be important to ensure that the necessary framework is in place for the exchange of personal data with third countries.

CEPOL

20. CEPOL could be encouraged to continue increasing its training offer on counter-terrorism, also as regards capacity building in key third countries. The Agency needs to have the necessary budgetary resources for this.

¹¹ Council Decision 2005/671/JHA requires sharing of information about prosecutions and judgments which affect or may affect two or more Member States

FRA

21. It could be explored in the context of the High Level Expert Group on Radicalization (HLEG-R) how to mobilize the FRA in a more targeted way to support EU initiatives on prevention of radicalization, integration and values, while upholding fundamental rights.
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