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NOTE

From: Presidency
To: Permanent Representatives Committee/Council
Subject: EU response to terrorism - state of play and way forward

This paper takes stock of the progress made since 2015 in preventing and combating terrorism at EU level and indicates possible directions for future actions.

The Presidency believes it is time to start a reflection process on the way forward in this area, bearing in mind that 2019 is a year of many changes for the EU (a new Commission, a new Parliament and a Multiannual Financial Framework (MFF) for the years 2021-2027), which could affect the EU's internal security policy, including counter-terrorism efforts.

The paper contains two questions which Ministers are invited to consider.

At the meeting of the Standing Committee on Operational Cooperation on Internal Security (COSI) of 21 February 2019, delegations highlighted the need;

- for timely implementation of adopted measures (referring in particular to PNR) as well as the recently adopted packages on interoperability and the Schengen Information System);

- to continue focusing on prevention of radicalisation and violent extremism (online and off line);
- to step up the work on terrorist financing, and in particular the coordination between relevant stakeholders;
- to pay closer attention to emerging threats, and also to the opportunities and challenges stemming from new technologies;
- to enhance the internal/external nexus at all levels;
- to increase the JHA-agencies' support to the Member States, and provide adequate resources for this purpose under the next MFF.

1. STATE OF PLAY

After the terrorist attacks in Paris in January 2015 and EU leaders' statement of 12 February 2015¹, substantial progress has been made at Member State and EU level to enhance the EU's ability to prevent and fight terrorism. The European Council has followed developments closely, identified issues of concern and called for tailored actions to address these issues. Also, the EU Counter Terrorism Coordinator (EU CTC) has monitored the implementation of the EU counter terrorism (CT) measures², presenting policy recommendations and indicating priority areas for action for the Council's consideration.

On 28 April 2015, the Commission adopted the European Agenda on Security, followed by many legislative proposals, non-legislative measures and action plans. Implementation of adopted measures has been closely monitored, and regular reports setting out the state of play in all areas related to the Security Union³ have been issued.

¹ The statement focused on three broad areas of action: ensuring the security of citizens; preventing radicalisation and safeguarding values; and cooperating with international partners.

² In 2015-17 the EU CTC regularly issued reports on the implementation of the counter-terrorism agenda set by the European Council (see Annex).

³ As of October 2016, the Commission adopted 17 progress reports towards an effective and genuine Security Union.

The European Parliament (EP), as co-legislator, has played an important role, not only in the adoption of the many legislative files, but most recently, on 12 December 2018, in bringing to an end the extensive work of the Special Committee on Terrorism (TERR) by adopting a comprehensive report on CT, including 227 recommendations for future work in the area.

The European External Action Service and the Commission are complementing the CT-related policies and actions on the external side, ensuring coordination between the renewed Internal Security Strategy 2015-2020 and the 2016 Global Strategy for EU Foreign and Security Policy. The June 2017 Council Conclusions on EU External Action on Counterterrorism have served as the main guideline for CT-measures in priority areas, including the internal/external security nexus.

JHA agencies (notably Europol, Eurojust, Frontex, CEPOL and eu-LISA) have been strengthened through revised mandates during recent years. Today they are much more involved in supporting the CT efforts of the Member States.

2. MAIN CT MEASURES ADOPTED

Most of the (legislative) measures called for in the immediate aftermath of the terrorist attacks in France in 2015 and in Brussels in March 2016 have now been adopted and partially or fully implemented (see Annex for details). Efforts for a timely implementation of all adopted measures should be stepped up.

Recently, agreement was reached between the two co-legislators on the interoperability package, on the Regulation on explosive precursors and the Directive facilitating the use of financial and other information for prevention, detection, investigation or prosecution of certain criminal offences (see Annex).

Following the request from the European Council of June 2018, on 6 December 2018 the Council reached a general approach on the draft Regulation on preventing the dissemination of terrorist content online, presented by the Commission on 12 September 2018⁴. Most recently at the informal meeting of JHA ministers, many ministers, the EU CTC and the Commission stressed the urgent need to adopt this proposal within the current legislature.

⁴ 15336/18.

The legislative instruments have been complemented by several sets of Council conclusions on priority areas in the fight against terrorism (see Annex). Particular attention has been given to the exchange of information. On 9 June 2016, the Council endorsed a roadmap to enhance information exchange and information management, including interoperability solutions, in the JHA area. It is important to mention that Member States' feeding and consultation of EU databases have considerably increased since 2015, and capacity to process and analyse big amounts of data has become essential.

Also threat assessments⁵ in the field of counter-terrorism in Europe have been undertaken every six months to monitor changes in the threat picture and support the adoption of policy recommendations to adjust CT priorities.

Measures providing for the protection, support and effective exercise of the rights of victims of terrorism, including for those victims residing in a Member State other than that where the attacks took place, have been put in place and additional support is being considered.

3. AREAS TO BE FURTHER CONSIDERED:

During recent discussions on the recommendations of TERR, including at the informal meeting of JHA ministers on 7-8 February 2019, Member States have indicated specific areas where further progress is needed:

- Preventing and countering violent extremism and radicalisation, both online and offline, with a particular focus on prisons (in the context of the current and upcoming release of terrorist offenders, including foreign terrorist fighters, and other offenders radicalised during detention);

An initiative addressing the preventing and countering of radicalisation, specifically in prisons, was launched by the Presidency in January 2019. To this end, a questionnaire has been issued in order to get an overview of the situation and to identify and share best practices among Member States on how to deal with this phenomenon.

⁵ Based on the six-monthly INTCEN threat assessment and Europol's report.

- Work is also ongoing on the implementation of the priorities identified by the Steering Board which was established following the recommendations of the High Level Commission Expert Group on Radicalisation (HLCEG-R) and the EU Internet Forum. It is important to make best use of the funding available in the areas of education, youth, social affairs, employment etc. for preventing radicalisation. Efforts to support the development of alternative and counter narratives to radicalisation should be also continued, acknowledging the important role of victims of terrorism in this respect.
- Improving the fight against the financing of terrorism;

The swift implementation of the 5th Anti-Money Laundering Directive, which also includes measures on virtual currencies, including cryptocurrencies, is crucial. During the informal meeting of JHA ministers, the need for further measures to counter terrorist financing was also mentioned, including complementary mechanisms to the EU-US TFTP to fill any potential gaps (i.e. transactions which are excluded from the EU-US TFTP agreement, notably intra-EU payments in euro). In addition, increasing cooperation with the private sector, including the tech industry, in the fight against terrorist financing should be examined. New tools to detect terrorist financing could also be further explored. Finally, better coordination between financial, justice and law enforcement is necessary.

- Interoperability and extended use of biometrics as well as access for the national competent authorities to existing data;

The package on interoperability should be fully implemented. Existing databases should be filled with good quality data, and tools (such as biometrics and facial recognition) should be improved to enable querying with data across more EU information systems. All relevant competent authorities in the CT area should have direct access to relevant information systems (notably SIS II and Prüm) to avoid information and security gaps. Connecting more systems could be explored in parallel to implementation. eu-LISA has taken the first steps towards interoperable systems, and the further development of the interoperability components will be done in a systematic manner to eliminate information gaps at EU level.

- Data retention;

Retention and use of telecommunications data is a very important tool for the prevention and investigation of terrorism. Work towards finding a common solution to ensure the availability of retained communications data should continue⁶, in line with EU case-law and taking into account the CT needs of the national competent authorities.

- Passenger Name Record (PNR);

The transposition date for Directive (EU) 2016/681 ('PNR Directive') expired on 25 May 2018. In October 2018, the European Council recalled the importance of fully implementing the agreed measures, mentioning PNR. The collection and processing of PNR data is crucial to detect, prevent and prosecute terrorist offences, and the effective connection of the PIUs of the Member States for information exchange is a priority. The further broadening of the scope of PNR (to other means of transportation) could be explored.

- Further synergies between internal and external policies in the CT context;

The nexus between internal and external security has become increasingly prominent, and progress has been made in better connecting the two areas. Together with the Commission, the EEAS and the EU CTC, the Presidency is further exploring ways to strengthen the links between the external and internal dimensions of security in relation to CT. This includes focusing on the use of internal instruments to promote EU security interests related to CT in priority third countries (e.g. Western Balkans, Turkey and the MENA region); closer coordination of efforts between Member States, JHA actors, CSDP (common security and defence policy) missions and operations and the CT/security experts in EU delegations; maximising the benefits of CT dialogues with third countries; and increased interaction between relevant Council bodies (such as TWP/COTER, COSI SG/CIVCOM and COSI/PSC) for a better coordinated approach.

⁶ A common reflection process on data retention for the purposes of prevention and prosecution of crime in the light of ECJ judgements in the *Digital Rights Ireland* (C-293/12) and *Tele 2* (C-203/15) cases was launched in 2016 and is still ongoing (see 14319/18).

Ways to better collect, share and use battlefield information, making it available in the relevant EU databases so that the information can be accessible for border guards as well as for purposes of criminal investigation and prosecution should be analysed.

- Managing chemical, biological, radiological and nuclear (CBRN) risks, in particular chemical risks;

Based on the Commission's 2017 CBRN action plan and the work carried out at expert level, and taking into account the increasing threat (in particular the chemical threat), new measures, including legislation, could be considered.

- Improving the coordination between JHA agencies in the fight against terrorism;

The mandate of Frontex (the European Border and Coast Guard Agency) allows the agency to process personal data related to cross-border terrorist activities. Further access to relevant databases should be examined in coordination with Europol in order not to duplicate activities. Europol has strengthened its cooperation on CT with both Frontex and Eurojust. Eurojust is increasingly involving Europol in the CT investigations it supports, and has seconded a CT prosecutor to Europol. A structured cooperation on CT among all relevant JHA agencies should be considered. It will be important in the new Multiannual Financial Framework to provide appropriate funding for the JHA agencies given the evolving threat picture.

- Emerging threats;

Evolving technologies such as UAVs (unmanned aerial vehicles), artificial intelligence (AI), blockchain or the Internet of Things, could be misused by terrorist groups. Tackling these threats requires high-tech expertise, meaning that more efforts at national and EU level are required to address the emerging threats, including through public-private partnerships and research and development. At the same time, the opportunities of the new technologies for security need to be explored and mobilised.

- Enhancing the cooperation with customs

The role of customs, as leading authority for controlling the movement of goods across the external borders, could be further exploited within the overall process of maintaining internal security of the Union. A lot of the above-mentioned areas relevant to CT, such as data retention, the internal/external security nexus, e-evidence, terrorist financing, CBRN and transport security are cross-cutting by nature. Addressing these areas requires cooperation and coordination between many different actors at national and EU level.

4. QUESTIONS TO DELEGATIONS/MINISTERS

1. Are there any practical and/or legislative gaps in the EU CT policy that we need to address as a matter of urgency?
 2. Should new legislation and/or other types of measures be required? What areas should they be focused on, taken also into account the increasing number of cross-cutting, multidisciplinary topics?
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**List of recent EU legislative instruments and measures
related to the preventing and combating of terrorism**

EU Legislative Instruments

Title	Reference
Regulation (EU) 2018/1861 of the European Parliament and of the Council of 28 November 2018 on the establishment, operation and use of the Schengen Information System (SIS) in the field of border checks, and amending the Convention implementing the Schengen Agreement	OJ L 312, 7.12.2018, p. 14
Regulation (EU) 2018/1726 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA), and amending Regulation (EC) No 1987/2006 and Council Decision 2007/533/JHA and repealing Regulation (EU) No 1077/2011	OJ L 295, 21.11.2018, p. 99
Regulation (EU) 2018/1240 of the European Parliament and of the Council of 12 September 2018 establishing a European Travel Information and Authorisation System (ETIAS)	OJ L 236, 19.9.2018, p. 1
Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing	OJ L 156, 19.6.2018, p. 43
Regulation (EU) 2017/2226 of the European Parliament and of the Council of 30 November 2017 establishing an Entry/Exit System (EES) to register entry and exit data and refusal of entry data of third-country nationals crossing the external borders of the Member States and determining the conditions for access to the EES for law enforcement purposes	OJ L 327, 9.12.2017, p. 20
Directive (EU) 2017/853 of the European Parliament and of the Council of 17 May 2017 amending Council Directive 91/477/EEC on control of the acquisition and possession of weapons	OJ L 137, 24.5.2017, p. 22
Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism (to be transposed by 8 September 2018)	OJ L 88, 31.3.2017, p. 6
Directive (EU) 2016/681 of the European Parliament and of the Council of 27 April 2016 on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime	OJ L 119, 4.5.2016, p. 132

Legislative instruments awaiting formal adoption	
Title	Reference
Directive of the European Parliament and of the Council laying down rules facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences	<u>5464/19</u> <u>COM(2018) 213 final</u> <u>(17.4.2018)</u>
Proposal for a Regulation of the European Parliament and of the Council on the marketing and use of explosives precursors	<u>6158/19</u>
Amended proposal for a Regulation of the European Parliament and of the Council on establishing a framework for interoperability between EU information systems (borders and visa) and amending Council Decision 2004/512/EC, Regulation (EC) No 767/2008, Council Decision 2008/633/JHA, Regulation (EU) 2016/399, Regulation (EU) 2017/2226, Regulation (EU) 2018/XX [the ETIAS Regulation], Regulation (EU) 2018/XX [the Regulation on SIS in the field of border checks] and Regulation (EU) 2018/XX [the eu-LISA Regulation] Amended proposal for a Regulation of the European Parliament and of the Council on establishing a framework for interoperability between EU information systems (police and judicial cooperation, asylum and migration) and amending [Regulation (EU) 2018/XX [the Eurodac Regulation], Regulation (EU) 2018/XX [the Regulation on SIS in the field of law enforcement], Regulation (EU) 2018/XX [the ECRIS-TCN Regulation] and Regulation (EU) 2018/XX [the eu-LISA Regulation]	<u>5691/19</u> <u>COM(2018)302 final</u> <u>(16.5.2018)</u> <u>COM(2018)480 final</u> <u>(13.6.2018)</u>
EU legislative instruments under discussion	
Title	Reference
Proposal for a Regulation of the European Parliament and of the Council on the European Border and Coast Guard and repealing Council Joint Action n°98/700/JHA, Regulation (EU) n° 1052/2013 of the European Parliament and of the Council and Regulation (EU) n° 2016/1624 of the European Parliament and of the Council	<u>COM(2018) 631 final</u> <u>(12.9.2018)</u>
Proposal for a Regulation of the European Parliament and of the Council establishing the conditions for accessing other Information systems for ETIAS purposes and amending Regulation (EU) 2018/1240, Regulation (EC) No 767/2008, Regulation (EU) 2017/2226 and Regulation (EU) 2018/1861 (8 January 2019)	<u>COM(2019) 4 final</u> <u>(7.1.2019)</u>
Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 767/2008, Regulation (EC) No 810/2009, Regulation (EU) 2017/2226, Regulation (EU) 2016/399, Regulation XX/2018 [Interoperability Regulation], and Decision 2004/512/EC and repealing Council Decision 2008/633/JHA (19 December 2018)	<u>COM(2018) 302 final</u> <u>(16.5.2018)</u>

Proposal for a Directive of the European Parliament and of the Council on combating fraud and counterfeiting of non-cash means of payment and replacing Council Framework Decision 2001/413/JHA	COM(2017) 489 final (13.9.2017)
Proposal for a Regulation of the European Parliament and of the Council on preventing the dissemination of terrorist content online (Council general approach of 6 December 2018)	COM(2018) 640 final (12.9.2018)
Proposal for a Regulation of the European Parliament and of the Council on strengthening the security of identity cards of Union citizens and of residence documents issued to Union citizens and their family members exercising their right of free movement (16 November 2018)	COM(2018) 212 final (17.4.2018)
Proposal for a Regulation of the European Parliament and of the Council on European production and preservation orders for electronic evidence in criminal matters (Council general approach of 7 December 2018)	COM(2018) 225 final (17.4.2018)
Proposal for a Directive laying down harmonised rules on the appointment of legal representatives for the purposes of gathering evidence in criminal proceedings	COM(2018) 226 final (17.4.2018)
Council Conclusions	
Title	Reference
Council conclusions: Anti-Money Laundering Action Plan (4 December 2018)	15164/18
Council conclusions on Victims of Terrorism (4 June 2018)	9719/18
Council Conclusions on strengthening the cooperation and the use of the Schengen Information System (SIS) to deal with persons involved in terrorism or terrorism-related activities, including foreign terrorist fighters (4 June 2018)	9691/18
Council Conclusions on strengthening the European Union response to CBRN related risks, reducing access to explosive precursors and protecting public spaces (7 December 2017)	15648/17
Council Conclusions on the strengthening of the ATLAS Network (7 December 2017)	15627/17
Council Conclusions on strengthening the EU internal security's external dimension in the Western Balkans including via the Integrative Internal Security Governance (IISG) (8 December 2016)	15413/16
Conclusions of the Council and of the Representatives of the Governments of the Member States, meeting within the Council The role of the youth sector in an integrated and cross-sectoral approach to preventing and combating violent radicalisation of young people - (30 May 2016)	9640/16

Conclusions of the Council of the EU and of the Member States on "The integrative and complementary approach to counter-terrorism and violent extremism in the Western Balkans" (3 December 2015)	14986/15 + COR 1
Conclusions of the Council of the EU and of the Member States meeting within the Council on Counter-Terrorism (20 November 2015)	14406/15 + COR 1
Other key documents	
Title	Reference
Implementation of the renewed EU Internal Security Strategy: joint Presidency paper (14 February 2019)	5562/1/19 REV 1
European Court of Auditors' Special Report No 13/2018: "Tackling radicalisation that leads to terrorism: the Commission addressed the needs of Members States, but with some shortfalls in coordination and evaluation" (16 July 2018)	11177/18
Council Decision (EU) 2018/889 of 4 June 2018 on the conclusion, on behalf of the European Union, to the Council of Europe Convention on the Prevention of Terrorism Council Decision (EU) 2018/890 of 4 June 2018 on the conclusion, on behalf of the European Union, of the Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism	
Child Returnees: Results of the questionnaire on approaches to dealing with accompanying family members of Foreign Terrorist Fighter (FTF) Returnees, in particular children (25 May 2018)	9316/18 + ADD 1
EU threat assessment in the field of counter-terrorism (most recent of 7 May 2018)	7879/2/18 REV 2
Strengthening military, law enforcement and judicial information exchange in counter-terrorism (EU CTC papers) (11 July 2017 and 15 February 2019)	10880/17 + ADD 1 6336/19 + ADD 1-2
Roadmap to enhance information exchange and information management, including interoperability solutions, in the Justice and Home Affairs (JHA) area (6 June 2016)	9368/1/16 REV 1 + COR 1
State of play on implementation of the statement of the Members of the European Council of 12 February 2015, the JHA Council Conclusions of 20 November 2015, and the Conclusions of the European Council of 18 December 2015 (EU CTC progress reports)	14260/16 6785/16 6450/16 14737/15 9422/1/15 REV 1
Statement by the members of the European Council at the Informal meeting of the Heads of State or Government, Brussels, 12 February 2015	SN 10/15