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Delegations will find attached the partially declassified version of the above-mentioned document.



ANNEX

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Brussels, 16 November 2004

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ADDENDUM TO NOTE

from: Presidency
to: Article 36 Committee

Subject : Interim Report on the Evaluation of National Anti-Terrorist Arrangements
- National Good Practices and Recommendations

Delegations find in Annex the good practices and recommendations as contained in the national peer evaluation reports of the Member States evaluated so far:

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1. AUSTRIA

1.1 Good Practices

1.1.1 BVT Acting as Security Service

With the new organisation of the security structure, Austria as refers to terrorism has charged the BVT not only with the investigations in case a crime has been committed but moreover, the BVT legally is allowed to take groups under surveillance if they are suspected to become a serious threat for the public security. The BVT¹ is bound to react as a police / law enforcement organ and immediately has to prevent or finish dangerous attacks.² As far as there is a predominant public interest to avert criminal unions³ or to prevent a planned serious crime during the phase of preparation, it is admissible, under certain additional conditions, to postpone intervention.

1.1.2 BVT Acting as Law Enforcement Agency

Due to the special situation of the BVT there is no need to officially coordinate tasks. As security service being responsible for the "extended threat investigation"⁴ the Office has to observe groups if they are supposed to commit serious - in particular ideologically or religiously motivated - crimes against public security. Basing on this information the BVT continues with official investigations as law enforcement agency. It has direct contacts to the judicial authorities and in case of a prosecution it acts on behalf of the public prosecutor's offices and courts.

¹ According to the Security Police Act/Code of Police Practice - Sicherheitspolizeigesetz - SPG

² Principle of legality

³ Included terrorist groups

⁴ Erweiterte Gefahrenforschung

1.2 Recommendation

1.2.1 Use of Covert Surveillance Techniques

The BVT reported that its covert means to gather intelligence are very limited. The BVT under legally defined conditions is allowed to use under cover measures such as surveillance and under cover agents to avert dangerous attacks or criminal unions. Covert optical and acoustical recording techniques are only allowed to avert a criminal union in case a serious crime is to be expected.

For the extended threat investigation (cf. footnote 8) in addition to open sources only the use of non technical surveillance is allowed, that means that in this context it is neither allowed to take photos, nor to perform any other type of optical recordings. As these means can not be compared with the means for preventive purposes, this strongly limits the results.

Austrian authorities should reflect whether to create the legal possibility for the BVT to be able to use similar means for the extended threat investigation as for threat investigation, evaluation and prevention.

1.2.2 Access to Tele-Communication-Data

Concerning tele-communication the access to technical and billing data was claimed by the Ministry of Justice to be a concern of the prosecution office or of a judge whereas the police wanted to have a legal basis e.g. in hostage situations.

Austrian authorities should reflect about both possibilities but grant legal protection by an independent authority.

1.3 EU / international Level

1.3.1 UN-Lists Identification Data

Austria mentioned the problem, that the pure listing of persons, being suspected of terrorism or of the financing of terrorism on the EU and UN-lists, often is not enough to freeze or seize assets or start preliminary proceedings. The enlisted data often are not detailed enough to clearly identify persons. Moreover, background information to prove the suspect of terrorism for the use in court trials often is missing.

Given the fact that this problem could not be solved at national level, the appropriate EU bodies are requested to bring it to the attention of responsible EU-bodies and of the UN level.

2. BELGIUM

2.1 Good practices

2.1.1 The Directorate General Crisis Centre

which is the competent Belgian authority to handle a crisis, to manage the consequences and to inform the government and the public. It is also the central point for the rapid alert systems. A system to evaluate risks and adequate measures, depending on the level of threat, are defined individually for each crisis.

The DGCC is also the national contact point for international incidents, and therefore directly and closely communicates with other crises centres.

It is reacting fast and working efficiently in particular because of its composition of staff and liaison officers of all relevant law enforcement and intelligence services.

2.1.2 National General Database of the Federal Police

Since a law for police information treatment makes the non-transmission of police information a criminal offence and thus provides for a permanently updated database, the National General Database and its organisational regulations are a powerful approach.

2.1.3 The Counter-Terrorist Joint Group

is the national body responsible for central threat assessments and the central analysis organ in the fight against terrorism. Its staff being composed of all competent services maintains close and permanent contacts to all relevant authorities. The cooperation works fast and produces reliable results and acknowledged reports.

2.1.4 Coordination by the Federal Prosecutor's Office

Within the authority for terrorism of the Federal Public Prosecutor's Office a new working method, the "case-related approach", implies in the framework of a concrete case that the police, the intelligence and security services and the GIA punctually meet, under command of a federal magistrate, with a view of splitting up the tasks.

Moreover, a weekly coordination meeting takes place between the three federal magistrates, officers of the federal police services as well as the local prosecutor in Brussels, all of them in charge of terrorism, where the ongoing "federal" investigations on terrorism are discussed and general information is exchanged.

2.2 Recommendations

2.2.1 **NOT DECLASSIFIED**

2.2.2 **NOT DECLASSIFIED**

2.2.3 The role of The Counter-Terrorist Joint Group under the supervision of two Ministries

Belgian authorities should reflect on the question whether working under the supervision of both Ministers (Home Affairs and Justice) might complicate the status of GIA or if an organisational subordination to only one body would facilitate its work.

2.2.4 The Security of State's and the federal police limited access to data

The Security of State and the police do not use a common database nor do they have reciprocal access to their databases.

The direct, permanent and complete access to information is the basis in order to create and maintain security. It should work on defined cooperation structures and grant the availability of the information needed. For the time being, it has not been settled by means of a protocol; both sides are working on it.

2.2.5 NOT DECLASSIFIED

2.2.6 The involvement of Customs and Excise

The involvement of Customs and Excise as refers to the coordination with the other national authorities involved in the fight against terrorism should be improved and, if appropriate, realised on a permanent basis.

2.3 EU and international level

2.3.1 The UN lists missing identification data

Though officially published the UN lists often are extremely vague because of the absence of several essential data for the identification of the listed persons.

2.3.2 The missing of an EU intelligence coordination body

The exploitation of operational intelligence and the cooperation among the intelligence services at EU level is considered rather insufficient by the Belgian Security of State.

Underlining the need to coordinate and support the cooperation in intelligence matters a special body on EU level is considered to be an appropriate tool. Created by the Club of Bern after 9/11, the Counter Terrorism Group, in order to provide the competent EU institutions with regular threat assessment and to exchange operational information on terrorism is proposed to establish a point of contact for the exchange of operational intelligence.

3. DENMARK

3.1 Good practices

3.1.1 Flexibility is a dominant guideline of the cooperation between the different agencies.

- The Danish public prosecution and the Ministry of Justice apply a rota system, which means that lawyers working within this field will usually have held positions in different police districts, with the regional public prosecutors, and/or the Ministry of Justice, the National Commissioner or the Security Intelligence Service (PET) before they are appointed to leading functions in a Police District, a Public Prosecutor, the Security Intelligence Service (PET) or within the Ministry of Justice.

3.1.2-PET as part of the of Police

The PET is part of the National Commissioner of Police and as part of the Danish police composed mainly of police officers. It gathers intelligence by its own means and is supported by the district polices, to where liaison officers are seconded. It carries out its own investigations (terrorism and organised crime affecting national security).

3.2 Recommendations

3.2.1 Central system to guide the commissioners and the districts

The law enforcement structure, which seems to be rather accurate to the criminal phenomenon experienced by the Danish society, requires full co-ordination nationally and internationally in order to ensure efficient collaboration at EU and international level. However, the division of the 54 police districts into 7 regions headed by a chief of the police region, ensures that also cross-district crime, organised crime etc. is dealt with efficiently. Furthermore the National Police Commissioner has established a national Centre of Investigative support (NCIS), which gathers information at national and international level and provides analyses for both national and international criminal investigations. One of the main objectives behind establishing a NCIS has been to compensate for the fragmentation of investigation, which may be caused by the many police districts. NCIS cooperates closely with PET.

At present, a Committee under the Justice Minister is considering the future structure of the Danish police. Moreover, the responsible authorities should reflect about a stronger central system to guide and control the commissioners and the districts.

3.3 EU/ International Level

The fact that the identification data on the UN (and other) lists is sometimes insufficient, when it comes to ensuring that a matching name is also a matching identity, was raised. Given the fact that this problem could not be solved at national nor at EU level, the appropriate EU bodies are requested to bring it to the attention of the UN level.

4. FINLAND

4.1 Good Practices

4.1.1 SUPO-Counter-Terrorism Unit

SUPO has an own Counter Terrorism Unit (CTU) dealing on full time basis among other things with Islamic extremist terrorist groups and their activities. CTU has intelligence gathering and police function and contact with similar units in other Member States. It participates in all EU fora, be they security or law enforcement related and thus gathers all relevant information in one unit.

4.1.2 Aircraft Security

The national airline company has made a decision that bullet-proof security cockpit doors will be installed in all its carriers. Steps to implement this decision have been taken from September 2002 onwards.

4.1.3 Prosecutor-General

According to the new legislation the prosecution in terrorist cases the decision to bring charges of a terrorist offence is always taken by the Prosecutor General, who assigns a prosecutor to the case. The reason is that the consideration of charges to prosecute or not to prosecute an act as terrorist crime involves deliberations on basic civil rights and liberties under the Constitution, and also on the existence of terrorist purpose in the criminal act in question. Moreover, vesting the right to bring charges with the supreme prosecutor also ensures uniform prosecution guidelines.

4.1.4 Joint Consultative Committee

The Joint Consultative Committee of officers of the National Bureau of Investigation and the Prosecution Service, set up since 2001, has proven very effective in developing the cooperation of the police and the prosecutors in its various aspects, e.g. pre-trial investigations, witness protection and the chain of criminal proceedings.

4.1.5 Liaison Officer

The yearly mutual exchange of an officer of the Central Criminal Police with the Office of the Prosecutor has been reported as successful and useful for both parties and is reported to be continued.

4.1.6 Border Cooperation

Very positive practice was reported in the flexible management of external borders and coordination between all law enforcement and security services (Police, Customs and Frontier Guard), in particular the establishment of joint border stations (Customs and Frontier Guard) and the mutual assistance and replacement in their respective tasks (Customs performing person checks and Frontier Guards performing controls on goods according to their liability of human resources). SUPO provides intelligence regularly in order to have intelligence-lead checks at the borders, in return SUPO is provided with daily reports on all incidents occurring at the borders.

4.2 Recommendations

4.2.1 National Crisis Centre

Finnish authorities should reflect about a national alert system, and whether to operate a national permanent crisis or situation centre, with internal links to all relevant domestic security bodies and as a permanent point of contact for other Member States, to duly be prepared for international cooperation in case of a terrorist attack.

4.2.2 Covert Investigation Techniques

The specific covert investigation techniques mentioned in the current Police Act do not give the police, including the SUPO, the right of access to all associated data necessary for preventing terrorist offences, nor do they allow the police to bug⁵ with a view to prevent or uncover preparations for terrorist offences. Moreover, SUPO is not allowed to use interception of telecommunications in order to prevent or uncover terrorist offences. Finnish authorities should reflect about improving the legal possibilities of at least the SUPO to prevent terrorist offences by all possible covert technical means as legally used in most EU Member States.

5. FRANCE

5.1 Good practices

One of the essential aspects of the French law enforcement arrangements to counter Islamic terrorism, clearly distinguishing them from other types of organisation, stems from the following three factors:

- strict centralisation of proceedings and investigations and involvement of specialised magistrates, systematic instigation of investigations and automatic referral to specialised magistrates,
- significant role played by the DST which has a virtual monopoly, and the special peculiarity that its members also have the status of criminal police officer,
- operational and analytical interface between counter-terrorism magistrates and the DST,
- immediate mobilisation of all the DCPJ's resources (including those of the Criminal Police headquarters), should any major events occur.

⁵ Intrusive surveillance in the shape of installing a radio transmitter in a flat

This aspect of the French arrangements is according to the experts a particularly coherent type of organisation. This includes in particular permanent contact between the security service (DST) and specialised magistrates,

The Ministry of the Interior has a key role in preventing and combating terrorism: it groups together, under the authority of the Director-General of the national police,

both police departments such as the *Direction Centrale de la Police Judiciaire* [Central Directorate of the Criminal Police] including the *Division nationale anti-terroriste* (DNAT) [National Counter Terrorism Division],

and civil intelligence agencies like the *Renseignements Généraux* [General Intelligence Department] whose traditional role is to analyse intelligence, and to carry out investigation and prevention of terrorist acts and the *Direction de la Surveillance du territoire* [Counter-intelligence Agency] whose counter terrorism officers turn intelligence into evidence when needed.

These Directorates have the powers, on national territory, to prevent and combat terrorism in its domestic, international and, more especially, its Islamic extremist forms.

In addition, there are two main co-ordinating permanent bodies that are

L'Unité de coordination de la lutte anti-terroriste (UCLAT) [Counter-Terrorism Coordination Unit] that regulates the operational branches in the law enforcement (police and gendarmerie) and intelligence sectors (The DGSE, answering to the Ministry of Defence, is a member of UCLAT).

Le Secrétariat Général de la Défense Nationale (SGDN) [General Secretariat for National Defence] that has the specific task of interministerial coordination in matters of defence and security. Its remit also includes acting as the secretariat for the Interministerial Intelligence Committee. The SGDN is responsible for summarising intelligence for use by State authorities for decision-making and strategic purposes. The SGDN also makes a decisive contribution to terrorist response plans (e.g. the Vigipirate plan and other specific plans to counter CBRN threats) by defining plans for emergency relief and protection of the population, recommending the appropriate alert status and proposing the resources to be deployed, etc. to the political authorities.

In addition, judicial authorities organise frequent meetings with both law enforcement bodies and security services and within the Ministry of Justice the *Direction des Affaires Criminelles et des Grâces* [Directorate for Criminal Matters and Pardons] play a similar coordinating role under the authority of of the Ministry of Justice.

Since 11 September 2001 the Ministry of Finance has created new structures (FINATER (coordination unit for action against terrorist financing) and the customs created GOLT [operational anti-terrorism group]) for the purposes of combating the financing of terrorism.

A key point of counter terrorism is the the dual centralisation of the counter-terrorism measures (political and administrative centralisation and judicial centralisation with regards to) the specific criminalisation of offences categorised as terrorist acts and the centralisation of prosecutions, investigations and judgments. This includes the central counter-terrorism department (section C1) in the Paris Court of First Instance of the Paris Public Prosecutor's Office and specialised examining magistrates. This dual centralisation is considered necessary and effective by all the agencies active in the field of counter-terrorism, from specialist magistrates to police and intelligence services and other competent authorities.

5.2 Recommendations

The aim of the Franco-Spanish working party, which brings together magistrates, police force and intelligence service, is to identify ways of enabling the two sides to exchange information, particularly of an operational nature, more effectively. This cooperation could be modelled in terms of best practice on which joint investigation teams throughout the EU could draw.

The relations between the Ministries of Finance and the Interior could be formalised in terms of exchange of information and coordination between the police and intelligence services concerned and TRACFIN.

Greater consistency of the joint dimension "operational fight against terrorism" could be achieved within UCLAT at specific meetings and on the basis of ad hoc coordination. It would give a new dimension to the fight against the financing of terrorism by bringing together the intelligence services (RG and DST), the police and the competent bodies of the Ministry of Finance (customs, FINATER, TRACFIN).

UCLAT works as an interministerial unit, but its legal basis – a ministerial order – does not confer upon it a clear interministerial dimension. Such a dimension, which would be consistent with the interministerial concept which prevails in the fight against terrorism on both a national and international level, would give it greater formal legitimacy and real authority but would not change its operation or basic expertise.

As regards threat assessment, it was stated that the SGDN compared its view with those of partner countries and exchanged information for that purpose. The SGDN could go further by emulating the approach of the agreement between the United States and the United Kingdom. It could, for example, carry out joint threat assessments (particularly of Islamic extremist terrorism) with other Member States, whether applicable to two countries (for example, France/United Kingdom or France/Spain based on current criminal investigations or available information relating to terrorist networks) or to a larger number of countries (group of Mediterranean countries, for example). This kind of approach could also be adopted by certain specialised departments, such as the DST in France.

With a view to improving cooperation with Europol, the experts' proposal is that a working party be set up, involving police authorities, magistrates and Europol, to identify and evaluate the legal, structural and *de facto* obstacles to cooperation, to determine the type of intelligence to be forwarded to Europol and how this should be done, and to propose solutions, including of a legislative nature.

Europol should develop a direct "personal and targeted" relationship, at the very least with UCLAT, and preferably with each of the major anti-terrorism players, in order to clarify its resources, its working methods, its objectives and the nature of its "offer" and the added value it is likely to give to analysis and operational action. In symmetrical fashion, "Europol correspondents" could be designated within the departments making a contribution to the fight against terrorism. The specialised departments could thus make clear what their needs were.

6. GERMANY

6.1 Good Practices

6.1.1 Biometric Features in Identification Documents, Automatic Comparison of Data

The German State's reactions to terrorism have varied over the past 30 years.

Repeatedly laws, structures and measures have been adapted to changing circumstances and experiences, with the aim of effectively combating terrorism. Currently especially are to be mentioned the efforts

- to create the legal basis for incorporating biometric features in passports and identity cards and
- to improve the efficiency of the automated comparison of data⁶ by including certain social data.

⁶ Profile search (Profilfahndung);

6.1.2 Security Service Surveillance Methods

To covertly gather intelligence, especially about conspirationally acting terrorist organisations, the German Security Services at federal and Länder level are legally allowed to use a wide range of intelligence methods. **NOT DECLASSIFIED**

6.1.3 Police Surveillance Methods

The same applies for the Federal and Land police forces, which under certain circumstances, carry out surveillance, monitor telecommunications and by undercover technical means intercept and record the spoken word not uttered in public. **NOT DECLASSIFIED** To match the high degree of specialised professional and technical know-how the police forces of the Länder and the Federal police have at their disposal specially trained units with a corresponding level of equipment.

6.1.4 Competences of the Federal Office for the Protection of the Constitution

As a consequence of the 9/11 attacks, the LfVs and the BfV have gained some competencies to - under certain conditions - collect the information needed and available at banks, at post and mail companies about names, addresses and mail-boxes, at telecommunication-providers about e.g. phone identification data and numbers, dates and positions, and for certain aims use the so called IMSI-Catcher⁷. They are also allowed to check information at airline companies about passengers, routes and other data.

⁷ Equipment to identify the numbers of mobile phones and cards

6.1.5 Competencies of the Federal Criminal Police Office

The State Security Department set up within the BKA is competent to fight terrorism and extremism at national and international level and to support the Länder police forces in the prevention and prosecution of transnational, international or major state security crimes. The focus is on multi-case analysis projects that concentrate on selected offences, regions or structures. It collates, assesses and analyses all the requisite information on the basis of the reporting obligations of the Länder.

Since the BKA is responsible for handling such matters and also has the necessary expertise to conduct complex investigations that require a large investment of time and resources, in almost all cases involving serious politically motivated offences in Germany the competent prosecution office puts the State Security Department in charge of the investigations.

6.1.6 Information Board

The rapid exchange, completion and use of the data in the Information Board made it possible to address personal enquiries fully and speedily with the relevant authority, issue warnings rapidly and facilitate the direct exchange of intelligence and the coordination of on-going investigations, and thus has led to a considerable improvement in Germany's capacity to effectively combat international terrorism.

6.1.7 "Analyseboards"

Various "Analyseboards" link special items into project work, aiming at the assessment of special strategic and methodical questions related to the fight against Islamic terrorism.

6.1.8 Competencies of the Public Prosecutor General

The Federal Public Prosecutor General has nation-wide jurisdiction for the prosecution of terrorist acts. The investigating judge at the BGH has special jurisdiction for judicial investigative measures. These provisions promote the necessary special public prosecution, as well as judicial expertise in prosecuting criminal offences related to terrorist organisations.

6.1.9 Intelligence as Evidence in Court

In cases where the security services can make supporting documents available in a form that can be used by the court, this information is produced in criminal proceedings through the reading of official reports and/or the hearing of officials of the respective security service as (expert) witnesses.

6.1.10 Competencies of the Customs Criminological Office

To prevent the proliferation of precursors and CBRN-weapons of mass destruction the ZKA plays a key-role especially referring to the export control and law enforcement. To that end it has far reaching legal competencies and powers in the law enforcement sector, in particular in special cases when it takes over the investigations itself. If there are indications on links to terrorism in a proliferation case, it is presented to the GBA in view of opening an investigation procedure. The GBA may instruct the BKA, ZKA and/or a LKA to undertake an investigation.

6.2 Recommendation

6.2.1 Data Base for the Information Board

For the time being the services involved in the Information Board have not the legal possibility to use a common data base or to have reciprocal access to the data bases of the other bodies but exchange - within the current legal setting - all information orally and on the basis of their respective reports. German authorities should reflect how to improve this kind of cooperation and exchange of information, e. g. by creating the legal possibilities for a structured and permanent electronic data exchange for the purpose and duration of an “Information Board”. At present the setting up of a common database with both reading and writing access for all involved bodies in the Information Board is under consideration at ministerial level.

6.2.2 Data Base for the "Analyseboards"

At present, the request of the security and law enforcement authorities cooperating in the „Analyseboards“ for a common database with both reading and writing access for all of them, is under consideration at ministerial level. German authorities are encouraged to improve this kind of cooperation and exchange of information, e.g. by creating the legal possibilities for a structured and permanent electronic data exchange for the purpose and duration of an “Analyseboard”.

6.2.3 National Data Base on Terrorism, Security Service Access to Relevant Data Bases

For the time being, the law enforcement agencies and the security services do not have the legal possibility for using a common data base nor do they have reciprocal access to their individual data bases.

German authorities should reflect how to improve this kind of cooperation and exchange of information by creating the legal possibility for a structured and permanent electronic data exchange on this special item of combating terrorism, e.g. by creating a national data base for all services involved.

Moreover, in order improve the means to detect and identify terrorist as well as their plans and activities at a very early stage, Germany should reflect about legislation allowing the domestic security service (BfV) to have access to law enforcement and other national relevant administrative databases to cross information from various sources while respecting data protection requirements.

6.2.4 Cooperation between the Customs Criminological Office and the Federal Criminal Police Office

The ZKA has the investigation competencies as regards export control and proliferation. In specific cases they might partly overlap with those of other law enforcement agencies, especially those of the BKA, German authorities should reflect how to improve cooperation, e.g. with the increased use of common investigation teams in suitable cases.

6.3 Recommendation on EU / International Level

6.3.1 Intelligence Index System on EU Level

German security services reported the bilateral cooperation with the security services of the EU Member States as being very well developed and effectively working. Regarding the fight against international terrorism, they did not expressively complain about the cooperation between security services on the EU level but argued that cooperation and exchange of information especially as refers to operational intelligence might be speeded up by creating a common index system.

6.3.2 Identification data on UN-Lists

NOT DECLASSIFIED

7. GREECE

7.1 Good Practices

The investigations by the Special Violent Crime Division take advantage of the existence of the State Security Service. Due to the fact that both are police bodies, co-ordination and co-operation is highly facilitated. In this field, the co-ordinating role that the State Security Service has in the police sphere is an obvious added value in terms of dissemination of relevant information.

Within the Ministry of Public Order, the Board for the Co-ordination of Analyses and Investigations is also a good practice due to its role for advising the Minister from a police point of view. This board contributes to unify the action of the police in fighting terrorism.

A Special Public Prosecutor in Greece is attached to the Ministry of Public Order and his office is located at the ministry. This is a unique case within the EU and really a good practice in terms of efficiency in the national context.

In the field of the fight against the financing of terrorism, the FIU plays a particular role due to the pre-investigative authority which facilitates administrative action or judicial investigation. This enables the members of the committee to have access to all relevant data (bank accounts, register of immobile property, etc). The fact that the FIU is headed by a high-ranking Judge facilitates this process.

NOT DECLASSIFIED

7.2 Recommendations

To involve the EYP and the Cost Guards in the work of the Board for the Coordination of Analyses and Investigations.

To include the EYP in the FIU or to organise regular meetings with the EYP.

To use the information sharing system that was set up for the Olympic Games.

Without prejudice to separate threat assessments by the Hellenic Police and the EYP, experts recommend a common national threat analysis **NOT DECLASSIFIED**. The recommendation is to continue to mandate for that purpose the aforementioned Special Group that shall be responsible for drawing up and issuing a common monthly threat assessment on terrorism issues that will be based on information exchanged processed and evaluated by this group.

NOT DECLASSIFIED There is no central database because of the different nature of each service. Co-operation overcomes to a certain extent the difficulty to have several databases.

NOT DECLASSIFIED

8. IRELAND

8.1 Good practices

8.1.1 Special Criminal Court

The use of the Special Criminal Court for terrorist and other serious cases assists in the preservation of public peace and order.

8.1.2 The dual role of An Garda Síochána

The dual role of law enforcement and state security, of An Garda Síochána allows for a cohesive management of intelligence.

8.1.3 The Evidence of the Chief Superintendents

Senior Garda Síochána officers (Chief Superintendents) can give evidence of membership of an unlawful organisations and this evidence can be considered by the Court in conjunction with other evidence in determining the guilt or innocence of the accused.

8.1.4 NOT DECLASSIFIED

8.1.5 The Criminal Assets Bureau's capacity to freeze assets

The Criminal Assets Bureau can take immediate action in relation to the freezing of assets, which are deemed to be the proceeds of crime.

8.2 Recommendations

8.2.1 Intrusive surveillance measures

Legislation should be introduced which would allow for the use of intrusive surveillance measures, under cover agents and simulated transactions, which are regarded as indispensable tools of an intelligence service in the fight against terrorism.

8.2.2 Produce of interception of communications

Legislation should also be introduced which would ensure that Member States can be provided with produce of interception of communications in cases of requests under the Mutual Legal Assistance Convention.

8.3 EU/International Level

NOT DECLASSIFIED

9. ITALY

9.1 Good practices

There is a clear definition of political responsibilities and technical roles between the Minister/Ministry of the Interior and other Ministries including its functional leadership. This also refers to

- the leadership of the DCPD and the setting up of the Technical Group for the Exchange of Information on the Prevention and Suppression of Terrorism
- the recent setting up of the Strategic Analysis Committee, its role in co-ordinating the law enforcement and the intelligence (SISMi and SISDe)
- the common database on terrorism

The existence (and its role and mandate) within the Presidency of the Council of the Ministers of CESIS including the Committee for Co-ordinating Intelligence on Financial Assets. In this domain, the fact that both SISMi and SISDe addressed reports to the General Secretary of CESIS and to Ministers responsible is a good practice as such. This obviously is a valuable link that bridges the law enforcement and intelligence side.

The Financial Security Committee as a whole and its capacity to propose draft legislative measures.

The existence of the Guardia di Finanza and its valuable contribution to the fight against the financing of terrorism.

Legal provisions on pentiti

9.2 Recommendations

NOT DECLASSIFIED

10. LUXEMBURG

10.1. Good practices

10.1.1 Legal power of the Financial Intelligence Unit

The legal power of the Financial Intelligence Unit at the Prosecution Office to look into accounts without being blocked by a bank secrecy, and to issue freezing orders against banks, financial institutions and life insurance companies,

10.1.2 Obligation for banks and financial institutions

- The obligation for banks and financial institutions to report the results of checking the international lists (not to report is a criminal offence, a violation of professional standards/obligations), and

10.1.3 The rule "know your customer"

- The obligation from the rule "know your customer" according to which financial institutions have to undertake measures to identify real beneficial account owners

10.2. Recommendations

10.2.1 No formal structures for exchange of information

- The exchange of information between the Police, the State Intelligence Service and the Prosecution Office, which is not regulated by a law but based on personal contacts without formal structures⁸;

10.2.2 Missing access of the State Intelligence Service to Police data

- The missing access of the State Intelligence Service to all the data bases of the Police;

10.2.3 Missing intrusive techniques

- The missing legal possibility for the police to use under cover agents and intrusive techniques;

10.3. EU/International Level

NOT DECLASSIFIED

⁸ Chapter 2 Art. 3 of the Law of 15 June 2004, tasks the Service to take care for an effective cooperation with the national police, judicial and administrative authorities, and to inform them as much as needed to fulfil their tasks.

11. THE NETHERLANDS

11.1 Good practices

The decisions to appoint the Minister of Justice as co-ordinating Minister and to nominate national co-ordinator for combating terrorism were taken recently. Undoubtedly this will facilitate a political and technical co-ordination at national level and will unify more importantly the fight against terrorism internally.

An particularly important number of co-ordinating bodies provides assistance to the decision makers both at political and technical level and this facilitates and favours a common awareness and understanding of terrorist threats/situations and counter terrorism activities.

The national Public Prosecutor for Terrorism has a key role due to the monopoly he/she has in dealing with terrorism including international terrorism at national level and due to his/her role of unique contact point with the AIVD.

Due to the crucial importance of intelligence in the Dutch system in particular, the fight against the terrorism takes benefit from the prevalence of the AIVD in the absence of a strongly centralised national police. In this context the article 60 of the Wiv 2002 that statutory bridges the regional police forces, the AIVD and the KLPD/UTBT is particularly relevant and efficient. It is a perfect example of best use of existing structures in a decentralised organisation.

Criminal information is largely transferred to the Europol AWF and the national Public Prosecutor favours such transfer even if the case is not over. The Netherlands provides regularly information to Europol and is one of the top contributors to analytical work files on terrorism.

The organisation of the fight against the financing of terrorism as a whole can be mentioned as a good practice. This refers to the comprehensive legal basis available (to be extended in the near future) as well as the machinery dedicated as such to the fight against the financing of terrorism. In this specific area, there are other good practices and in particular the FEC. In this domain the involvement of the AIVD, the structural partnership between the MOT and the BLOM (whose activities will be integrated in the near future), the Intranet Suspicious Transactions that was completed by a secure website for the reporting of unusual transactions by financial institutions have also to be mentioned as good practices.

11.2 Recommendations

The Dutch authorities are aware of the need to better involve the police in the fight against the terrorism and to improve co-ordination and co-operation with the AIVD for that purpose. Consequently, to expand the role and the capacity of the UTBT is a need.

In order to overcome this bottleneck and to facilitate a full access for the UTBT to all files and not only to the selected information, the proposal of experts is first to adopt a national regulation to ensure uniformed and regular /routine information providing by the regional police forces in order to improve the existing situation.

In relation with above mentioned recommendation and without prejudice to the regional police forces, it is so suggested to create only one national police operational database on terrorism that would act as the head and the heart of the network of 25 antiterrorism regional databases. From this perspective, the existing special investigations register (BRZ) is a register as the name implies and not an operational database in terms of intelligence (intelligence as such and criminal intelligence).

Exchange of information between the police and the AIVD is currently a bottleneck due to the legitimate need for the AIVD to protect its sources. This leads to an unbalanced situation and the proposal of experts in this field is to provide the UTBT with a better access to the AIVD counter terrorism database: this would rebalance the current situation and would facilitate criminal investigations. In addition, the experts suggest the adoption of police and AIVD databases that are compatible.

To define a national counter terrorism strategy at technical (steering guidelines) level for all police forces (common priorities, criteria, quality standards, training programmes with the participation of the KLPD and the AIVD members...in order to develop a common know how/expertise that would apply routinely on an uniformed basis in all regional police forces). Training programmes could fruitfully include the national Public Prosecutor for Terrorism.

To assess the feasibility and the added value to have a national police counter terrorism task force that would deal only with terrorist cases. This task force, as part of the KLPD, would closely interact with the KLPD/UTBT, the national Prosecutor for Terrorism and district Public Prosecutor, the AIVD and the regional police forces whose role would be to assist its investigators. Such a national counter terrorism task force would undoubtedly reinforced the role of the Dutch police in fighting terrorism as well as the efficiency of the fight against terrorism. It would also simplify international co-operation at law enforcement level.

In the light of the Rotterdam trial and of the decision of the Court of Appeal of The Hague, the government intends to reinforce the admissibility of AIVD information in Court. This will undoubtedly facilitate the prosecution of terrorist acts. An alternative solution is to confer a law enforcement competence to the AIVD in the counter terrorism area regarding Islamic terrorism and only in this area. This could also apply to the RIDs when they act under article 60 of the Wiv 2002 under the guidance/control of the AIVD. A law enforcement competence will facilitate under the supervision and control of the national Public Prosecutor for Terrorism, the disruption of terrorist activities at early stage when needed on the basis of criminal investigations whose results could be immediately used as evidence in Court. The organisation and law enforcement competence of the French DST could inspired this reform.

To set up a general national warning system that could be similar to the one which exists in France (plan Vigipirate) including consequence management in addition to the definition of risk levels and consecutive related safety measures. In that field, the experts fully support the ongoing discussions aiming at defining a national warning system.

Threat assessments are made by the AIVD. The proposal of experts in this field is to include law enforcement input in the future and in particular police input.

12. PORTUGAL

12.1 Good practices

Co-operation between law enforcement bodies, intelligence agencies and relevant bodies contributing to security is enshrined in laws, administrative provision and ministerial orders ruling respective competencies and attributions. This applies to law enforcement and intelligence bodies and more widely to other entities such as e.g. public administrations and bank system in terms of information made available when needed and requested by appropriate bodies.

In the aftermath of 11 September 2001 Portugal took appropriate measures in order to reinforce its ability to combat terrorism including new legal provision and relevant decisions aiming at improving law enforcement and intelligence capacities to prevent and to react to terrorist threat and terrorist activities. For instance, on 13 December 2002 a FIU was set up within the Judicial Police and the special Unit for the Co ordination of Anti-Terrorism (UCAT) was set up on 25 February 2003.

The Portuguese counter terrorism machinery is structurally coherent and involves all ministries, law enforcement bodies and intelligence agencies, as well as judicial authorities in their fields of competence. In terms of competencies and attributions, there is no apparent overlapping on the basis of a clear definition of tasks and responsibilities:

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12.2 Recommendations

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13. SPAIN

13.1 Good practices

The legal basis related to terrorist acts is a key factor with a particular to the constant updating of legal provision. This includes appropriate laws targeting political/social dimensions of fight against terrorism.

The Audiencia Nacional/National Court, which is an independent body, is the relevant Court dealing with terrorism. Based in Madrid, the Audiencia Nacional exercises jurisdiction over all the Spanish territory. The existence of only one Court dealing with major terrorist acts and groups is undoubtedly a very efficient tool.

The two national law enforcement bodies under the authority of only one "person" responsible, the ministry of interior and in particular under the direction of the State Secretary for Security who is personally and permanently involved in fighting terrorism on a daily basis.

The State Secretary for Security directs and co-ordinates the counter terrorism activities of the Guardia Civil and the Cuerpo Nacional de Policia/National Police Corps, including exchange of information/intelligence.

The Civil Guard and the National Police Corps are engaged against terrorism and related activities and both have special units with intelligence competence for that purpose.

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13:2 Recommendations

To create a co-ordinating mechanism at technical level subordinate to the State Secretary for Security to improve the day to day co-ordination and co-operation. This co-ordinating mechanism would include intelligence department (heads of departments or their representatives) within the two-law enforcement bodies and the heads of counter terrorism intelligence units (or his representative) within the National Intelligence Centre.

SEPBLAC and units dealing with the fight against financing of terrorism within the law enforcement bodies could be part also of this additional mechanism due to the obvious importance of financial aspects of terrorism.

To assess the unquestionable experience of the French/Spanish co-operation in order to duplicate the methodology in other EU MS if needed or with the view to apply to other fields such as organised crime.

To involve the members of the National Intelligence Centre in joint investigative teams.

While respecting rights of alleged terrorists, information could be channelled from judicial authorities investigating terrorist cases to law enforcement bodies and a working group could identify obstacles in order to overcome legal difficulties in terms of draft legal provision.

In order to speed up the process leading to a more efficient co-operation with Europol, a working group involving Europol, law enforcement representatives and judicial authorities could be set up in order to identify obstacles including legal obstacles. This working group could then propose appropriate solutions including new legal provision. In addition, awareness programmes could be implemented within the law enforcement bodies and for instance Europol could have contact points acting in close co-operation with the Spanish National Unit and the new department dealing with international co-operation within the ministry of interior.

A common database related to terrorism including firearms and explosives and a common threat assessment involving law enforcement (Guardia Civil and Police) and intelligence (NIC) perspectives and including both internal (ETA and other terrorist groups) and external (Islamic extremist activities) security issues. Fight against the financing of terrorism would be part of this common threat analysis.

Participation of NIC representative (and law enforcement bodies' representatives) in the Foreign Affairs counter terrorism department and formal link with SEPBLAC.

To formalise an appropriate link between Foreign Affairs counter terrorism department and Customs which already posted a representative within the National Intelligence Centre.

To define common works involving both law enforcement bodies and Customs in addition to the existing Guardia Civil/Customs co-operation.

To create an ad hoc response (emergency plan dedicated to the terrorist threat as such) to major terrorist attacks at national level (cf the existing French Vigipirate plan and the assessment report on France).

14. SWEDEN

14.1 Good Practices

14.1.1 Phone Call Analysis System

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14.1.2 SÄPO as Security and Law Enforcement Service

All SÄPO participants, be they from the counter-terrorism or the protection units reported a close, experienced and trustful cooperation with all national and local agencies. This coordination is based on good personal contacts, supported by the fact, that SÄPO is part both of the Security Service and Law Enforcement system too. This has been stressed as very good practice. No problems concerning the exchange of information, especially referring to investigations have been mentioned.

This was confirmed by the Stockholm Police participants.

14.1.3 Use of Evidence / Intelligence at Court

The Court is free to decide on the use of evidence, even intelligence provided by the Security Service. Excluding rules do not exist.

14.1.4 Swedish Emergency Management Agency (SEMA)

The Swedish Emergency Management Agency works together with municipalities, county councils and government authorities, as well as the business community and several organisations, to reduce the vulnerability of society and improve the capacity to handle emergencies. It also coordinates the planning, resource allocation, follow-up and evaluation of work within the area of crisis management. In addition, it collects knowledge through horizon scanning, strategic analyses and research to develop society's emergency management.

However, SEMA does not operate a permanent national crisis centre.

14.2 Recommendations

14.2.1 National Crisis Centre

Swedish authorities should reflect about a national alert system, and whether to operate a national permanent crisis or situation centre, with internal links to all relevant domestic security bodies and as a permanent point of contact for other Member States, to duly be prepared for international cooperation in case of a terrorist attack.

14.2.2 Special Surveillance Technique

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14.3 EU / International Level

14.3.1 Third-Party Rule

Similar to other Member States, discussion took place on the Third-Party Rule, according to which intelligence and information provided by a security service may not be shared with another addressee without the consent of the originator.

The Swedish view is that the third party rule is a ground rule, but that the information received may sometimes be difficult to be used as evidence.

14.3.2 EU/International Level

After 9/11, the financing of terrorism has become an important topic. However, the identification data on the UN (and other) lists distributed to freeze assets of suspected individuals, is sometimes incomplete and thus difficult to manage when it comes to ensuring that a name on the lists is matching with an identity.

Given the fact that this problem could not be solved at national nor at EU level, the appropriate EU bodies are requested to bring it to the attention of the UN level.

15. UNITED KINGDOM

15.1 Good practices

The UK adopted a wide approach to the new terrorist risk and systematically screened for vulnerabilities before adopting/implementing appropriate policy/measures in the light of the new nature of the threat from international terrorism (a global counter terrorism strategy in response to a global threat).

This applies to counter terrorism legislation including the fight against the financing of terrorism at both national and international level.

The capacity to co-ordinate security, intelligence and consequence management matters at the centre of Government has been enhanced (cf. the appointment of a Security and Intelligence Co-ordinator and Permanent Secretary to the Cabinet Office as well as the role devoted to the CCS, cf. also crisis management COBR level that provides a co-ordinated government response and arranges any necessary assistance to the police that has the lead on the ground).

The Home Secretary clearly has the lead and his wide range of responsibilities facilitates a pivotal role in counter terrorism. In fact he co-ordinates all aspects of counter terrorism including resilience.

In terms of preparedness, structural and legislative improvements have been made or are expected including guidelines on respective roles of local, regional and central authority. In this domain, the UK pays attention to exercises (lessons to be learned) and not just to classroom exercises to test all procedures (coherence and efficiency of the network, response and effectiveness of the response).

In that domain as in others (for instance in the area of intelligence gathering) there is no department and/or agency solely responsible for the terrorist threat and a co-ordinated approach has been adopted.

Countering terrorism requires the integration of political will, diplomatic efforts, and military involvement in addition to the work of intelligence and law enforcement bodies.

The permanent and effective culture of "joined up approach" (or "network approach" of counter terrorism) and its consequence – "joined up operative mechanism/system" – leads to co-ordination and co-operation and this in particular applies to the respective role and work of intelligence and law enforcement bodies.

The assessment of the threat is a continuous process at various levels and from that perspective the creation of JTAC and its "philosophy" was a remarkable innovation that fully demonstrated the already mentioned "joined up approach". In particular JTAC ensures that the person responsible will have relevant information in a proper and timely way and for the purpose of threat assessment has access via "customer departments" to relevant databases and information sources.

Terrorism is treated as a threat to national security, and as such, lead responsibility rests with the security service. But the police have the executive powers, which are required, when an investigation moves to arrest suspects on the basis of a criminal offence.

The law enforcement bodies and intelligence agencies fully took into account the threat from international terrorism and consequently its impact led them to re-allocate resources. Most relevant Special Branch resources are counter terrorism oriented in the long run.

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The respective roles of the Police, the Special Branch and the Security Service -whose lead is unequivocal - are dependent on the division of responsibilities and there is no overlap or confusion. They act together on the basis of an extremely longstanding co-operation and institutional and operational arrangements. Special Branch bridges the police and intelligence agencies and this point is undoubtedly crucial to ensure the effective co-operation and exchange of information.

The Security Service's National Security Advice Centre (NSAC) and NaCTSO's works (protective security) is valuable in both reducing vulnerability to terrorist threats and increasing the awareness of a terrorist event. In connection with this work, the public information policy is to be mentioned.

In addition, the new Special Branch guidelines focus on the need to give counter terrorism greater priority within the wider police service agenda. The close partnership that already exists between Special Branch and the Security Service will be further enhanced if this is achieved.

The role and the importance of the role of ACPO in general and ACPO (TAM) in particular is to be highlighted in the UK context.

The list of proscribed organisations is also considered as valuable tool.

International co-operation (including the EU aspects) are considered as essential for countering terrorism worldwide and internally. This applies to all bodies/agencies and entities involved.

In the area of countering the financing of terrorism, the existence of the Charity Commission that is a quasi-judicial department is very good practice.

15.2 Recommendations

The experts took note of the limited role of the national co-ordinator of Special Branches and the recommendation of experts is to extent his already valuable role in order to :

assess the role and importance of Special Branches in the counter terrorism area within each police force (with the aim to solve difficulties on the basis of exchanges of views with the Chief Police Officer and relevant entities)

ensure that guidelines are effectively implemented (keeping in mind that some police force have no important staff and that the operational capability of individual units depends very much on their size).

These additional tasks will provide the national co-ordinator of Special Branches with material in order to report to the Home Office and ACPO (TAM) and to propose amendments to the existing guidelines including best practices.

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The National Co-ordinator may, by invitation of the relevant Chief Constable, assume responsibility for the co-ordination and direction of enquiries into terrorist and other related activity. In practice, the national co-ordinator will invariably be invited to act because he provides vital additional resources. Given the complexity of issues related to international terrorism and the need to properly deal with, the experts consider that the National Co-ordinator should be able to operate on his own authority. This conclusion and suggestion is logic and constitute both a potential development and a follow up of what implicitly exists de facto. Another point is that, apart from the MPSB mainly, other police force would face difficulties where dealing with major terrorist investigations (e.g. in case of CBRN attack) and would stand-alone. In such a case in particular, centralisation and effective dissemination of all kind of information as well as the involvement of partners abroad are crucial in order to investigate all dimensions of the terrorist event.

In addition to this, the experts underline the importance of ensuring the continuing adequacy of existing national coordination mechanisms and procedures for operational information exchange. These arrangements should take full account of the interests and inputs of all relevant bodies, including law enforcement.

Possibly in connection to the previous point, the experts note that each police force including Special Branch has its own database and that there is no single Special Branches database dedicated to counter terrorism. Consequently the experts recommend to set up as a priority a national intelligence sharing capability in that domain for Special Branches with the aim to make intelligence available to all Special Branches on the basis of data quality and timeliness standards. The prerequisite to that national intelligence sharing capability is provide police forces in general and Special Branches in particular with compatible technical equipment.