



**COUNCIL OF
THE EUROPEAN UNION**

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NOTE

From: Presidency
To: Delegations
Subject: Draft Council conclusions on Terrorism and Border Security

Following discussions at the Informal Justice and Home Affairs Ministers' meeting in Athens on 23-24 January 2014 on threats posed by terrorism to border security the Presidency hereby submits draft Council Conclusions on the topic.

Delegations had a first exchange of views on these draft Council Conclusions on Terrorism and Border Security at the TWP of 6 March and were invited to submit written contributions by 28 March.

On that basis, the Presidency has reviewed the text and invites delegations to examine the revised draft attached to this note.

DRAFT COUNCIL CONCLUSIONS

ON BORDERS AND TERRORISM

THE COUNCIL OF THE EUROPEAN UNION

RECALLING the EU commitment to ensure safety and security of its **citizens, residents and visitors**;

RECALLING the EU commitment to facilitate the free movement of persons in an area of freedom, security and justice including appropriate measures with respect to external border controls;

RECALLING the Charter of Fundamental Rights of the EU and, in particular, the right to the protection of personal data;

RECALLING that national security is the sole responsibility of each Member State;

RECALLING the EU commitment to support and complement Member States' initiatives in the fight against terrorism along with the principles of subsidiarity and proportionality;

UNDERLINING the need for tailored information sharing between Member States and EU **INTCEN as well as EUROPOL and EUROJUST** in the fight against terrorism;

UNDERLINING the need for a better understanding of terrorists' travel routes, profiles and patterns, including the procurement and use of fraudulent documents, as risk indicators allowing more targeted controls;

UNDERLINING the importance of a comprehensive approach in **countering** terrorism as set out **in the United Nations Global Counter-Terrorism Strategy**, in the Stockholm Programme, the Internal Security Strategy and the 2005 EU Counter Terrorism Strategy;

RECALLING that the EU Counter Terrorism Strategy contains a commitment to enhance protection of external borders, as well as to building capacity in third countries;

RECALLING the Council's commitment to ensure that priorities related to external and internal security are aligned, and to present appropriate policies to that end;

DETERMINED to (...) enhance the effectiveness of **integrated** border management as a tool in ensuring security and in **countering** terrorism;

CONCERNED that organised crime groups facilitating illegal immigration could contribute, directly or indirectly, willingly or unwillingly, to the smuggling of terrorist operatives into the EU;

UNDERLINING the unique European expertise on integrated border management;

CONCERNED that the Syrian conflict attracts **high numbers** of EU citizens and (...) third country nationals **residing legally in the Member States** to **combat zones** with some of the travellers leaving in good faith to Syria but possibly returning from Syria with the intention to engage in terrorist activities in the EU;

NOTING also that the Council has called on all states bordering Syria or with direct air or maritime routes in to Syria to **increase their vigilance**, and to take appropriate measures to prevent the flow of foreign fighters to and from Syria;

CONCERNED that third country nationals who are already in Syria and other conflict zones and cannot or do not wish to return to their countries, could instead head for Europe with the intention to engage in terrorist activities in the EU;

REQUIRING strengthened cooperation between Member States and between Member States and third countries so as to identify potentially vulnerable and/or dangerous individuals before their departure, during their stay in conflict zones and upon their return from conflict zones

NOTING the many terrorist threat assessments and analyses provided by the High Representative of the Union for Foreign Affairs and Security Policy which also encompass aspects related to border security;

CALLS UPON all actors concerned to bundle energies in their endeavours against terrorist **groups and terrorist acts both within and outside** the EU and therefore;

CONCLUDES

- that the Member States should continue to **strengthen** law enforcement **and judicial cooperation** on terrorism related issues;
- that the Member States should involve all relevant national actors such as police, customs, border **guards and** coast guards or any other authorities having a role in contributing to an effective national border management;
- that the Member States should exchange best practices regarding border management capabilities and development and cooperation in the field of training of border guards in the context of **counter**-terrorism;
- that the **possibilities** offered by the second generation Schengen Information System (SIS II) for counter-terrorism purposes should be fully exploited by Member States, in particular **by using more systematically the alert categories** referred to in Articles 36(2) and 36(3) of Council Decision 2007/533/JHA;
- that the **potential offered by the Visa Information System (VIS) for counter-terrorism purposes** should **be fully exploited**;
- **that, in accordance with the Schengen Border Code, for a limited period of time and in respect to some specific entry points and segments of travellers, the non-systematic checks of persons enjoying the Community right of free movement should be increased in order to ensure that such persons do not represent a genuine, present and sufficiently serious threat to the internal security of the Member States;**
- that a **(...)** contribution of Frontex should be promoted and supported both in the specific context of the foreign fighters phenomenon and in counter-terrorism in general, via enhanced cooperation with the Member States, Europol and third countries, in accordance with the respective mandates of each agency **(...)**;
- that the Member States **and** Europol, **together with** Frontex, should **develop and pursue** common operational initiatives for safeguarding the EU's external borders against terrorist threats, **in accordance with their respective mandates**;

- (...)
- **that the Integrated Border Management (IBM) of the EU should be fully exploited in countering terrorism in relation to external borders, including by organising practical cooperation with third countries;**
- that the Member States **and** Europol **should** enhance their capacity and, **together with** Frontex, **in accordance with their respective mandates, promote** cooperation **between border guards, customs and other law enforcement services, with a view to detecting at the borders** the illicit possession and cross-border transfer of weapons and sensitive materials, such as explosives, precursors and high-risk Chemical, Biological, Radiological and Nuclear substances;
- that the European Parliament and the Council **speed up** their **work** on the proposed PNR directive¹ (...);
- that the examination of the proposals on the Smart Borders Package (Entry/Exit System and Registered Travellers Programme) should be continued (...) and that the legal and technical conditions **for the** access **for** law enforcement **purposes** to the Entry/Exit System **by competent** authorities of Member **States** should be examined by the Commission and the Member States **so that this access is effective from the start of the operation of the system;**
- that preparatory work for allowing Member States' law enforcement authorities access to EURODAC in 2015 should be speeded up by the **European Agency for large-scale IT systems (eu-LISA)** and the Member States so as to allow its entry into operation as soon as legally available;
- that Europol and Frontex should finalise their working arrangement by the end of 2014 for Frontex to transmit on a case by case basis personal data to Europol as provided by Regulation 1168/2011²;

¹ Proposal for a Directive of the European Parliament and of the Council on the use of Passenger Name Record data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime

- that the Member States should enhance cooperation with Europol and where appropriate Frontex as regards the strategic analysis of organised crime groups facilitating illegal immigration **as well as facilitation networks for travel of foreign fighters** so as to provide Member States with in-depth knowledge of these groups. This could notably be done by systematically transmitting the interview reports that Member States' authorities conduct with the victims of these organised crime groups **while fully respecting human rights, fundamental freedoms and personal data protection provisions**;
- that the Commission should include security and counter-terrorism in the dialogues and instruments under the EU external migration and asylum policy (...);
- that the Commission **and the High Representative of the Union for Foreign Affairs and Security Policy include, in the framework of** the dialogues and negotiations between the EU and countries of origin or transit the issue of organised crime groups facilitating directly or indirectly, willingly or unwillingly, the smuggling of terrorist operatives into the EU;
- that the Commission, the High Representative of the Union for Foreign Affairs and Security Policy, and the **EU** Counter Terrorism Coordinator should facilitate, support and promote the development of appropriate border security policies, programmes and instruments within third countries, including enhancing interoperability with EU and Member State policies, programmes and instruments;
- that the Member States, the Commission **and Eurojust** should **examine more closely the effectiveness of existing legal provisions on the basis of experience gained from investigations and prosecutions related to foreign fighters, and consider whether it would be useful to establish a common legal framework for cooperation in the EU context**;
- **that Member States ensure that asylum applications are considered in line with the exclusion criteria under the Qualification Directive** in order to **mitigate the risk that terrorists could use the asylum system in order to get entry to the EU.**

² Article 11c and 13 of Council Regulation (EC) No 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, as amended by Regulation (EU) No 1168/2011