



**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 submitted 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 8 April.

Subsequently, the Presidency reviewed the text and the current version takes account of written contributions submitted by delegations by end of April.

Delegations were invited to discuss the draft Council Conclusions at the meeting of 13 and 14 May and agreed on them with a view to submitting them to the Council for adoption.

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 approach to facilitate mobility **and 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, **the case law of the European Court of Justice** and, in particular, the right to the protection of personal data **and privacy**;

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 a better understanding of terrorists' travel routes 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 EU 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;

RECALLING the Council conclusions on strengthening the security of the supply chain and customs risk management;¹

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

UNDERLINING the European expertise on integrated border management;

CONCERNED that conflict areas attract high numbers of EU citizens and third country nationals residing legally in the Member States to combat zones and that while some of these travellers go in good faith, some may return from there with the intention of engaging in terrorist activities in the EU;

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

CONCERNED that some third country nationals who are already in Syria and other conflict zones and who cannot or do not wish to return to their countries of origin, may travel to Europe with the intention of engaging in terrorist activities in the EU;

RECOMMENDING strengthened cooperation between Member States and between Member States and third countries so as to identify individuals presenting a risk 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;

¹ doc. 10163/13 UD 115 ENFOCUSTOM 97 ENFOPOL 163

CALLS UPON all actors concerned to coordinate their efforts 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 and ensure among them effective cooperation and coordination with regard to national border management;
- that the Member States should exchange best practices and lessons learned regarding border management capabilities, and development and cooperation concerning awareness raising of border guards on counter-terrorism matters **and may involve Frontex in these efforts;**
- 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, in accordance with Article 3 of Regulation (EC) No 767/2008 as well as with Council Decision 2008/633/JHA;
- that, at external borders, while the minimum check, including checking the authenticity of the travel documents, is the rule for persons enjoying the right of free movement under Union law, border guards should make, where appropriate (...) intensified use of the possibility to consult on a non systematic basis national and European databases in order to ensure that such persons do not represent a genuine, present and sufficiently serious threat to the EU internal security, in accordance with the Schengen Borders Code;
- that best practices relating to the verification of parental authorisation for unaccompanied minors leaving the Schengen area, should be considered in line with the Schengen Borders Code;

- 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 take into account 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 **competent authorities**, 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 should continue their work on the proposed PNR directive²;
- 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 beginning**;
- 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 the Regulation becomes applicable;
- that Europol and Frontex should **seek to** 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 1168/2011³;

² 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 (see doc 8916/12 GENVAL 23 AVIATION 73 DATAPROTECT 52 CODEC 1024)

³ 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

- that the Member States should enhance cooperation with Europol and where appropriate Frontex as regards the strategic analysis of organised crime groups facilitating illegal migration 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 (...) transmitting (...) relevant information of interview reports that Member States' authorities conduct with the victims of these organised crime groups to the respective Focal Points at Europol while fully respecting human rights, fundamental freedoms and personal data protection provisions;
- that Member States **should** ensure that (...) applications **for international protection** are considered in line with the exclusion criteria under the Qualification Directive⁴ in order to mitigate the risk that terrorists could (...) legally stay in the EU;
- that the Commission should propose to include, where relevant, a specific discussion on security and counter-terrorism issues in the framework of the dialogues and instruments of the external dimension of **relevant EU (...) policies; it is also important to take into account the revised EU Strategy for Combating Radicalisation and Recruitment to Terrorism as well as the EU Counter-terrorism Strategy in the development of visa policies;**
- (...)
- 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.

⁴ Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted, OJ 20.12.2011 L 337 p. 9