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'I/A' ITEM NOTE

From: General Secretariat of the Council
To: Permanent Representatives Committee/Council

No. prev. doc.: 6812/3/18 REV 3

Subject: Draft Council Conclusions - 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
- Adoption

1. On 21 February 2018, the Standing Committee on Operational Cooperation on Internal Security (COSI) tasked the Working Party for Schengen Matters (SIS/SIRENE) and the Terrorism Working Party (TWP), building upon the previous measures undertaken within the field¹, with setting out guidelines for 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.

¹ 5635/1/18

2. Draft Council Conclusions² were discussed at the SIS/SIRENE Working Party meeting of 16 March 2018, at the TWP-meeting of 19 March 2018, at the joint TWP-SIS/SIRENE meeting of 24 April 2018, at the meeting of the support group of the Standing Committee on Operational Cooperation on Internal Security (COSI) on 2 May 2018 and finally endorsed by COSI on 15 May 2018.

 3. The Permanent Representatives Committee is invited to confirm the agreement on the draft Council Conclusions 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, as set out in the Annex, and to submit them to the Council for adoption.
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² 6812/18 and revised versions thereof

DRAFT COUNCIL CONCLUSIONS

Strengthening the cooperation and use of the Schengen Information System (SIS) to deal with persons involved in terrorism or terrorism-related activities, including foreign terrorist fighters

THE COUNCIL OF THE EUROPEAN UNION

ACKNOWLEDGING that the terrorist threat has grown and rapidly evolved in recent years, requiring adequate measures not only at national level, but also at Union level,

RECOGNISING, in view of the terrorist attacks in Europe in the past few years, the need for swift implementation of the instruments at EU level, such as Directive (EU) 2017/541 on combating terrorism³, providing the Member States' national authorities with the appropriate tools for the prevention, detection, investigation and prosecution of terrorist offences, and the added value of identifying the pattern of and connections of persons involved in terrorism or terrorism-related activities, including foreign terrorist fighters and returnees, based on SIS hits,

TAKING INTO ACCOUNT that the Council Conclusions on the Renewed European Union Internal Security Strategy 2015-2020⁴ identify tackling and preventing terrorism as a priority for the coming years, with special attention on the issue of foreign terrorist fighters,

STRESSING that Regulation (EU) 2017/458 of 15 March 2017 amending Regulation (EU) 2016/399 as regards the reinforcement of checks against relevant databases at external borders⁵, provides for systematic checks on all persons crossing the external borders, including individuals enjoying the right of free movement against relevant databases, in particular the mandatory consultation of SIS,

³ OJ L 88, 31.3.2017, p. 6

⁴ 9798/15

⁵ OJ L 74, 18.3.2017, p. 1

TAKING INTO ACCOUNT the value of existing bi- and multilateral agreements and cooperation to counter terrorist activities,

RECOGNISING that the challenges that the competent authorities face in dealing with terrorism in this context are twofold: firstly, identifying and tracing the travel movements of the detected persons involved in terrorism or terrorism-related activities across the EU external borders and within the EU; secondly, further ensuring the effective sharing of information and taking the relevant measures,

RECALLING that the SIS is the biggest, most widely used and most efficient IT system of the European Union in the area of freedom, security and justice, and is supported by the network of SIRENE Bureaux, providing significant added value in the field of international police cooperation and border control,

NOTING that better use of SIS for the purposes of countering terrorism requires that relevant available information be filled in when inserting the alerts under Article 36 of Council Decision 2007/533/JHA on the establishment, operation and use of the second generation Schengen Information System (SIS II)⁶ (hereinafter 'Article 36'),

BEARING IN MIND that the new Regulation on the use of SIS for the purpose of police and judicial cooperation, which is currently under negotiation⁷, would further enhance the SIS' capacities for detecting, monitoring and responding to travel movements of persons involved in terrorism or terrorist-related activities,

RECALLING the 'Roadmap to enhance information exchange and information management including interoperability solutions in the Justice and Home Affairs area'⁸, and in particular its action 23 (30), which requires Member States to '*ensure that information on FTFs is consistently and systematically uploaded to European systems and platforms, and synchronised where possible*' by implementing '*a consistent three-tier information sharing approach regarding FTFs by making optimal and consistent use of SIS and Europol data that Europol processes for cross-checking and for analysis in the relevant Analysis projects*',

⁶ OJ L 205 of 7.8.2007, p. 63

⁷ See 15814/16; 14116/17

⁸ 12223/3/17 REV3 and 14750/17 - update following Council Conclusions on interoperability

RECOGNISING that implementing such a three-tier information sharing approach would complement the existing tools available to competent authorities for identifying and potentially interrupting the travel movements of persons involved in terrorism or terrorism-related activities, including foreign terrorist fighters via the relevant alerts in SIS, e.g. arrest, withdrawal of invalid travel documents, discreet checks and specific checks,

TAKING INTO ACCOUNT that as of 5 March 2018, the automated identification of persons on the basis of their fingerprints has been made possible through the integration of an Automated Fingerprint Identification System (AFIS) component in the SIS, and encouraging Member States to make use of this new functionality,

ACKNOWLEDGING the principle of data ownership as crucial for ensuring confidence of the CT authorities in sharing information via SIS and SIRENE and with Europol,

RECOGNISING the value of exchange of post-hit information, where appropriate, and to ensure sufficient analytical capacities, and EMPHASISING that this not only requires the involvement of other national competent authorities but also cross-checking against other relevant databases and information systems⁹,

UNDERLINING the need to make full use of the capacities of Europol to support Member States in conducting operational and thematic analyses, making full use of the Analysis projects such as 'Travellers' and 'Hydra', the Europol Information System and other tools available to the European Counter-Terrorism Centre,

TAKING INTO CONSIDERATION Regulation (EU) 2016/1624¹⁰ which assigns responsibilities to the European Border and Coast Guard in the field of counterterrorism,

⁹ Relevant national databases, Europol data, the Visa Information System (VIS), Passenger Name Records (PNR), Interpol's *Stolen and Lost Travel Documents* database (SLTD), the future Entry/Exit System (EES) and the *European Travel Information and Authorisation System (ETIAS)*

¹⁰ OJ L 251, 16.9.2016, p. 1

TAKING NOTE OF the crucial importance of ensuring an appropriate balance between the requirements of the internal security policy of the EU, on the one hand, and the need to guarantee full compliance with fundamental rights, on the other, including those related to privacy, personal data protection, confidentiality of communication and the principles of necessity, proportionality and legality, and freedom of movement in the Schengen area,

RECALLING the "*Indicative criteria to be taken into consideration regarding exchange and sharing of information on individuals involved in travelling to and from jihadi areas of conflict*" that was agreed in an Annex to the Milan conclusions of 7 July 2014¹¹,

STRESSING finally the need to regularly discuss lessons learned and best practices, including within the Council preparatory bodies,

THE COUNCIL,

CALLS ON THE MEMBER STATES TO:

- Take the appropriate steps to:
 - fully implement already agreed measures and provide adequate technical and human resources for this purpose, in particular to the SIRENE Bureaux;
 - correctly reflect the categories of the individuals as defined in the Best Practices Catalogue¹² when filling in the forms under Article 36 of SIS for the purpose of countering terrorism;

¹¹ See 7412/16 "Observations of the Presidency, based on earlier discussions, on strengthening Information Exchange/Information Systems, especially SIS".

¹² COMMISSION RECOMMENDATION establishing a catalogue of recommendations and best practices for the correct application of the Schengen Information System (SIS II) and the exchange of supplementary information by the Member States competent authorities implementing and using SIS II and replacing the catalogue established by the recommendation of 16 December 2015 (C(2018) 2161 of 17 April 2018).

- Unless legal or operational reasons require otherwise, ensure that the relevant information on persons involved in terrorism or terrorism-related activities, including FTFs, is provided in the alert under Article 36 and on the appropriate SIRENE forms in each relevant case in compliance with Council Decision 2007/533/JHA;
- Ensure that the national competent authority/ies issuing the alert and the Member State where the hit occurs exchange additional information via the appropriate communication channels and to decide on a case by case basis to what extent the information should be further disseminated to other Member States, while respecting data ownership principles;
- Continue the efforts to further develop tools and appropriate national training programmes for SIS end-users to make reporting of hits on Article 36 alerts to SIRENE Bureaux fast and smooth;
- Unless legal or operational reasons require otherwise, share information on persons involved in terrorism or terrorism-related activities held in SIRENE hit reporting forms with Europol. This will allow cross-checks and, if deemed appropriate, operational and/or thematic analyses, in order to proceed with the mapping of travel patterns and/or to analyse the located individual(s)'s possible connections;

INVITES MEMBER STATES AND THE COMMISSION TO:

- Explore and further develop common procedures for hits on persons involved in terrorism-related activities which require 'immediate reporting';

INVITES THE COMMISSION TO:

- Determine, with the active participation and agreement of experts from the Member States, good practices in terms of follow-up procedures for hits on persons involved in terrorism or terrorism-related activities, including foreign terrorist fighters under Article 36; incorporate these into the SIS/SIRENE Best Practices Catalogue and amend the SIRENE Manual, if necessary;

INVITES EUROPOL TO:

- Make full use of its current rights to access SIS, VIS and Eurodac with the purpose of enhancing interoperability, while respecting fundamental rights and data protection requirements;
- Ensure the timely availability of QUEST to Member States, with the purpose of enhancing interoperability;
- Step up efforts to identify the travel patterns and connections of persons involved in terrorism or terrorism-related activities and to share the outcome of these efforts with the Member States;

INVITES THE EUROPEAN BORDER AND COAST GUARD AGENCY (FRONTEX) TO:

- Develop training programmes and deliver training courses for border guards focusing on reinforcing checks against relevant databases at external borders and supporting the implementation of common risk indicators;

INVITES CEPOL TO:

- Continue developing training programmes for end-users of SIS, on the basis of the **SIRENE** Manual and Best Practices Catalogue, on the topic of persons involved in terrorism or terrorism-related activities, including foreign terrorist fighters, who are the subject of alerts in SIS.