COUNCIL OF THE EUROPEAN UNION

Brussels, 28 February 2014 (OR. en)

6626/14

JAI 96
ENFOPOL 40
COTER 8

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 are invited to examine the draft Council Conclusions on Terrorism and Border Security 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 peoples;

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 bodies 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 the fight against terrorism as set out 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 further explore that border crossing may offer Member States a "window of opportunity" to fight terrorist activities and therefore to enhance the effectiveness of border management as a tool in ensuring security and in fighting 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 thousands of EU citizens and legally residing third country nationals to conflict areas outside the EU 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 remain vigilant, 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 violence being imported in the EU and therefore;

CONCLUDES

- that the Member States should continue to strengthen the cooperation between law enforcement authorities on terrorism related issues, both at national and EU level;

- that the Member States should involve all relevant national actors such as police, customs, border/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 fighting terrorism;

- that the potential offered by the second generation Schengen Information System (SIS II) for counter-terrorism purposes should be fully exploited by Member States, in particular through a better use of the alerts referred to in Articles 36(2) and 36(3) of Council Decision 2007/533/JHA;

- that the Commission should study the recourse to the possibilities to reintroduce, in exceptional circumstances, border control at a defined geographical area of the internal borders under the Schengen Border Code[1];

- that a stronger 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. This stronger contribution of Frontex should be translated in work programmes and resources;

- that the Member States, Europol and Frontex should enhance common operational initiatives for safeguarding the EU's external borders against terrorist threats;

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1 Regulation (EU) No 1051/2013 of the European Parliament and of the Council of 22 October 2013 amending Regulation (EC) No 562/2006 in order to provide for common rules on the temporary reintroduction of border control at internal borders in exceptional circumstances

- that the Commission should promote the research and development by European industries of privacy compliant technologies which allow as much as possible automated controls at border crossing points while easing the flows of travellers;

- that the Member States, Europol and Frontex enhance their capacity and cooperation to detect 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 seek to finalise their negotiations on the proposed PNR directive[2] by the end of 2014;

- that the examination of the proposals on the Smart Borders Package (Entry/Exit System and Registered Travellers Programme) should be continued in order to develop that system and put it to use as soon as practicable;

- that the legal and technical conditions of a possible access of Member States' law enforcement authorities to the Entry/Exit System should be examined by the Commission and the Member States;

- that preparatory work for allowing Member States' law enforcement authorities access to EURODAC in 2015 should be speeded up by the Commission 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 1168/2011[3];

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[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

[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 immigration 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;

- that the Commission should include security and counter-terrorism in the dialogues and instruments under the EU external migration and asylum policy, the Global Approach to Mobility and Migration (GAMM) partnerships;

- that the Commission should suggest the inclusion into 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 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 and the Commission should study the possibility to modify national and EU legislation in order to criminalise travel aiming at the preparation or perpetration of a terrorist act.