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NOTE

from: Presidency/Counter-Terrorism Coordinator
to: Coreper/Council/European Council
Subject: Implementation of the Action Plan to combat terrorism

1. This note responds to the European Council's request to have a report every six months on the implementation of the Action Plan to combat terrorism adopted in June 2004 (Conclusions of the European Council meeting on 17 December 2004, paragraph 26). The note summarises progress since December 2004, the details of which are set out in ADD 1, and the state of play regarding ratification of the conventions and implementation of the legislative acts seen as having high priority, the details of which are set out in ADD 2.
2. This note follows the order of priorities for 2005 contained in 5657/2/05.

3. **Justice and Home Affairs:**

3.1. Adoption of acts by the Council:

During the first half-year, the Council (JHA) adopted several instruments of importance for the fight against terrorism:

- Council Framework Decision on attacks against information systems (OJ L 69, 16.3.2005, p. 67)
- Council Framework Decision on confiscation of crime-related proceeds, instrumentalities and property (OJ L 68, 15.3.2005, p. 49)
- Council Decision concerning the introduction of some new functions for the Schengen Information System, including in the fight against terrorism (OJ L 68, 15.3.2005, p. 44)
- Council Common Position on the exchange of certain data with Interpol (OJ L 27, 29.1.2005, p. 61)
- [– Draft Council Decision on the exchange of information extracted from the criminal record, entered as an "A" item on the agenda for the JHA Council meeting on 2 June 2005].

In addition, the JHA Council has achieved a general approach on two draft Framework Decisions which can be adopted once Member States which have entered parliamentary scrutiny reservations on them are able to withdraw them:

- Draft Council Decision on the exchange of information and cooperation concerning terrorist offences (December 2004) [NL-FR-UK-IE parliamentary reservations]
- Draft Framework Decision on the application of the principle of mutual recognition to confiscation orders [IT parliamentary reservation]

In addition, the Presidency has stepped up the proceedings of Working Parties and Committees to allow the following three draft legislative acts to be adopted as soon as possible:

- Draft Framework Decision on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union, whose adoption by the end of 2005 at the latest has been called for by the European Council
- Draft Framework Decision on the retention of data, which is on the agenda for the JHA Council meeting on 2 June 2005
- Proposal for a Framework Decision on the European Evidence Warrant.

3.2. Peer review of domestic anti-terrorism arrangements:

All Member States have been reviewed. The Article 36 Committee has taken note of 19 evaluation reports. The final report of the review round will be submitted to the Council, as planned, in October 2005. To date, 10 Member States have informed the Council of the steps they have taken to implement the recommendations contained in the report concerning them. The Presidency has therefore not been able to submit to the Council a summary report on follow-up to the recommendations.

3.3. Information exchange:

The European Council has repeatedly stressed the importance of better information-sharing between the various competent services of the Member State (intelligence services, security services, police forces, customs and judicial authorities) and between the former and the agencies and services of the Union (Europol, Eurojust, European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union and SitCen), be it strategic or operational information. Significant progress has been made in recent months:

– Strategic information:

As the SG/HR announced in his report to the European Council on 17 December 2004, SitCen has intensified its collaboration with the Counter Terrorism Group (CTG) and Europol. The reinforcement of its staff through the recruitment of security service experts and the imminent conclusion of a collaboration agreement with Europol will enable SitCen henceforth to present to the competent Council working parties threat analyses containing information gathered by the intelligence, security and police services. The analysis of the phenomena of radicalisation and recruitment is the first instance of this. Developing this analytical capability will make it possible under the United Kingdom Presidency to rationalise the proceedings of the Council's working parties with competence in the terrorism field, so as to focus their work on drafting political recommendations for submission to the Council.

– Operational information:

In its report to the Council (9156/05), Europol stresses the increasingly operational nature of its analysis file on terrorism, supplied with police data, which is being used in 21 current investigations across several Member States. The report also sets out recent developments relating to the composition and activities of the Counter-Terrorist Task Force, which the European Council decided to reactivate in its Declaration on combating terrorism of 25 March 2004.

Eurojust, in its report to the Council (9157/05), notes that the flow of information sent to it, while increasing, still fails to meet the current legal requirement provided for by the Council Decision of 19 December 2002 on the implementation of specific measures for police and judicial cooperation to combat terrorism, in accordance with Article 4 of Common Position 2001/931/CFSP (OJ L 16, 22.1.2003, p. 68), or the future requirement contained in the proposal for a Council Decision on the exchange of information and cooperation concerning terrorist offences (15599/04). The Presidency suggests that the question be examined by the Council under the United Kingdom Presidency. Two dossiers offer opportunities for this: the examination of the Eurojust report for 2004 and that of the interim report on the peer evaluation round on methods of information exchange between Member States and between Member States and Europol.

– Database access:

Pending the Commission's legislative proposal on the realisation of the principle of availability (expected by the end of 2005), the JHA Council, at its meeting on 14 April 2005, tasked the MDG with examining, by the end of 2005, the modes of access, in accordance with the principle of availability, that should be specified for six types of database (7641/2/05 REV 2).

3.4. Operational cooperation:

- Eurojust: in its report to the Council, Eurojust notes an encouraging number of occasions where it has been called on to coordinate terrorism-linked prosecutions, but it also states that its office remains under-used.

- Police Chiefs Task Force:
In the context of COSPOL (Comprehensive Operational Strategic Planning for the Police), the Police Chiefs Task Force agreed on a UK draft initiative designed to strengthen community policing (6425/05).
- Customs cooperation: the customs authorities of the Member States have a key role to play as regards the security of the supply chain. The relevant Council bodies are therefore invited to examine how to improve and simplify checks on the flow of goods, particularly by intensifying the collection and analysis of information relating to international trade.
- Standing Committee on Internal Security: to prepare for the entry into force of the Constitutional Treaty, the Presidency referred a discussion paper to the Article 36 Committee and the JHA Council on the composition, remit and operation of the Standing Committee on Internal Security provided for by Article III-261 of the Constitutional Treaty (6626/05). A meeting bringing together the current and forthcoming chairpersons of the Article 36 Committee, the Strategic Committee on Immigration, Frontiers and Asylum, the Police Chiefs Task Force, the College of Eurojust, the Director of Europol and the Director of SitCen was held on 13 May 2005, as called for by the Hague Programme.

3.5. Implementation:

While, as shown in the table in ADD 2, some progress has been made with ratification and transposition, it must nevertheless be noted that several deadlines set by the European Council in its March 2004 Declaration on combating terrorism have not been met. The following is a non-exhaustive list of the instruments concerned:

- The Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union (deadline set by the European Council = December 2004: 15 ratifications notified to the Council)

- Protocol of 16 October 2001 to the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (deadline set by the European Council = December 2004: 13 ratifications notified by the Council)
- Council Framework Decision of 13 June 2002 on Joint Investigative Teams (deadline set by the European Council = June 2004: 4 Member States have yet to transpose the Framework Decision).
- Council Framework Decision of 13 June 2002 on combating terrorism: the deadline set for transposition has not been met by all the Member States. Some Member States have forwarded incomplete information. However, a number of Member States have provided no information at all on national implementation of the Framework Decision. The Commission plans to present a further report at the end of 2005. The entry into force of these instruments will enable the Member States and the Union to combat terrorism more effectively. By way of example:
 - once the second Protocol amending the Europol Convention has been ratified by all Member States, it will be legally possible for Europol to take part in joint investigative teams;
 - once the third Protocol amending the Europol Convention has been ratified by all Member States, it will be possible for Europol to work with the competent agencies in the United States, giving them access to analysis files to investigate the history of transactions carried out on frozen bank accounts, as provided for by the Dromoland Declaration adopted at the EU/US summit on 26 June 2004.

4. **Financing of terrorism:**

The Presidency has worked to implement the strategy adopted by the European Council at its meeting on 17 December 2004. This has led inter alia to the following specific results:

- regarding legislation, the completion of proceedings preparatory to the adoption of the proposal for a third Directive on money-laundering and the proposal for a Regulation concerning controls on movements of cash at external borders.

- a series of actions aimed at improving the effectiveness of the system of financial sanctions against terrorists and terrorist organisations, covering inter alia the asset-freezing mechanism envisaged by UNSC Resolution 1267 (1999) or the European Union's autonomous system, set up pursuant to UNSC Resolution 1373 (2001). In this context attention should be drawn to the second ad hoc meeting with the countries of the Gulf Cooperation Council (Abu Dhabi, 5 to 8 March 2005), the seminar organised by the Presidency in New York on restrictive measures (22/03/2005), the EU/US seminar organised by the Presidency in Luxembourg on the freezing of terrorist assets (28 and 29/04/2005), the work of the Working Party on External Relations on the implementation of restrictive measures against terrorism and the updating of the list of terrorists and terrorist organisations on 7 March 2005.

At the end of June 2005 Coreper will be called upon to evaluate the implementation of the Union's strategy on the financing of terrorism on the basis of a report from the Counter-Terrorism Coordinator and the Commission, an analysis by SitCen and a Europol report.

5. Civil Protection and Protection of Critical Infrastructure

- The Commission was asked to forward to the Council its second report evaluating the capabilities that Member States could provide for the Civil Protection Mechanism in the event of a terrorist attack. It will then be for the Council to take a position and for the Member States to deliver on their solidarity commitments. The Council's attention should be drawn at this stage to the need to improve information-sharing among Member States on vaccine supplies available in the event of a bio-terrorist attack.
- The Council has adopted Decisions approving the conclusion of the Conventions on Early Notification of a Nuclear Accident and on Assistance in the case of a Nuclear Accident or Radiological Emergency.

During the second half of 2005, the Council is to:

- examine the Commission Communication on "Improving the Civil Protection Mechanism" so as to make a very short-term reaction possible;
- examine the Commission proposal to establish a programme for protection of critical infrastructure with potential trans-boundary effects;
- examine a proposal on intermodal security;

- adopt a port security Directive;

Finally, we stress the need to improve cooperation between police/security/intelligence services and emergency services so that the threat analyses of the former can contribute to the development of the risk analyses of the latter.

6. External relations

In external relations, the EU has reaffirmed its support for the United Nations and for its key role in the fight against terrorism. In this context, the EU welcomes the adoption of the Convention on the suppression of nuclear terrorism and is prepared to support the adoption of a world-wide Convention as soon as possible. In its dialogue with its partners, the EU continues to promote universal ratification and effective implementation of the United Nations instruments on combating terrorism.

The Union has also pursued very positive contact with the UN's CTED (Counter-Terrorism Committee Executive Directorate). In that context, in order to improve international coordination of its initiatives, it took part in three CTED missions (Morocco in March 2005, Kenya in May 2005, and Albania in June 2005) evaluating the state of implementation of Resolution 1373 (2001).

The regional dimension in combating terrorism was also taken into account by the EU in its external relations. The EU continued its dialogue with the relevant regional organisations and with Euromed partners. Cooperation in combating terrorism was included in the action plans approved by the Union and its partners in the framework of the new Neighbourhood policy. The Counter-Terrorism Coordinator and the Commission encouraged regional coordination in this area.

Cooperation with the United States has been extremely positive. The Union and the United States have stepped up their dialogue on the financing of terrorism. A formal EU troika/US meeting on terrorism and an informal EU troika/US meeting on the financing of terrorism were held in Brussels in May 2005. Member State experts have participated, with a view to coordination, in a mission to evaluate technical assistance requirements in the fight against the financing of terrorism organised by the United States. Participation in a similar mission will take place shortly.

The Commission and the Presidency, assisted by the Counter-Terrorism Coordinator, met their counterparts from the Homeland Security Department and the State Department in the context of the Policy dialogue on border and transport security.

Measures to enhance cooperation in countering terrorism were included in the road maps for the creation of the four Common Spaces agreed between the EU and Russia. On the Counter-Terrorism Coordinator's initiative, Russia, Europol and Eurojust agreed to intensify their relations.

As regards cooperation with third countries and technical assistance, the European Community provides substantial assistance to third countries to help them implement the UN Resolutions involved. The EU is also pursuing dialogue with a number of high-priority countries in order to strengthen cooperation in the fight against terrorism, both at political level and in the area of technical assistance. Evaluation missions to two priority countries will take place during June.

On the first anniversary of the Madrid attacks on 11 March 2004, the European Union gave its support to the holding of an international summit on "Democracy, Terrorism and Security" at which the Madrid Agenda was approved. The promotion of the principles and recommendations contained in the Madrid Agenda can make a useful contribution to reinforcing international cooperation in the fight against terrorism.

7. ESDP

On 23 May 2005, the Council endorsed the first Report on the implementation of the Conceptual Framework of the ESDP dimension in the fight against terrorism as a living document that should be updated regularly. The report makes specific recommendations to be implemented as soon as possible for each action point in the Conceptual Framework.

In addition, at the Presidency's request, on 7 March 2005 the EU Institute for Security Studies organised a seminar on the contribution of the ESDP to combating terrorism.

8. Radicalisation and recruitment

Largely on the basis of an analysis by SitCen, [COREPER/the Council has identified] a series of guidelines to be examined in greater detail under the UK Presidency with a view to drafting the strategy which the European Council, at its meeting on 17 December 2004, asked the Council to present to it. A Commission communication on violent radicalism and a Europol report will enrich discussions over the coming weeks.

9. Conclusion

The Council is asked to examine this report and its two Addenda and to forward it to the European Council with any recommendations it may decide to make.
