



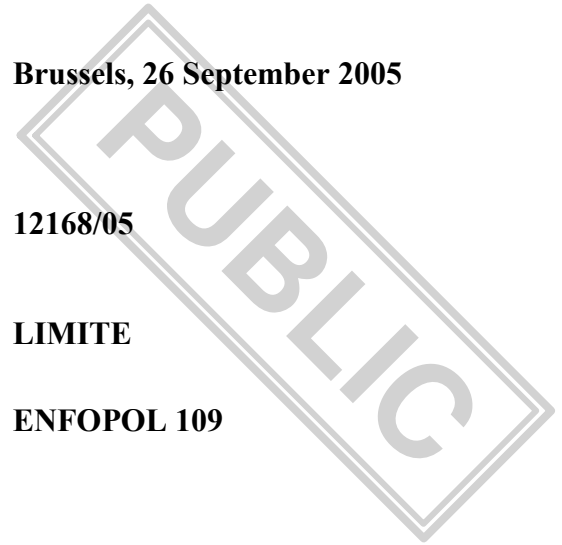
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NOTE

from: Presidency in cooperation with the Counter Terrorism Coordinator
to: Working Party on Terrorism

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Subject : Final report on the Evaluation of National Anti-Terrorist Arrangements:
Improving national machinery and capability for the fight against terrorism

Delegations find attached the final report on the Evaluation of National Anti-Terrorist Arrangements.

Delegations are invited to address written comments to the Presidency and the Council Secretariat by latest 30 September 2005.

The comments should be addressed to David Makinson (David.Makinson@homeoffice.gsi.gov.uk); Benjamin Saoul (Benjamin.Saoul@fco.gov.uk); Niels Bracke (Niels.Bracke@consilium.eu.int) and Nina Tuhkunen (Nina.Tuhkunen@consilium.eu.int).

FINAL REPORT ON THE EVALUATION OF
NATIONAL ANTI-TERRORIST ARRANGEMENTS:
IMPROVING NATIONAL MACHINERY AND CAPABILITY
FOR THE FIGHT AGAINST TERRORISM

A Introduction

1. As a consequence of the attacks in the United States of 11 September 2001, the JHA-Council¹ of September 2001 launched an assessment of national anti-terrorist arrangements (peer evaluation) on the basis of considerations of a legislative (...), administrative and technical nature².
2. The interim report³ released in November 2004 was based on the evaluation of 15 Member States. The final report now includes all 25 Member States⁴.
3. The objectives of the evaluation were
 - to provide an analysis of Member States' structures and capabilities for the fight against terrorism,
 - to highlight good practices and to give recommendations where national structures needed to be improved and
 - to identify practices likely to be possibly applied in other Member States in addition to recommendations at EU level⁵.

1 Doc. 12156/01 JAI 99 of 25 September 2001

2 Doc. 12156/01 JAI 99 of 25 September 2001

3 The 2626th Council Meeting Justice and Home Affairs held in Brussels on 2 December 2004 "took note of an Interim Report on the Peer Evaluation of National Anti-Terrorist Arrangements (14306/3/04 REV 3) and asked the 15 Member States evaluated to report by June 2005 on the measures taken with regard to the recommendations of the report". The European Council held in Brussels on 16 and 17 December 2004 (doc. 16238/1/04 REV 1 CONCL 4) welcomed "the peer evaluations in 15 Member States of the national structures on combating terrorism to be completed for the 25 by September 2005" and called upon to report on implementation of recommendations aimed at strengthening these structures". With respect to the implementation of recommendations, see also the Luxembourg Presidency and Counter Terrorism Coordinator joint letter of 24 February 2005.

4 In October 2005, Bulgaria and Rumania will be evaluated on their request.

5 Doc. 14306/3/04 REV 3 ENFOPOL 155 of 23 November 2004. "National good practices with a significance for all or most other Member States were identified as best practices and dealt with as recommendations in (the interim) report" and in the final report.

4. The evaluation focused on:
- the national responsibilities at the level of Government Ministries, security and intelligence, and law enforcement agencies, and
 - the level of national and international coordination and cooperation, including exchange of information, in particular that relating to Islamist extremist terrorism.

B Summary

5. Member States are primarily responsible for the fight against terrorism. A wide range of situations exists within the EU and each Member State's counter-terrorism policy/strategy is part of and depends upon its constitutional and legal framework⁶. Other variables are historical background and respective perceptions of the terrorist threat including in particular the experience of the fight against domestic and international terrorism.
6. In the aftermath of the terrorist attacks of 11 September 2001, Member States reinforced their counter terrorism machinery in addition to enhancing international cooperation. They also assessed their counter terrorism capacity, adopting new laws and allocating additional financial or personnel resources to strengthen their counter terrorism machinery, with a special focus on the:
- exchange of information;
 - coordination and cooperation on both national and international levels;
 - the protection of critical infrastructure, including the identification and protection of vulnerabilities, and
 - crisis and consequence management.
7. In general terms, Member States with longstanding experience in fighting terrorism have developed wide-ranging counter-terrorism strategies involving all relevant Government Ministries and agencies; have developed their capabilities to assess the threat; and are taking steps to improve their intelligence gathering capabilities.

⁶ cf. doc. 5339/1/03 REV 1 ENFOPOL 2

8. In addition, work at European level has usefully supplemented Member States' domestic efforts. The creation of the Counter-Terrorism Task Force (CTTF) within Europol; that of the CT analytical capability within the EU Situation Centre, and the creation of the Counter-Terrorism Group (CTG) are notable examples. Implementation of the Union acquis also helped raise standards in those Member States which joined the Union in 2004.
9. Member States have been evaluated by means of two questionnaires⁷ and on-site visits from June 2003 to May 2005 by teams consisting respectively of experts from Member States (2), Commission (1), General Secretariat of the Council (2) and Europol (1).

C Recommendations

10. The individual country evaluations identified good practices in all Member States and identified recommendations for action for each Member State.
11. Recommendations aim at providing added value or/and new instruments to law enforcement bodies, security services and other Government authorities, in order to develop Member States' capabilities in line with the characteristics and significance of the threat from international terrorism. Legal and structural changes have also been recommended where needed for this purpose.
12. In addition to the recommendations as mentioned in the country reports, this report aims to draw out of those evaluations those elements of good practice which might usefully be applied in all (or most) Member States.

⁷ Doc. 11722/1/02 REV 1 ENFOPOL 113 CATS 52 COTER 44 and doc. 6337/2/03 REV 2 ENFOPOL 11 RESTREINT UE

13. In general terms, recommendations have been identified from an operational and practical perspective. It is a matter of relevance for each Member State to implement recommendations with regard to its national legal and political framework. Recommendations are to be considered in the national context taking into account political implications. Some recommendations aimed at closing security gaps and/or enhancing the existing counter terrorism capacity may require constitutional, legal or structural changes to current national arrangements.
14. In the wake of the evaluation, some Member States have already implemented recommendations as listed in country reports and the interim report or are in the process of implementing them, including new legislation when needed. Without prejudice to the final report on the implementation of recommendations as required by the Council and previous presidencies as well as the EU Counter Terrorism Coordinator, much as already been done from this perspective ⁸. An addendum attached to this report lists the measures already decided and/or implemented in connection to the peer evaluation in particular.
15. The recommendations are divided into three parts as follows:
- **‘Core’ recommendations at Member States’ level**, which are those linked directly to the field of the evaluation;
 - Coordination (recommendations 1, 2 and 3)
 - Cooperation (recommendation 4)
 - Threat assessment, information collection and access to databases (recommendation 5, 6 and 7)
 - Police training and border control (recommendations 8 and 9)

⁸ "(...) strengthened national antiterrorist arrangement in each Member State directly or indirectly enhance the security of the EU as whole and vice versa" (doc. 14306/3/04 REV 3 ENFOPOL 155)

- **other significant recommendations at Member States' level**
 - Use of intelligence as evidence (recommendation 10)
 - Providing the legal base for a range of investigative techniques (recommendation 11)
 - Secure communications systems and security clearances (recommendation 12)
 - Crisis management (recommendation 13)
- **and recommendations for action at EU level.**

Working with Europol, Eurojust, the Situation Centre and CEPOL (recommendations 14, 15 and 16).

Core Recommendations at Member States Level

Coordination

Experts and relevant agencies in Member States identified coordination and cooperation as issues whose importance is crucial: Government ministers/ministries and a wide range of agencies (law enforcement bodies, security and intelligence agencies, etc) are involved in the fight against terrorism as well as in the area of the fight against the financing of terrorism.

Recommendation 1: Political co-ordination of counter-terrorism efforts

Member States should consider setting up a national structure at ministerial level responsible for drawing up the national counter-terrorism strategy. This structure should be responsible for national strategic policy on the prevention of terrorism; on the pursuit and investigation of terrorists by the security and law enforcement authorities; on the protection of critical infrastructure and on the development national crisis and consequence management arrangements.

From this perspective, to ensure coordination/cooperation as well as the coherence of the response to terrorism,

Recommendation 2: Appointment of a Counter-Terrorism Co-ordinator

Member States should consider appointing a high level national authority, such as a national Counter Terrorism Coordinator whose role should be to coordinate governmental as well as law enforcement and security/intelligence agencies' counter-terrorism activities.

To complement this high level coordination,

Recommendation 3: Co-ordination of prosecutions

Member States should consider establishing an authority (e.g. a National Prosecutor) with responsibility for coordination among prosecution services as well as the exchange of information from judicial authorities to law enforcement bodies and security services.

Inter-agency co-operation

Experts also identified unanimously inter-agency cooperation as another essential aspect in fighting terrorism on a day to day basis in the area of operational activities. From that perspective, a coordinating body/mechanism is a very useful way to promote a joined up approach to terrorism and counter terrorism and an overall coordinated response to terrorism. Coordinating bodies/mechanisms are fully part of the national counter terrorism machinery where set up.

Recommendation 4: Inter-agency co-operation

Member States should consider putting in place national co-ordination arrangements to ensure strong inter-agency co-operation, and to ensure that all competent national authorities have access to the information and intelligence that are needed. One possibility would be for Member States to set up a national coordination arrangement for the day to day exchange of information in the field of prevention, disruption and investigation, involving all security and intelligence services and law enforcement agencies engaged in counter-terrorism.

In addition to this, Member States are recommended to facilitate the exchanges of staff with a view to enhancing coordination and cooperation, especially where formal structures are not available.

Threat assessment, information collection and access to databases.

An effective inter-agency cooperation allows for the assessment of the terrorist threat on a multi-agency basis and optimised information exchanges.

Recommendation 5: All sources threat assessments

Member States should ensure that national arrangements allow for a coordinated assessment of the terrorist threat drawing on all available sources. Those responsible for producing threat assessments should respond to the requirements of their customers. Assessments should be disseminated in a timely fashion.

In the area of threat assessment, a prerequisite is optimised information collection. Security services also need access to relevant databases.

Recommendation 6: Information collection

It is recommended that Member States competent authorities optimise the collection and exchange of information both nationally and internationally on all aspects of the terrorist threat with collection priorities reviewed under a national requirements system.

Recommendation 7: Access to databases

In order to detect and identify terrorists at an early stage, as well as the terrorist networks and individuals supporting them, Member States should consider putting in place an appropriate legislation allowing security services to get access to law enforcement and other relevant governmental agencies/bodies' databases. This access would be strictly restricted to the need to know and should respect data protection requirements. Where appropriate, Member States should encourage security services to provide law enforcement bodies with information relevant to law enforcement.

Police training and border control

Police training and border control are areas of importance and police at local (and community) level as well as border guards must be appropriately engaged in counter terrorism efforts in particular in terms of information collection.

Recommendation 8: Police training

Member States should ensure that their police forces, including at local (and community) level, are fully engaged in the fight against terrorism and that they receive appropriate training and briefing on the current threat.

Recommendation 9: Border control

Counter terrorism aspects of border control should be developed, including in terms of information collection and systematic information sharing with law enforcement bodies and security agencies.

Other significant recommendations at Member State level ⁹.

Use of intelligence as evidence in Court

Due to the existing legal framework, the use of intelligence as evidence in Court is of particular importance in some Member States ¹⁰.

Recommendation 10: The use of intelligence as evidence

The use of intelligence as evidence in courts is primarily an issue to be dealt with by national authorities. However, its use could undoubtedly have a impact in reinforcing national capacity to prosecute those accused of terrorist activities. Member States are invited to pay attention to this issue and to take necessary steps where needed.

Providing the legal base for a range of investigative techniques

The security services' first challenge is to prevent and disrupt terrorist activities. To achieve this objective, information collection must be based on an appropriate legal basis to allow relevant agencies proper intelligence gathering.

Recommendation 11: Providing the legal base for a range of investigative techniques

Member States should provide their competent authorities with the legal base necessary for them to take full advantage of the range of investigative techniques, both technical and non technical.

⁹ Given that the EU is producing separately a strategy on radicalization and recruitment, the final report no longer includes recommendations in this area.

¹⁰ Recommendation 10 only recommends to pay attention to this issue where existing legal system allows for the use of intelligence as evidence in Court in order to reinforce the counter terrorism capacity to prevent and disrupt terrorist activities, including radicalisation and recruitment processes.

Secure communications systems and security clearances

Secure communications systems and security clearances facilitates inter-agency cooperation, information sharing and access to databases.

Recommendation 12: Secure communications systems and security clearances

Where these do not already exist, Member States should provide their competent authorities with secure communications systems to communicate nationally and internationally. Member States should also ensure that those who need to read and handle confidential information, including their nationals working in EU institutions, hold an appropriate national security clearance.

Crisis management

Recommendation 13: Crisis management

Member States should establish national crisis management arrangements, which would bring together all relevant Government Ministries and agencies, in order to promote a rapid and co-ordinated response to terrorist attacks. These national centres should develop close cooperation among themselves to prepare and response to cross border crisis. Contingency planning for the continuity of Government should be put in place. The crisis management arrangements and contingency plans should be regularly tested in counter-terrorism exercises including international exercises.

Recommendations at EU level

Working with Europol, Eurojust, the Situation Centre and CEPOL complement Member States activities while respecting respective competences.

Recommendation 14: Working with Europol and Eurojust

Member States should support and make best use of Europol's existing terrorism analytical work files, and optimise bilateral information exchanges, including through their Europol national units. Equally they should make full use of Eurojust in terrorist cases in compliance with the Council Decision on the exchange of information and cooperation concerning terrorist offences.

Where obstacles exist, Member States should consider the creation of ad hoc working groups at national level involving representatives of their competent authorities as well as representatives of Europol and/or Eurojust.

Where appropriate, the creation of joint investigation teams should be considered with the participation of Europol and Eurojust.

Recommendation 15: Working with the Situation Centre

Member States should optimise their contributions to the SitCen in order to improve SitCen's strategic analysis. Where obstacles to the provision of information to the SitCen exist, Member States should consider setting up ad hoc working groups at national level, involving representatives of the SitCen. The SitCen's threat assessments should form an integral part of the counter-terrorism policy making process at EU-level.

Recommendation 16: Working with the European Police College (CEPOL)

CEPOL should ensure that political priorities of the Union are taken into account in its working programme. Together with Europol, and bearing in mind the work being done on the COSPOL, it should develop training courses as well as awareness programmes on counter-terrorism for law enforcement officials from around the EU. Such programmes should promote mutual trust between law enforcement authorities. CEPOL should consider the possibilities for supporting staff exchanges between the relevant competent authorities of the Member States.

D Conclusion and next steps

16. The peer evaluation process has been a very valuable tool in helping Member States assess their national counter-terrorism arrangements. It was also an excellent opportunity for Member States' experts to identify good as well as best practices abroad and to learn from other national counter-terrorism arrangements.

 17. In order to ensure that the benefits of the peer evaluation process are maximised, a follow-up evaluation round is recommended. The Presidency, together with the Counter Terrorism Coordinator, will suggest possible topics to the Article 36 Committee.
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