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"I" ITEM NOTE

from : Counter-Terrorism Coordinator
to : COREPER/Council/European Council

Subject : Implementation of the Action Plan to Combat Terrorism

1. This report responds to the European Council's request for a report every six months on the implementation of the Action Plan to combat terrorism adopted in June 2004. The report summarizes progress since June 2005 and the state of play regarding ratification of the conventions and implementation of the legislative acts regarded as having priority, the details of which are set out in ADD 1. In particular, the report includes progress on the key priorities outlined in the Council Declaration on the EU response to the London bombings¹, which highlighted the main dossiers and gave added urgency to the task of making progress on them.

¹ Doc. 11158/05.

2. To prevent and combat terrorism is one of the most important responsibilities of the Member States and of the Union. In March 2004 the European Council adopted a Declaration on combating terrorism, setting out priority actions for the Union. The Heads of State or Government also pledged that the Member States would act jointly in a spirit of solidarity if one of them is the victim of a terrorist attack. In June 2004 the European Council adopted a detailed Action Plan against terrorism.
3. Over the past 18 months good progress has been made with implementation of this Action Plan, and practical results have been obtained. Examples include the level of security at airports, which has been considerably enhanced through the implementation of Community rules. In the fight against terrorism and other forms of major crime frequent and effective use is being made of the European Arrest Warrant. Information exchange and cross-border co-operation between national authorities charged with internal security have increased, with Europol, Eurojust, the Situation Centre and (outside the EU framework) the Counter-Terrorist Group playing an important role. Acting on the best practices identified in the EU peer review several Member States have strengthened their domestic arrangements in the fight against terrorism.
4. In the past six months further progress has been made. Important legal instruments such as the third Money Laundering Directive¹ and the Directive on Enhancing Port Security² have been adopted, and discussions on other instruments are at an advanced stage. The Commission issued several new proposals, including on information exchange and protection of personal data. The Peer Evaluation exercise has been completed. A strategy against radicalisation and recruitment into terrorism has been presented to the Council. FRONTEX, the European Borders Agency, became operational. EUROPOL and EUROJUST have stepped up their support to national law enforcement authorities. The Council and the Commission have

¹ OJ L 309, 25.11.2005, p. 15

² OJ L 310, 25.11.2005, p. 28

continued to benefit from SITCEN's analyses of the terrorist threat. Proposals for EU crisis co-ordination arrangements, which are directly relevant to the fight against terrorism, have been prepared. On the external side, efforts have intensified to deliver technical assistance to priority countries, close co-operation has been maintained with the UN and dialogue with key partners has continued. Building on four special sessions in Coreper and a similar session at the informal meeting of JHA Ministers in Newcastle, a proposal for an EU Counter-Terrorism Strategy has been presented to the Council.

5. However, there is still much to be done. A number of instruments which have been adopted have still to be implemented by all Member States, in some cases preventing their entry into force in the Union. The flow of information to EUROPOL and EUROJUST, while improving, is still limited. Deadlines for a Commission Communication on critical infrastructure protection and on an independent review of efforts to combat terrorist finances have proved unrealistic. Work in these fields needs to be accelerated, as does cross-border co-operation in the field of consequence management. While several terrorist attacks in EU Member States have been prevented, Europe remains vulnerable, as tragically demonstrated by the attacks on London (7 July 2005) and Madrid (11 March 2004). The nature of the terrorist threat facing Europe is evolving. In addition to the threat from outside, Europe is confronted with informal loose networks of extremists operating within its borders. Other challenges include the way terrorists use the Internet, and the efforts by some to obtain and employ non-conventional weapons. To address this changing threat counter-terrorism co-operation in the EU therefore must be further intensified and our strategy needs to be adapted accordingly. The following is a summary of progress on key dossiers in the Action Plan.

Peer evaluation of national arrangements

6. Member States are primarily responsible for the fight against terrorism. National arrangements therefore are of critical importance to the effectiveness of efforts to prevent and combat terrorism in Europe. The evaluation of all Member States' national arrangements in the fight against terrorism has been completed, and best practices have been identified. The final report is before the Council. Key recommendations address, *inter alia*, the need for inter-agency co-operation, information exchange, and national co-ordinating structures. The implementation of these recommendations by Member States will be the priority for 2006; individual reports by member States on implementation will be discussed in the Council next year.
7. Two other peer evaluation exercises relevant for the fight against terrorism are in progress:
 - i. The evaluation of the exchange of information and intelligence between EUROPOL and the Member States and among the Member States. An interim report on the evaluation of 15 Member States has recently been issued¹.
 - ii. The Council has recently decided to launch a further peer evaluation type exercise concerning the practical operation of the European Arrest Warrant. This process, which will begin by on-site visits in March 2006, will inform the Member States, the European Commission and the Council on how the European Arrest Warrant is working in practice and of any adjustments that may need to be made.

Exchange of Information

8. The SITCEN analytical reports have served as valuable information for Council bodies and as a basis, where appropriate, for policy-making. Good use of the Siten's threat assessments has been made in formulating specific policy recommendations. A cooperation arrangement between Europol and the General Secretariat of the Council² which allows for regular information exchange between EUROPOL and SITCEN became operational in October 2005.

¹ Doc. 14292/05

² Doc. 12332/1/05

9. During the period under review, the Council adopted two instruments on exchange of information relevant to the fight against terrorism:
- i. Council Decision on the exchange of information extracted from criminal records¹. This instrument is intended as an interim measure to improve existing mechanisms for exchanging information held in criminal records, pending proposals from the Commission for a comprehensive computerized system.
 - ii. Council Decision on the exchange of information and cooperation concerning terrorist offences². This instrument obliges Member States to make available to each other and to Europol and Eurojust data relating to pending investigations and prosecutions in the field of terrorism.
10. In addition, in accordance with the extraordinary session of the Council on 13 July 2005, following the London bombings on 7 July, the Presidency stepped up the proceedings of Working Parties and Committees to allow the following three draft legislative acts to be adopted as soon as possible:
- i. 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;
 - ii. draft Framework Decision on the retention of telecommunications data, which is on the agenda for the JHA Council meeting on 2 December 2005;
 - iii. draft Framework Decision on the European evidence warrant.

¹ Doc 11569/05

² OJ L 253, 29.9.2005, p. 22

11. The Council has also begun examination of proposals from the Commission on draft Framework Decisions on the principle of availability and on data protection for police and judicial cooperation in criminal matters. The JHA Council has also agreed a general approach on the draft Framework Decision on the application of the principle of mutual recognition of confiscation orders. This will be adopted once the parliamentary scrutiny reservation by one Member State (IT) has been withdrawn.

Access to Databases

12. Discussions are now underway in the relevant Council Working Party on proposals for a new legal basis for the Schengen Information System (SIS II). The speedy adoption of the relevant draft Regulation and Council Decision is imperative in order for SIS II to be operational by 2007. Making SIS II operational will introduce a number of new functionalities to the system which are important in the fight against terrorism.
13. Negotiations are continuing on the Draft Regulation concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas. Work is proceeding in parallel on planning for the geographical roll out of the VIS. In addition the Commission adopted on 24 November 2005 a communication on improved effectiveness, enhanced interoperability and synergies among European databases in the area of Justice and Home Affairs¹ as well as a proposal for a Council Decision concerning access for consultation of the VIS by the authorities of MS responsible for internal security and by Europol for the purpose of the prevention, detection and investigation of terrorist offences and of other serious offences². Current progress needs to be maintained if the deadline of the end of 2006 for bringing the VIS into operation is to be met.

Joint Investigation Teams

14. An informal network of experts has been established. Eurojust, in co-operation with Europol, is planning to hold a meeting with experts on 23 November to discuss the promotion of JITs and this will be taken forward by the Police Chief's Task Force.

¹ Doc. 15122/05

² Doc. 15142/05

Common standards for ID cards

15. Work is being taken forward on the application of biometric identifiers for documents such as residence permits and national identity cards.

Lost and stolen explosives

16. The Commission has submitted to the Council a Communication on measures to ensure greater security in explosives, detonators, bomb-making equipment and fire-arms. Key recommendations have been elaborated based on the Communication and, subject to approval by the Council, will be included in the revised EU CT Action Plan.

EUROJUST

17. Eurojust has taken on 11 new terrorism related cases since January¹. However, in its report to the Council², EUROJUST notes that the flow of information sent to it, while increasing, does not yet 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. The Presidency has organised discussion of these issues in the context of a visit to EUROJUST on 9 December 2005. Examination of the EUROJUST report for 2005 and the interim report on the peer evaluation round on information exchange between Member States and between Member States and EUROJUST provide opportunities for addressing this issue.

¹ Doc. 9157/05

² Doc. 9157/05

EUROPOL

18. EUROPOL is currently supporting 21 national investigations into islamist terrorism¹. EUROPOL cannot function without the input and full support of all Member States. This applies in all fields of activity of EUROPOL, but notably as regards the fight against terrorism. It is thus up to Member States to implement the demands of the European Council regarding EUROPOL's role in the fight against terrorism by providing the necessary information and expertise, in particular to EUROPOL's Counter-Terrorism Task Force.

FRONTEX

19. The European Borders Agency has been established and is now operational.

Police Chiefs Task Force

20. 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 give local police better training in preventing terrorism². To that end a manual has been drawn up, which will in due course be available online so that it becomes a practical tool for local police.

Customs

21. The customs authorities of the Member States have a key role to play in the fight against terrorism as regards the security of the supply chain. In April 2005, the Council adopted amendments to the Community Customs Code in relation to checks on the flow of goods by introducing a system of pre-arrival and pre-departure declarations and by using an improved system of data communication and information sharing between Member States.

¹ Doc. 7800/05

² Doc. 6425/05

Implementing rules to these amendments are currently being discussed at Committee level. In September/October 2005, a successful multi-agency joint customs operation ("Protect") took place with the objective of targeting high risk sea containers moving into the EU. A proposal to modernise the customs code, aiming i.a. at further strengthening and structuring the measures to secure the supply chain, is expected to be presented to the Council before the end of 2005. In the area of supply chain security, various initiatives are ongoing on a bilateral (e.g. container security) and multilateral (WCO framework of standards) basis, in which the Community and Member States are actively involved.

Horizontal Coordination

22. The Hague Programme calls for the organisation of a joint meeting every six months between the chairpersons of the Article 36 Committee, the Strategic Committee on Immigration, Frontiers and Asylum and representatives of the Police Chiefs Task Force, EUROJUST, EUROPOL, the EBA (FRONTEX), the Commission and the SITCEN to gain practical experience with coordination of operational activities by law enforcement agencies and other agencies. The Austrian Presidency has announced it will hold such a coordination meeting.

Protection of critical infrastructure

23. An important step forward was achieved by the adoption of a Directive on enhancing port security¹. On aviation security, a review of Regulation EC 2320/2002 showed that security at EU airports has been considerably enhanced through the implementation of EU rules. However, in many Member States the number of national inspectors proved insufficient². The Commission proposed a Regulation extending Community competence to cover in flight security and air traffic from third countries.

¹ OJ L 309, 25.11.2005, p. 28

² Doc COM (2005) 428 final

24. The Council and the Commission started preparatory work on a European Programme for the Protection of Critical Infrastructure (EPCIP). Following discussion with Member States' experts the Commission decided to issue a Green Paper for consultation rather than a Communication. The deadline set by the European Council in December 2004 for EPCIP to be established before the end of 2005 was therefore unattainable. Considerable efforts will now be required to meet the new deadline of mid-2006 for agreement about the Programme.

Civil protection

25. Following examination of the Commission communication on "improving the civil protection mechanism"¹, the Council adopted conclusions on improving the European Civil Protection Capabilities², which aim at reinforcing the Union's rapid reaction capacity to respond to all types of disasters inside or outside the EU, including terrorism.
26. The Council bodies also started examination of the Commission proposal on a rapid response and preparedness instrument for major emergencies in the EU³. In addition, the Presidency started a series of expert meetings with a view to developing a common understanding on the methodologies for risk assessment. For its part, the Commission submitted to the Council its final report on the assessment of the civil protection assistance available through the Civil Protection Mechanism in case of major terrorist attacks in the Union⁴. The Commission's analysis points at several key areas which clearly require Council decisions.

¹ Doc 8430/05

² Doc. 10576/05

³ Doc. 8436/05.

⁴ SEC (2005) 1406 final RESTREINT UE.

Crisis Coordination

27. In line with the Council Declaration of 13 July 2005 on the London bombings, consideration has started of arrangements for the sharing of information, coordination and collective decision making in emergencies, particularly for terrorist attacks on more than one Member State. A report to Council by December 2005 makes proposals for arrangements which will be taken forward under the Austrian Presidency with a view to finalizing operational procedures by June 2006¹.

International Dimension

28. The EU continued to promote the key role of the UN in the fight against terrorism. It supported strong language in the UN World Summit on Counter-Terrorism and continues to work for the adoption of the draft Comprehensive Convention on international terrorism both in New York and in dialogue with its partners. All EU Member States signed the Convention for the Suppression of Acts of Nuclear Terrorism in September. The EU welcomed the adoption of UNSC Resolution 1624 and is committed to address further the issue of incitement into terrorism.
29. The EU also continued to support the role of the UN CTED and to work closely with it on the ground. At the invitation of CTED, the EU sent a representative to join a CTED assessment mission to Algeria, following successful participation in other missions to Morocco, Kenya and Albania earlier this year. The EU also built on information and experience gained through participation in CTED assessment missions in order to develop further its own assistance programmes.
30. Political dialogue with partners is an essential component of the EU external relations policy in the fight against terrorism. Master messages for this dialogue developed by the COTER Working Group have proved useful. Respect for the rule of law and the protection of human rights and fundamental freedoms in the fight against terrorism were key themes in this dialogue.

¹ 15106/05

31. Cooperation with the US in the fight against terrorism remained excellent. The EU and the US worked together to deepen their dialogue, both at political and expert level. Discussions covered a wide range of issues from transport security to judicial and law enforcement cooperation, and the fight against terrorist financing.
32. The EU also extended its dialogue on counter-terrorism with other partners like Israel, Japan, Australia, Canada and Russia. Areas of common interest and options for cooperation were taken into account, in particular the provision of technical assistance to other countries. The EU and Russia started to discuss the implementation of the Common Spaces of Freedom, Security and Justice and of External Security.
33. Substantial work was carried out with a number of countries in order to enhance CT cooperation. On the basis of needs assessment missions organised in June, the EU and its Member States have agreed to provide counter-terrorism assistance to two of the identified priority countries - Morocco and Algeria. The delivery of assistance to Morocco has begun and concrete actions for Algeria have been identified. Consultations at political level were brought forward with other priority countries. The Commission continued to provide CT related assistance to many countries and regions in the world.
34. The EU also contributed to capacity building at regional level. The Commission and some Member States provided financial aid and seconded staff to the Jakarta Centre for Law Enforcement Cooperation (JCLEC) in Indonesia. Options for contributions to the AU counter-terrorism centre based in Algiers are being examined.

ESDP dimension of the fight against terrorism

35. Work focused, *inter alia*, on the possible support that military assets and capabilities could give to consequence management:

- the military database of military assets and capabilities for the protection of the civilian populations against terrorist attacks is being expanded to cover all natural and man made disasters. In the light of this enlarged scope, Member States will be asked to re-examine their voluntary contributions.
- a preliminary analysis on interoperability between military and civilian capabilities, including civil protection ones, was launched. The aim is to identify, by the next semester, a set of recommendations based on Member States best practices, lessons identified within the framework of the Community Civil Protection Mechanism and UN-OCHA's expertise.

36. Progress was also accomplished in ongoing areas of work such as military capability development, where the terrorist threat was incorporated in all the relevant illustrative scenarios used for identifying the assets and capabilities needed for EU-led crisis management operations.

Terrorist Financing

37. There has been good progress in this field. The Third Money Laundering Directive¹ and the Regulation on Controls on Cash Entering or Leaving the Union² will both enter into force on 15 December 2005. The Commission issued a draft Regulation on wire transfers in July and agreement on this now appears close. Much work has been done on a Code of Conduct for Non Profit Organizations/ charities. The Commission has engaged in an extensive public consultation and will soon issue a Communication on the subject. Meanwhile, the UK Presidency, working closely with the Commission, proposed a set of principles which should guide implementation of regulations at national level. A workshop was held under the UK Presidency to highlight best practice in financial investigation. On asset freezing, the UK also organized a workshop in November 2005, which helped lay the groundwork for improving national asset freezing regimes to complement EU action.

¹ OJ L 309, 25.11.2005, p. 15

² OJ L 309, 25.11.2005, p. 9

38. However, much work remains to be done. Legislation which has been adopted needs to be fully implemented by all Member States. Financial investigation as a part of all terrorist investigations needs to be strengthened at the national level. Financial intelligence units (FIUs) must be more closely integrated in national co-ordination structures and the exchange of information between FIUs needs to be expanded, including through the FIU.NET. The independent scrutiny of Member States actions in relation to the Nine FATF Special Recommendations on terrorist financing is a high priority and the Commission is urged to push this forward without delay.
39. On 21 September 2005 the Court of First Instance of the European Communities gave judgment in favour of the Council in two cases¹ concerning an asset freeze imposed by the Security Council of the United Nations on certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban, as implemented by the EC². The Court held that there is an adequate legal basis in the EC Treaty for the imposition of asset freezing measures against such persons and entities. The Court also held that, although the Community is not itself a member of the United Nations, it must also be considered to be bound by the obligations flowing from the UN Charter in the same way as are its Member States. In addition, the Court found that there had been no infringement of the applicants' fundamental rights as protected by the higher rules of general international law: in particular, there was no breach of the rights of defence or of the right to effective judicial review. Nor was there any breach of the applicants' right to property³.

¹ Case T-306/01 (Yusuf and Al Barakaat International Foundation v Council and Commission) and Case T-315/01 Kadi v Council and Commission).

² Council Regulation (EC) No 881/2002 of 27 May 2002 (OJ L 139, 29.05.2002, p. 9, as amended by Council Regulation (EC) No 561/2003 of 27 March 2003 (OJ L 82, 29.03.2003, p. 1).

³ The Court found that it was not for it to review indirectly whether the Security Council's resolutions were compatible with fundamental rights as protected by the Community legal order, or to verify that there has been no error of assessment of the facts and evidence relied on by the Security Council.

Radicalisation and Recruitment

40. Work on an EU strategy for combating radicalisation and recruitment has progressed well and is expected to be endorsed by the European Council in December 2005 together with an action plan to implement the recommendations of the strategy. The strategy sets out the EU's determination to disrupt the activities of networks which draw people into terrorism, ensure that voices of mainstream opinion prevail over those of extremism, and to promote yet more vigorously security, justice, democracy and opportunity for all. Implementation of the Action Plan will require sustained efforts at the level of Member States as well as the Union.

Implementation of legislation

41. Progress has been made with ratification and implementation during the period with two important instruments entering into force:
- i. Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union (18 ratifications notified to the Council);
 - ii. Protocol of 16 October 2001 to the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (14 ratifications notified to the Council);
2. However, some instruments have not yet been implemented fully, e.g.:
- i. The deadline set for implementation of the Council Framework Decision of 13 June 2002 on Joint Investigation Teams was June 2004. Three Member States have yet to implement the Framework Decision .
 - ii. The deadline set for implementation of the Council Framework Decision of 13 June 2002 on combating terrorism has not been met by all Member States. Two Member States have not implemented this Framework Decision, while a further three have only implemented it partially. Following its report in 2004 on the state of implementation of the Framework Decision, the Commission is now working on a further report based on additional information provided by the old Member States. This report will also cover the 10 new Member States and is due by the end of 2005.

43. The entry into force of these instruments will enable Member States and the Union to combat terrorism more effectively. The following two examples serve to illustrate the case:

- i. 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;
- ii. 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.
