



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 25 November 2008 (26.11)  
(OR. fr)**

**16042/1/08  
REV 1**

**LIMITE**

**JAI 660  
ENFOPOL 235  
SIRIS 155  
VISA 375  
CRIMORG 199  
COMIX 847**

**"I/A" ITEM NOTE**

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from : General Secretariat of the Council  
to : Coreper/Council

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No prev. doc. 14356/3/08 REV 3 JAI 541 ENFOPOL 196 SIRIS 143 VISA 322 CRIMORG 176  
COMIX 746

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Subject : Draft Council conclusions on implementing an early warning mechanism for  
threats linked to terrorism and organised crime

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1. At its meeting on 19 November 2008, the Mixed Committee at Senior Official level approved the draft Council conclusions set out in the Annex.
2. Coreper is invited to submit the attached conclusions to the Council for adoption.

**Draft Council conclusions on implementing an early warning mechanism for threats linked to terrorism and organised crime**

The Council of the European Union:

- A.
1. Recalling that terrorism and organised crime constitute two of the most serious violations of the universal values on which the European Union is founded: human dignity, liberty, equality, solidarity and respect for human rights and fundamental freedoms. They represent one of the most serious attacks on democracy, the rule of law and the area of freedom and security, whose development and reinforcement are essential EU objectives.
  2. Noting that in recent years, the terrorist threat and organised crime have been on the increase and have evolved rapidly. Given the persistence and high level of the threat from these two kinds of crime, and in order to respond to the needs of Member States' law enforcement and security services, it is necessary to set up alert mechanisms suited to the fight against terrorism and organised crime.
  3. Recalling that, in order to prevent and combat terrorism and organised crime effectively with due regard for fundamental rights, Member States cannot confine their activities to maintaining their own security, but must also align their activities on the security of the European Union as a whole. This objective of solidarity is even more crucial in an area where the free movement of people is the rule, now that controls at internal borders have been discontinued.

4. Recalling that the Council and Commission Action Plan implementing the Hague programme stresses that terrorism calls for a comprehensive approach and that the expectations of citizens and residents with regard to the European Union should not be left without due response. It states, in addition, that it is right to focus on different aspects of prevention, preparedness and response in order to enhance and complement Member States' capabilities to fight terrorism, concentrating in particular on recruitment, financing, risk analysis, critical infrastructure protection and consequence management.
5. Considering that one of the ways of increasing prevention is to improve the use of existing mechanisms in accordance with the EU counter-terrorism strategy and to make available to Member States' law enforcement and security services tools which are suited to operational needs. Among the existing tools, the Schengen Information System illustrates the mutual solidarity, trust and complementarity developed through this form of cooperation in the Schengen area.
6. Noting that the results of use of the mechanism in Article 99 of the Convention implementing the Schengen Agreement (Article 36 of Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II)) by the law enforcement and security services of European Union Member States facing these threats demonstrate the relevance of this mechanism.
7. Bearing in mind that in its report SCHAC 2501/08 dated 18 January 2008 the Schengen Joint Supervisory Authority notes that the Article is under-used, while stressing the relevance of the data contained therein.

8. Noting that on this basis, to enable persons subject to an alert for activities linked to terrorism or organised crime to be detected early and also to help locate them, this mechanism should be used systematically.
9. Recalling that a Member State that issues an alert under Article 99 of the Convention implementing the Schengen Agreement (Article 36 of Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II)) needs to know if this individual has applied for a visa at a diplomatic mission or consular post of another Member State.

In this context, automated cross-checking of the information available under the visa delivery procedure against alerts under Article 99 of the Convention implementing the Schengen Agreement (Article 36 of Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II)) will reinforce the common security mechanism. Once the Visa Information System is fully operational the Council should reconsider an automated consultation of the Schengen Information System for visa applications.

10. Recalling that the United Kingdom and Ireland have been authorised by the Council to participate in Article 99 of the Convention applying the Schengen Agreement (and in Article 36 of the Council Decision 2007/533/JHA), and that they do not participate in Schengen acquis on visas and borders, and that they should be included, once it has been decided to put those provisions into effect for those Member States, with full respect of the Schengen protocol, in any mechanism put in place to facilitate the early detection of persons covered by alerts issued under that Article.

**B.** Concludes that there is a need:

- (a) for Member States to consider putting in place an early warning mechanism for suspects linked to terrorism and organised crime, in order to:
- facilitate the early detection of persons subject to an alert in the Schengen Information System (SIS) for activities linked to terrorism or organised crime by consulting the SIS via the national authorities at central level having the right to access these data for every visa application in order to check whether there is any alert pursuant to Article 99 of the Convention implementing the Schengen Agreement (Article 36 of Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II)),
  - in the event of a hit, inform the SIRENE bureau of the Member State which issued the abovementioned alert, as the services which originated the alert are responsible for deciding what action to take. This mechanism for sharing information between Member States must not affect how the Member State which noticed the abovementioned alert processes the visa application. In order to protect the data contained in Article 99 of the Convention implementing the Schengen Agreement (Article 36 of Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II)), consular posts will not be kept informed of the results;
- (b) to assess whether amendments to existing legal instruments are necessary in order to make the application of this mechanism legally binding. This evaluation, taking as a base the principle of proportionality and the need for the protection of fundamental rights, should cover the legal, technical as well as financial impact of the mechanism.