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**NOTE**

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| from:           | Presidency   |
| to:             | CATS   |
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| Subject:        | Judicial dimension of the fight against terrorism - Follow-up to the CTC<br>recommendations for action |

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On 8 October 2010, the EU Counter-Terrorism Coordinator presented a number of recommendations to the Council on the judicial dimension of the fight against terrorism. These recommendations have not been adopted by the Council. At the CATS meeting of 26 October 2010 a first discussion took place at CATS on possible follow-up to these CTC recommendations.

In accordance with the conclusions by the Chair of CATS, the Presidency has endeavoured to indicate for each recommendation whether it is a legislative or an operational one. This distinction is not always very clear, as there are some recommendations which might be given a follow-up through either legislative or operational action or even both. Where recommendations address the implementation of already existing legislation, the Presidency has chosen to refer to them as operational. Regarding legislative recommendations it is suggested that CATS would be tasked with examining: 1) whether further follow-up is required, and 2) who should be responsible for it. For the operational recommendations, COSI could be asked to examine these questions.

The Presidency has also tried to establish for each of the recommendations whether these are new or already exist, in some form or another (e.g. in existing EU legislation, political decisions, the Stockholm Programme or an action plan). The fact that a recommendation exists already, obviously does not imply that no further work is required. Moreover, the CTC recommendation may emphasise a different aspect of a recommendation.

*The Presidency invites CATS to examine and discuss the attached table and to agree on the "legislative" or "operational" nature which has been provisionally assigned to each recommendation. Delegations are also invited to indicate their view on which follow-up should be given to the legislative recommendations and which could be the appropriate forum to be responsible for the follow-up of concerned recommendations.*

*COSI will be invited to discuss which follow-up should be given to the operational recommendations.*

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**EU CTC - Judicial dimension of the fight against terrorism – Recommendations for action  
(doc. JAI 716 COPEN 175 EUROJUST 83 ENFOPOL 240 COTER 62 FIN 380 + COR 1)**

| RECOMMENDATIONS   | INSTITUTION   | NATURE<br>(LEGISLATIVE/<br>OPERATIONAL) | NEW OR<br>EXISTING |
|---|---------------|---|--------------------|
| <b>I. Judicial organisation</b>   |               |   |                    |
| R 1. Compensate for the lack of specialisation in those MS which choose not to centralise by offering prosecutors and magistrates dealing with terrorist cases professional advice and training sessions under the European Judicial Training Network and with the assistance of the Eurojust National Coordination System where the contact points for terrorism have a seat | EJTN/Eurojust | OPERATIONAL                             | NEW                |
| R 2. Catalogue operating methods between intelligence services and players in the judicial sphere and identify good practice, taking account of their respective areas of specialisation.   | MS/Eurojust   | OPERATIONAL                             | NEW                |

| <b>II. Special investigation techniques and terrorist financing</b>   |             |                             |                       |
|---|-------------|-----------------------------|-----------------------|
| R 3. Work to improve mutual awareness of good practices and draw up model agreements, and then establish a common judicial framework for certain investigative techniques such as the use of undercover agents and informers, or online searches, and spell out the rules to be observed in the case of surveillance and undercover operations that continue across borders | COM/MS      | OPERATIONAL/<br>LEGISLATIVE | NEW                   |
| R 4. Strengthen cooperation between MS so as to provide appropriate protection to witnesses and others cooperating with judicial action   | COM         | LEGISLATIVE/<br>OPERATIONAL | EXISTING <sup>1</sup> |
| R 5. Reinforce the MS' technical capacity and training in the investigation of computer-based media by establishing a centre of excellence at Europol, and support this effort with EU funding  | Europol/COM | OPERATIONAL                 | EXISTING <sup>2</sup> |

<sup>1</sup> Stockholm Programme 3.1.1: Victims of crime or witnesses who are at risk can be offered special protection measures which should be effective within the Union.

<sup>2</sup> Council Conclusions 26 April 2010 an Action Plan to implement the concerted strategy to combat cybercrime.

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|---|--|-------------|-----------------------|
| R 6. Instruct the CARIN network to promote more effective use of the instruments governing cooperation on the detection of assets, freezing, seizure and return, by compiling a handbook on the use of these measures | MS<br>Network of EU<br>asset recovery<br>offices/EUROPOL | OPERATIONAL | EXISTING <sup>1</sup> |
| R 7. Utilise the results of the 5th mutual evaluation round to develop a training course in financial investigations  | EJTN   | OPERATIONAL | NEW                   |
| R 8. Establish a framework of appropriate administrative measures for implementing a preventive freeze on assets pursuant to Article 75 TFEU  | COM/Council/EP   | LEGISLATIVE | EXISTING <sup>2</sup> |
| R 9. Develop the partnership with the private sector, notably by improving the FIUs' system of feedback from banks in relation to the financing of terrorism  | FIUnet/COM/MS  | OPERATIONAL | EXISTING              |
| R 10. Develop a European terrorist finance tracking programme (EU=TFTP)   | COM/Council/EP   | LEGISLATIVE | EXISTING <sup>3</sup> |

<sup>1</sup> Council Conclusions 28 May 2010 on Confiscation and Asset Recovery: 10) Foster financial investigations by making full use of existing cooperation tools within the framework of Europol, Eurojust and OLAF.

<sup>2</sup> Art. 75 TFEU calls for establishment of these measures and two expert meetings have already been organized by the Commission on his issue.

<sup>3</sup> The Council Decision of 13 July 2010 on the conclusion of the TFTP Agreement with the US specifies that the Commission must submit a "legal and technical framework for the extraction of data on EU territory" by 1 August 2011. See also Stockholm Programme 4.5.

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|---|------------|-------------|-----------------------|
| <b>III. Rights of defence</b>   |            |             |                       |
| R 11. Establish an overview of the practices of the various Member States as regards the checking and protecting of (intelligence) sources, particularly in cross-border proceedings, whilst safeguarding the rights of defence, especially the principle of an adversarial process                             | COM/MS     | OPERATIONAL | NEW                   |
| R 12. Implement as soon as possible the roadmap on protection of suspects in criminal proceedings, as provided for in the Stockholm Programme   | Council/EP | LEGISLATIVE | EXISTING <sup>1</sup> |
| <b>IV. Judicial cooperation</b>   |            |             |                       |
| R 13. Lay down the principle that evidence obtained in the context of a joint investigation team in one Member State, in accordance with the procedural requirements of that Member State, is to be regarded as equivalent to evidence properly obtained in the Member State of the proceedings as to substance | COM/MS     | LEGISLATIVE | EXISTING <sup>2</sup> |
| R 14. Consider extending this principle to transfers of proceedings   | COM/MS     | LEGISLATIVE | NEW                   |

<sup>1</sup> Stockholm Programme 2.4.

<sup>2</sup> Article 13, § 10 of the 2000 EU Mutual Assistance Convention.

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| R 15. Taking terrorism as a pilot case, promote a mechanism for the settlement of conflicts of jurisdiction: strengthen the mechanisms laid down in the Framework Decision on the prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings, specifically for the area of terrorism | COM/MS                      | LEGISLATIVE | NEW                   |
| R 16. Increase the use of joint investigation teams and their EU funding via Eurojust  | MS/Eurojust                 | OPERATIONAL | EXISTING <sup>1</sup> |
| R 17. Adopt measures by which Europol and Eurojust should always be involved in joint investigation teams concerning terrorist cases   | MS/<br>EUROPOL/<br>EUROJUST | OPERATIONAL | EXISTING <sup>2</sup> |

<sup>1</sup> Stockholm Programme 4.3.1.

<sup>2</sup> Stockholm Programme 4.3.1.

| <b>V. International perspective</b>   |             |             |                       |
|---|-------------|-------------|-----------------------|
| R 18. Make more systematic use of the Eurojust channel in cases which extend outside the European Union   | MS          | OPERATIONAL | NEW                   |
| R 19. Intensify EU assistance programmes for third countries confronted with terrorism, to strengthen their judicial mechanisms   | COM/EEAS/MS | OPERATIONAL | EXISTING <sup>1</sup> |
| R 20. Take advantage of the existence of liaison magistrates between third countries and MS and, on the basis of those experiences, extend this network and establish Eurojust liaison magistrates in third countries with which more intense cooperation is desirable  | MS/Eurojust | OPERATIONAL | NEW                   |
| R 21. Start to draw up cooperation agreements with those third countries most often involved in terrorist cases under investigation in the EU, in particular to determine the legal framework for the exchange of information, arrangements for any technical assistance, and the conditions under which joint investigation teams might be established | COM/MS      | LEGISLATIVE | NEW                   |
| R 22. Lay down basic criteria for the acceptance of evidence gathered in a non-Member State   | COM/MS      | LEGISLATIVE | NEW                   |

<sup>1</sup> Certain forms of assistance exist already, but may have to be stepped up. See also Stockholm Programme 4.3.5.2.

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|--|------------------|-------------|-----|
| <b>VI. Strategy for EU prosecutions and criminal policy</b>  |                  |             |     |
| R 23. Increase judicial input in the composition of COSI, by the participation of Eurojust and the Consultative Forum of Prosecutors General/Directors of Prosecution  | MS/EUROJUST      | OPERATIONAL | NEW |
| R 24. Evaluate the impact of the 2002 and 2008 Framework Decisions on terrorism: carry out systematic and in-depth monitoring of national case-law, based in particular on Eurojust's analysis (the Terrorism Convictions Monitor) | COM/<br>EUROJUST | OPERATIONAL | NEW |

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