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NOTE

from: Presidency

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Subject: Judicial dimension of the fight against terrorism - Follow-up to the CTC
recommendations for action

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. At the CATS meetings of 26 October and 13 December 2010 two initial discussions took place on a possible follow-up to these CTC recommendations.

In accordance with the conclusions by the Chair of CATS, for each recommendation it is indicated whether it is a legislative or an operational one. Even though 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, most delegations have welcomed this distinction. Where recommendations address the implementation of already existing legislation, the Presidency has chosen to refer to them as operational. At the CATS meeting of 13 December 2010, it was agreed that COSI should have the primary responsibility for the follow-up to the operational recommendations.

The Presidency has also tried to establish for each of the recommendations whether they 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's recommendation may emphasise a different aspect of a recommendation.

Following the CATS Chair's request at the meeting of 13 December 2010, a number of Member States have commented on some of the recommendations. The list of responsible actors has accordingly been changed in some instances. Some delegations have suggested modifications to some of the recommendations, but the Presidency has declined to amend these recommendations, firstly because these are the CTC's and not the Presidency's recommendations and secondly because this would require a prior and more thorough discussion.

The CTC has presented his recommendations to the Council but these were not put to the Council for formal adoption as a package. Obviously not all recommendations (will) meet with the approval of all Member States. Several delegations have stated their wish to have a discussion on the substance of these recommendations. Therefore the Presidency has added a fourth column to the annex, in which it suggests the procedural avenue for further follow-up to be given to the recommendations, mostly by mentioning the Council Working Party that could be tasked with the further follow-up. As COSI will of course have to decide the forum for following up the operational recommendations, COSI is always mentioned for those recommendations. A number of these recommendations correspond to proposals which are already being prepared (legislative), being implemented (operational) and therefore do not require specific follow-up action. These have been identified in the fourth column as ongoing initiatives.

In accordance with the above, the Presidency proposes the following course of action to be agreed by CATS:

- 1) for the following operational recommendations, COSI will be asked to refer them to the competent Working Party in order to examine what kind of follow-up is required: 1, 2, 5, 6, 7, 9, 11, 16, 18, 19, 20 23 and 24;*
- 2) the following legislative recommendations should be referred to the competent Working Party to determine what kind of further follow-up is required: 3, 4, 13, 14, 15, 17, 21, 22;*
- 3) the following legislative recommendations correspond to measures under preparation or cannot be examined before existing legislation has been implemented or existing legislative proposals have been adopted and implemented: 8, 10 and 12.*

**EU CTC - Judicial dimension of the fight against terrorism –
Suggested follow-up to CTC recommendations for action**

RECOMMENDATIONS	RESPON- SIBILITY	NATURE: LEGISLATIVE/ OPERATIONAL	NEW OR EXISTING	FOLLOW-UP WITHIN COUNCIL
I. Judicial organisation				
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	COSI/COPEN
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/ Europol	OPERATIONAL	NEW	COSI/TWG

II. Special investigation techniques and terrorist financing				
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	MS/COM	OPERATIONAL/ LEGISLATIVE	NEW	COSI/COPEN OR GENVAL
R 4. Strengthen cooperation between MS so as to provide appropriate protection to witnesses and others cooperating with judicial action	COM	LEGISLATIVE/ OPERATIONAL	EXISTING/ NEW ¹	COPEN
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/C OM	OPERATIONAL	EXISTING ²	COSI/ GENVAL or TWG

¹ The Stockholm Programme (3.1.1) refers to the need to offer special protection measures to victims of crime or witnesses who are at risk within the Union. However, the planned Commission package on victims does not seem to cover this recommendation.

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

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/ Network of EU asset recovery offices/ EUROPOL	OPERATIONAL	EXISTING ¹	COSI/ GENVAL
R 7. Utilise the results of the 5th mutual evaluation round to develop a training course in financial investigations	EJTN	OPERATIONAL	NEW	COSI/ GENVAL
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 ²	ONGOING INITIATIVE
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	COSI/TWG or GENVAL
R 10. Develop a European terrorist finance tracking programme (EU=TFTP)	COM/ Council/ EP	LEGISLATIVE	EXISTING ³	ONGOING INITIATIVE

¹ 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.

² Article 75 TFEU calls for establishment of these measures and two expert meetings have already been organized by the Commission on this issue. The Commission has announced in its Communication on the Internal Security Strategy that in 2011 it will consider devising a framework for administrative measures under Article 75.

³ 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.

III. Rights of defence				
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	MS/COM	OPERATIONAL	NEW	COSI/ COPEN ¹
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 ²	ONGOING INITIATIVE
IV. Judicial cooperation				
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	NEW ³	COPEN ⁴

¹ It has been suggested that the COPEN WP could usefully draw upon the study carried out by Vernimmen-van Tiggelen/Surano, *The future of mutual recognition in the European Union*.

² Stockholm Programme 2.4. This is work in progress, regarding measures A and B of the roadmap.

³ See however the *Green Paper on obtaining evidence in criminal matters from one Member State to another and securing its admissibility*.

⁴ Some Member States suggested that the outcome of the discussions on the European Investigation Order (EIO) be awaited.

R 14. Consider extending this principle to transfers of proceedings	COM/MS	LEGISLATIVE	NEW	COPEN ¹
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	OPERATIONAL	NEW/EXISTING	COSI/ COPEN ²
R 16. Increase the use of joint investigation teams and their EU funding via Eurojust	MS/COM/ Eurojust	OPERATIONAL	EXISTING ³	COSI/ COPEN
R 17. Adopt measures by which Europol and Eurojust should always be involved in joint investigation teams concerning terrorist cases	MS/ EUROPOL EUROJUST	OPERATIONAL	EXISTING ⁴	COSI/ COPEN

¹ Some Member States suggested that the outcome of the discussions on the EIO be awaited.

² Some Member States suggested that the implementation of the Framework Decision on the prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings be awaited.

³ Stockholm Programme 4.3.1.

⁴ Stockholm Programme 4.3.1.

V. International perspective				
R 18. Make more systematic use of the Eurojust channel in cases which extend outside the European Union	MS	OPERATIONAL	NEW/EXISTING	COSI/ COPEN/ JAIEX ¹
R 19. Intensify EU assistance programmes for third countries confronted with terrorism, to strengthen their judicial mechanisms	COM/ EEAS/MS	OPERATIONAL	EXISTING ²	COSI/ JAIEX/ COTER
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	COSI/ COPEN

¹ Some Member States suggested that the implementation of current legislation (Decision 2003/48 JHA of 19 December 2002 + Article 27b of the Eurojust decision) be awaited.

² Certain forms of assistance exist already, but may have to be stepped up. See also Stockholm Programme 4.3.5.2.

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	COPEN
R 22. Lay down basic criteria for the acceptance of evidence gathered in a non-Member State	COM/MS	LEGISLATIVE	NEW ¹	COPEN

¹ See also the Austrian proposal on Police Equal Performance (PEP) – setting-up an umbrella strategy for South Eastern Europe (DS 1083/11).

VI. Strategy for EU prosecutions and criminal policy				
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	EXISTING/ NEW	COSI
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/ EUROJUST	OPERATIONAL	NEW	COSI/ COPEN ¹

¹ Some Member States suggested that the implementation of the 2008 Framework Decision be awaited.