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NOTE

From: EU Counter-Terrorism Coordinator
To: Permanent Representatives Committee/Council
Subject: JHA agencies' role in counter-terrorism

Background

Today data protection with regard to the handling of operational information by Europol and Eurojust is determined by the Europol Regulation, while for Eurojust the pre-Lisbon Eurojust Decision and Eurojust data protection rules still apply. It will be crucial that the processing of operational information by the JHA agencies, in particular Europol and Eurojust, is compatible with the Directive (EU) 2016/680 [processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences], which will become applicable to national authorities in May 2018, while duly taking into account the specific needs of those agencies. This needs to be ensured in the context of the trilogues on the draft Regulation on the Application of the Data protection by Union institutions and the new Eurojust regulation.

1. Europol

Information sharing and operational support in the context of Europol have strongly and consistently increased since the creation of the European Counter Terrorism Centre (ECTC) in January 2016: By the end of 2017, more than half of the data objects in the Europol Information System (EIS) were linked to terrorism¹, compared to only 3,9 % at the end of 2016. Counter-terrorism has become the third largest crime area with regard to exchanged SIENA messages. Today, the EIS contains 46,166 persons linked to terrorism (foreign terrorist fighters and their supporters/facilitators), 6.573 provided by EU Member States and 39.593 by third parties² compared to around 350 at the end of 2014. The ECTC also strongly increased operational support to Member States. Support more than tripled in 2017 (439 supported operations) compared to 2016 (127). Around a third of this support is provided by the Internet Referral Unit (IRU). EIS searches by the Member States more than tripled from between 2015 (633,639) to 2017 (2 million searches). However, more than half of the searches originate in one Member State, which means there is scope for others to increase their use of the EIS. There has been a 20% increase in the number of intelligence leads provided by the Terrorist Finance Tracking Programme (TFTP) in 2017, compared to 2016.

Europol's counter-terrorism Joint Liaison Team (CT-JLT), created in 2016 with a current participation of 13 Member States³ and three third countries⁴, is a platform to support operations, tailor support to Member States' requirements, to streamline exchange of operational information, reach directly Member States CT investigative authorities and explain to the authorities at home the available ECTC support. In addition to Europol's task force Fraternité, set up after the attacks in Paris and Brussels with the Joint Investigation Team (JIT) Vendredi 13 to support the investigations, Europol is supporting five other JITs on CT (there have not been any JITs in CT with proactive Europol involvement before 2015). Member States CT units are more aware now about Europol services and ask for more specific support.

¹ More than half a million data objects linked to terrorism in the EIS.

² Most of this information shared by the US (Terrorist Screening Center data)

³ Austria, Belgium, Denmark, Finland, France, Germany, Hungary, Italy, Malta, Netherlands, UK, Spain, and Sweden

⁴ US, Norway, Switzerland

Since Europol's IRU was established in July 2015, 45,598 items were assessed for referral in over 80 online platforms and in more than 10 languages (focus on non-EU languages) to internet companies for removal, with a success rate of 85 %. Eight referral action days have been organized with participation of 19 Member States and six third partners⁵ in cooperation with internet companies. Europol also actively participates in the EU Internet Forum and makes available strategic reports and identified materials on the Check the Web portal. In 2017, the IRU has supported 153 operations⁶. Europol has recently launched SIRIUS (Shaping Internet Research Investigations Unified System) to support MS internet investigation and analysis of internet based communication. Close to 500 law enforcement representatives from 30 countries are members of SIRIUS and are making use of the open source intelligence (OSINT) knowledge database and toolsets. Implementation of a grant by the Commission starting in 2018 will support law enforcement and judicial cooperation with the US with training, digests on US based services providers, best practices guidelines and technical solutions to support internet-based investigations. The EU IRU is also working hard to improve the referral process, working closely with those MSs who have national IRUs to enhance the process and avoid duplication.

Europol's role to support Member States when faced with encryption in criminal investigations is being strengthened with additional resources, in particular to reinforce Europol's European Cybercrime Centre (EC3). Europol will also be the network hub to facilitate collaboration in the context of a new network of points of expertise of Member States with regard to encryption, including to support the development of a toolbox of alternative investigation techniques⁷.

Europol's post attack support was used by all Member States that had terrorist attacks in 2017, including inter alia as appropriate requests for cross-match, deployment of mobile office, Terrorist Finance Tracking Programme (TFTP), SIRIUS⁸, forensic support (including de-cryption) and CT-JLT coordination. Operational information was received by Europol within 12 hours after almost two thirds of the attacks and within 48 hours for the remaining attacks but one.

⁵ CH, US, Bosnia and Herzegovina, Albania, Serbia and Interpol

⁶ It has produced 193 operational products.

⁷ 11th progress report on implementation of the Security Union, p. 9/10 and 13th progress report on implementation of the Security Union, p. 6

⁸ OSINT and analysis of internet based communication

In 2017, Europol staff and guest officers carried out secondary security checks in hotspots in Italy and Greece, leading to 83 hits (9.896 persons, 1.242 documents and 10.388 communication means (mobile devices, email etc.) referred for secondary security checks). It will be necessary to ensure continued financing for Europol's hotspot deployments in 2018.

In the field of counter-financing terrorism and money laundering, since early 2016 Europol hosts the FIU.net system to facilitate the exchange of information between Financial Intelligence Units (FIUs) of the Member States. FIU.net gives national FIUs the possibility to communicate and cross-check data “FIU to FIU” in real time. Europol offers to FIUs the possibility to cross-check their own data against High-Value Targets from Europol’s databases. Europol Analysis Project Sustrans and the Europol Criminal Assets Bureau actively support money laundering investigations in Member States through the analysis of suspicious transaction reports and assistance in the identification and tracing of criminal proceeds. Europol maintains the secretariats of the Anti-Money Laundering Operational Network (AMON) and Camden Asset Recovery Inter-Agency Network (CARIN).

Recently, Europol launched in December 2017 a Public Private Partnership in Financial Intelligence (EFIPPP), aiming at bringing together police, customs, regulatory authorities and FIUs with major European banking institutions in order to better detect suspicious financial operations; the exchange of strategic information already started recently, for exploring operational data sharing as a next step.

The Counter-Terrorism Programme Board (CTPB) was set up in 2017 upon proposal from the Commission⁹ and a German initiative to convene a meeting of European Police Chiefs. The CTPB provides a dedicated ECTC steering mechanism to define the scope for future action. Work on the different strands is led by co-drivers and progress has already been made on information exchange, scalable support, further development of capabilities to counter terrorism online, the organised crime and terrorism nexus, innovative expertise and war crimes.

⁹ *Enhancing security in a world of mobility: improved information exchange in the fight against terrorism and stronger external borders*, COM(2016) 602 final, 14.9.2016

Europol is providing strategic analysis and threat assessments from a law enforcement perspective to the Commission and Council (Standing Committee on Internal Security - COSI), in parallel to INTCEN reports.

The Commission, Europol and the ATLAS network of special intervention units are working towards the establishment of an ATLAS Support Office (ASO) located at Europol with a view to strengthen the network.

In October 2017, the Commission tabled a CBRN action plan¹⁰ proposing to develop a CBRN knowledge hub within the ECTC.

Europol is preparing its support to the Passenger Information Units (PIUs) of the Member States for processing and use of Passenger Name Record (PNR) data. Enrichment of Europol's analysis by drawing on PNR data on known criminals and terrorists is in preparation. Europol is also developing a vision on travel information in cooperation with the Commission, other JHA agencies and Member States on how the various initiatives (ETIAS, EES, PNR, interoperability, revisions of SIS and Eurodac) can get together from an operational perspective and how Europol can best support the relevant border management and security authorities.

¹⁰ *Action plan to enhance preparedness against chemical, biological, radiological and nuclear security risks*, COM(2017) 610 final, 18.10.2017

In line with its mandate, Europol has the right to access and to directly search certain data entered in the Schengen Information System (SIS) concerning wanted persons (for arrest for surrender or extradition purposes), discreet and specific checks and objects for seizure or use as evidence in criminal proceedings. The legislative proposals on the SIS, which are currently under negotiations, will provide full access rights to Europol to all alert categories. It is also foreseen that Europol will be enabled to receive and process supplementary information on corresponding SIS alerts. The extension of Europol's access rights to the SIS alerts and the supplementary information should further improve Europol's capacity to provide national law enforcement authorities with comprehensive operational and analytical products.

As regards the European Travel Information and Authorisation System (ETIAS), the legislative proposal currently under negotiations, provides for the ETIAS Central System to compare visa-exempt third country nationals' data that will be contained in their applications for a travel authorisation with data present in Europol data. In addition, it is also foreseen for Europol to enter data related to terrorist offences or other serious criminal offences in the ETIAS watchlist. Europol will need to cooperate with Member States for the purpose of an assessment of visitors applications prior to their arrival at the external borders crossing points. A consequential amendment to the Europol Regulation mirroring the tasks entrusted to Europol forms also part of the legislative proposal.

Europol and the Counter-Terrorism Group (CTG) continue to explore possibilities for cooperation.

Regular cooperation is taking place with Eurojust (e.g. temporary placement of a liaison prosecutor to the ECTC) and Frontex (e.g. joint training on detection of foreign terrorist fighters at the external borders). Europol has also stepped up cooperation with third countries, in particular the US (including recent pilot deployment to the US Immigration and Customs Enforcement), but also in the Western Balkans (contributing to the Western Balkans Counter-Terrorism Initiative WBCTi and promoting information exchange), Turkey and the North Africa and Middle East region.

Europol is developing cooperation with CT/security experts in EU delegations, which may help to promote cooperation with the partner countries¹¹, and increasingly participates in dedicated EU CT Dialogues with 3rd countries and multilateral institutions organised under the framework of the Foreign Affairs Council Conclusions on Counter Terrorism (February 2015/June 2017).

Europol is also setting up an Instrument for Pre-Accession (IPA) funded project to place Europol liaison officers to Serbia, Bosnia and Herzegovina and Albania. Within the framework of the EU Policy Cycle 2018/2021, Europol is supporting the fight against illicit trafficking in firearms in and from the Western Balkans with an operational action plan and joint action days.

In December 2017, the Commission tabled recommendations for Council Decisions authorizing the opening of negotiations for agreements between the EU and eight countries in the MENA region on the exchange of personal data between Europol and these countries' competent authorities for fighting serious crime and terrorism¹².

Also in December 2017, Europol Management Board adopted its list of priority partners¹³ for the conclusion of working arrangements for strategic-level cooperation. The Management Board has adopted a model for the working arrangements which it would conclude with third partners in this context.

In the context of the Europol Analysis Project on Core International Crimes, Europol is exploring cooperation and information exchange with a number of international entities, including on battlefield information.

¹¹ In October 2017 the EEAS and Europol signed a Letter of Understanding which included elements designed to strengthen engagement on external CT matters.

¹² Algeria, Egypt, Israel, Jordan, Lebanon, Morocco, Tunisia and Turkey.

¹³ First tier priorities are: Algeria, Egypt, Israel, Jordan, Lebanon, Morocco, Tunisia and Japan.

2. Eurojust

Eurojust has a distinctive operational and strategic role in the fight against terrorism by facilitating multilateral judicial cooperation, coordination and exchange of information in cross-border terrorism cases. Member States are making increased use of Eurojust in counter-terrorism cases with an international dimension: a majority of EU Member States have already used Eurojust's assistance in cross-border terrorism cases for example to agree upon common and coordinated approaches, speed up the execution of European Arrest Warrants, European Investigation Orders, Mutual Legal Assistance requests, exchange information and evidence in ongoing investigations, set up joint investigation teams (JITs), deal with extradition requests, etc. Reasons for using Eurojust include urgency of the need for judicial cooperation and coordination of investigations.

The number of terrorism cases Eurojust has supported over the last years has increased six times: 14 cases have been registered at Eurojust in 2014, 41 in 2015, 67 in 2016 and 87 in 2017. Eurojust was mobilized in the aftermath of the attacks in Paris and Saint-Denis, in Brussels and Zaventem, in Berlin and in Barcelona and Cambrils. For example, after the November 13, 2015 attacks in Paris and Saint-Denis, Eurojust opened a case involving France and 13 EU Member States as well as the USA on 26th November 2015 and from then onwards played a facilitating role, enhancing the cooperation between the judicial authorities of the concerned Member States and organizing five coordination meetings that have resulted in the surrender of several suspects to France.

Indeed Eurojust's main operational tool for terrorism cases are coordination meetings as they help to achieve better operational results by bringing together the judicial authorities and the investigators of all concerned Member States and offer a relevant framework to exchange information and enhance judicial cooperation. The number of coordination meetings organized at Eurojust in counter-terrorism cases remained stable the last years since the agency hosted 15 coordination meetings in 2015, 18 in 2016 and 14 in 2017. Eurojust's coordination centres provide increased operational support during common action days. As a result of a coordination centre in 2015, a terrorist organization providing logistical and financial support to recruiting foreign terrorist fighters was dismantled.

Moreover, Eurojust participates in a growing number of Joint Investigation Teams in terrorism cases (12 in 2017, of which eight were newly signed) and contributes to their setting up, enabling swift exchange of information and evidence and reinforcing investigations and prosecutions with a multinational dimension.

Information sharing within Eurojust on counter-terrorism prosecutions and convictions based on Council Decision 2005/671/JHA has improved since 2015. Timely, systematic and consistent sharing of information in conformity with Council Decision 2005/671/JHA will enable Eurojust to provide more efficient support to competent national authorities in ongoing investigations and prosecutions. At operational level, it aims at identifying links between ongoing investigations and prosecutions, links with other countries or links with organized crime cases (of growing importance), which may trigger national authorities to launch new investigations or extend ongoing ones. At strategic level, Eurojust provides the Member States with analysis of convictions and the criminal justice responses to terrorism. By means of reports, such as the Terrorism Convictions Monitor or ad hoc analysis of milestone judgements issued in the Member States, Eurojust contributes to the sharing of best practice and lessons learned and to building solid prosecution cases. Information sharing about ongoing investigations on terrorist offenses more than tripled in the last three years: 110 in 2015, 161 in 2016 and 375 in 2017. With regard to convictions, information on 218 concluded court proceedings was shared with Eurojust in 2015, 275 in 2016 and 345 in 2017.¹⁴

Eurojust has also set up a network of national correspondents for terrorism, CT prosecutors based in the Member States who regularly hold tactical meetings at Eurojust sharing best practice and challenges with regard to CT prosecutions.

¹⁴ The numbers concerning information exchange in 2017 are preliminary and pending confirmation.

A priority for Eurojust in CT matters is to further develop the cooperation with Europol. In this regard, Eurojust has stepped up cooperation and information exchange with the ECTC at Europol, including by recruiting a national CT prosecutor as bridge maker with the ECTC in 2017, which allows early involvement of the judicial authorities in CT investigations. The association of Eurojust to the Analysis Projects TRAVELLERS and HYDRA allows Eurojust to provide judicial follow up on the basis of Europol's analysis, and creates further opportunities for both agencies to build synergies in supporting the national authorities, Eurojust could also be instrumental in facilitating the judicial follow-up to activities of Europol's Internet Referral Unit.

Eurojust provides analysis on challenges with regard to the criminal justice response to terrorism such as the judicial response to returnees, data retention, e-evidence, battlefield information, terrorist financing etc. Financial investigations are not opened in all counter-terrorism cases, although they may be instrumental in uncovering facilitation and support networks and schemes. Eurojust monitors developments and facilitates exchanges of best practice. Since 2012, for example, Eurojust has been analyzing the criminal justice response to FTFs and contributing to the common efforts to seek more efficient ways to address the challenges in a coordinated and cooperative manner. The findings of Eurojust's analysis are presented in reports, produced annually since 2013, and are shared with Member States' judicial authorities, as well as with policy-makers and legislators to raise awareness about the challenges faced by practitioners, and avoid possible prosecution gaps.

Eurojust also facilitates judicial cooperation with third countries for example through its network of contact points, including specifically for CT. Eurojust has also participated in some dedicated CT dialogues with third countries. Representatives of judicial authorities of ten third countries participated in coordination meetings in terrorism cases organized by Eurojust in 2017.

3. European Border and Coast Guard Agency (Frontex)

Border control, including, where appropriate, measures related to the prevention and detection of cross-border crime, including terrorism, is a core component of a European integrated border management. CT has been included in the new Frontex regulation which entered into force in 2016. Frontex shall cooperate with Europol and Eurojust and provide support to Member States in circumstances requiring increased technical and operational assistance at the external border in the fight against organized cross-border crime and terrorism.

Frontex has included the detection of suspected FTFs as an operational objective in most of its operations, including in the hotspots. Frontex has contributed to the further operationalisation of the detection of suspected FTFs by developing common risk indicators for border guards and other law enforcement authorities.

Activities carried out in the context of Frontex-coordinated operations at the external EU borders, where a large number of undocumented migrants are apprehended. Frontex is training the staff.

Frontex is processing a large volume of personal data related to suspects of cross-border crime, including terrorism. This information is collected during Frontex-coordinated operations and is first transmitted to the Member State hosting the operation, then transmitted by the host Member State to Frontex, which stores the data for up to 90 days, and then shared by Frontex with Europol after preliminary risk analysis¹⁵. These “information packages” of personal data transmitted to Europol - based on a specific agreement - are mainly in relation to migrant smuggling, but can also include information on potential FTFs. A similar working arrangement is now being discussed with Eurojust.

¹⁵ Frontex can process personal data for the purpose of risk analysis and for transmission to Europol or Eurojust or to the authorities of the relevant Member States. Personal data shall be deleted as soon as they have been transmitted to Europol or Eurojust or to the competent authorities of Member States or used for the preparation of risk analyses. The storage period shall, in any event, not exceed 90 days after the date of the collection of those data.

Frontex is also contributing to the fight against firearms trafficking, which has implications on terrorism, in cooperation with Europol, and has participated in the Firearms Priority under the EU Policy Cycle/EMPACT since 2015. Frontex has collected data and contributed to improving the information picture with regard to the Western Balkans. Frontex is also co-leading a pilot project to address potential risks of trafficking of weapons by sea.

Frontex is developing a number of training activities in relation to identification of terrorists at the EU's external borders as well as related to the detection of falsified documents. Frontex has also developed a number of tools to support Member States in the fight against document fraud such as handbooks on Syrian and Iraqi (under preparation) documents. Frontex is following closely research on innovations in document inspection technologies and providing input to the work of international organisations and standardisation institutions in relation to the development of technical standards for border security. Frontex has developed standards for strengthening the capabilities of canine teams to detect explosive substances and weapons, which are implemented by Frontex certified instructors in EU Member States.

Risk assessments at the border to identify unknown potential terrorist suspects should include all travel information available to law enforcement and border guards (API, PNR, VIS, EES, ETIAS). It is important that tactical risk assessment capacities are developed in an interoperable manner in the EU to achieve harmonization among Member States and to allow for consistent security levels at EU external borders. Frontex, through its Advance Information Working Group, aims at providing Member States with guidelines on how to develop tactical risk profiles and build a targeting capability while creating a common framework in order to tend to interoperability and harmonization within the EU.

In the future, the ETIAS Central Unit located at Frontex will be responsible for the automated processing of ETIAS applications notably based on specific risk indicators and risk profiles. In this context, it is foreseen that the ETIAS Central Unit, in the case of hits against the consulted information systems and databases, will be notified and will verify whether the data recorded in the ETIAS application file corresponds to the data contained in those information systems and databases, including the SIS. In addition, the new SIS legal proposals foresee that the European Border and Coast Guard teams and the teams of staff involved in return-related tasks, including the members of the migration management support team will have a right to access and search data entered in SIS within their mandate when assisting the Member States.

The Frontex Risk Analysis Network (FRAN) connects Frontex with Member States' risk analysis and intelligence experts and provides the framework for joint analytical work regarding the external borders.

Frontex has established four similar regional risk analysis communities with third countries: with the Western Balkans¹⁶, Eastern Partnership countries¹⁷, Turkey¹⁸ and the Africa-Frontex Intelligence Community¹⁹. Frontex has a growing Liaison Officers network outside of the EU and is strengthening its capacity building involvement in third countries with regard to border security, including CT. A new project for the Southern Neighbourhood starting in mid-2018 to strengthen border security will be implemented by Frontex and include capacity building on information sharing, risk analysis and to detect cross-border crime at the borders, including FTF. However, the Frontex regulation only allows sharing of strategic information with third countries but not the exchange of personal data.

¹⁶ Western Balkans Risk Analysis Network (WB-RAN)

¹⁷ Eastern European Borders Risk analysis Network (EB-RAN)

¹⁸ Turkey-Frontex Risk Analysis Network (TU-RAN)

¹⁹ The 2016 joint report for example includes an analysis of regional security threats from terrorist groups

4. CEPOL

CEPOL has considerably stepped up its training offer in the area of counter-terrorism with the support of its networking including national training institutes for law enforcement in the Member States. The new CEPOL regulation also specifically refers to terrorism. CEPOL's counter-terrorism training contribution for EU Member States includes residential training courses, opportunities under the CEPOL Exchange Programme to build up contacts with peers, online modules and webinars, addressing both counter-terrorism specialists and law enforcement officials who might need to deal with terrorism aspects in a more general context. A structured strategic and operational training needs assessment at EU level is the basis for the development of the training offer, which allows to turn policy level priorities into a training portfolio.

In 2018 and 2019, a pilot CEPOL Knowledge Centre (CKC) on counter-terrorism is being established, a virtual knowledge hub that provides needs assessment, planning and implementation of training activities for law enforcement. This is a consortium of eight Member States (BE, CZ, DE, FR, IT, NL, PL, PT) and academia, led by the Netherlands Police Academy. 10 residential counter-terrorism training courses are planned for 2018, taking place in the consortium Member States, with about 260 participants and a variety of topics ranging from terrorist financing over radicalization in prison, de-radicalization of foreign fighters to PNR, preventing attacks on critical infrastructure and airport soft target protection.

All CEPOL counter-terrorism training activities have increased since 2015: Residential training courses increased from six in 2015 to ten in 2018. In 2015, one online module was developed, in 2018 one new online module is planned. Counter-terrorism webinars increased from two in 2015 to five planned webinars for 2018. The overall objective is to reach 1200 participants in counter-terrorism related training activities. Exchange programmes are an important tool to increase knowledge of law enforcement officials of good practices in other Member States and create links between officials working in the same field. 21 counter-terrorism related exchanges took place in 2015. In 2017, this rose to 37 exchanges with participants from 11 EU Member States.

CEPOL is also supporting the ATLAS network of law enforcement special intervention forces of the Member States. In 2018 a seminar for the ATLAS network will take place to develop a strategy for the network. The ATLAS network is also eligible for the CEPOL Exchange Programme.

Since late 2015, CEPOL has increased its engagement with MENA countries and implemented an EU counter-terrorism training partnership²⁰, in particular for Jordan, Lebanon, Tunisia and Turkey, reaching almost 800 law enforcement officers with 26 residential training courses and 40 study visits / exchanges to Member States and EU bodies. This will continue between 2018 and 2020, adding also Algeria and Morocco. CEPOL is involving Europol and Eurojust in the project, hence it benefits also outreach of those agencies to the partner countries.

5. Fundamental Rights Agency (FRA)

FRA is collecting and analysing information and data to provide Member States and EU institutions with independent, evidence-based advice on fundamental rights. FRA research could be relevant in particular in the context of prevention of radicalization, including underlying factors such as integration. To date, FRA has undertaken the largest comparative EU surveys on ethnic minority and immigrant groups in the European Union, with up to 25,000 people interviewed. Such data can be used to support action related to integration and counter-radicalisation and be broken down at the level of individual Member States and with respect to different respondent characteristics. In addition, the Agency has conducted surveys on Jewish communities' experiences of anti-Semitism. FRA's survey on Muslims have been repeated twice to date, which allows for the comparison of trends over time. The Agency has also stepped up its work on communicating rights and common values, including through the fields of education, working with policy-makers and the media.

Finally, the active involvement of the FRA in the context of the High Level Expert Group on Interoperability and the High Level Commission Expert Group on Radicalization could be a model for early involvement of the FRA in future security related initiatives to include the human rights perspective from the outset.

²⁰ Financed under the Instrument contributing to Security and Peace short term