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NOTE

From: the Swedish delegation
To: Standing Committee on operational cooperation on internal security (COSI)
Subject: Discussion paper on COSI and terrorism

Sweden believes that this is a good time to initiate a discussion on the best way for COSI to take on the additional topics under its remit and responsibility.

It is the aim of this discussion paper to contribute to and hopefully stimulate the discussion, outlining the Swedish thoughts on how COSI can better utilise and fill its explicit mandate in the field of internal security and especially terrorism, and invite other delegations to share their views on this issue as well.

Introduction

In the discussions preceding the setting-up of the Standing Committee on Operational Cooperation on Internal Security (COSI) in 2010 emphasis was placed on the Committee's coordinating and evaluating role on operational cooperation between national police, customs and external border control authorities.¹ Fostering efficient cooperation with and between affected EU agencies was also foreseen (*i.e.* Europol, Frontex, Eurojust, Cepol and IntCen).

¹ See inter alia doc. 5815/10 JAI 85 COSI 1

Through its tasked role of ensuring implementation of the Internal Security Strategy (ISS) COSI essentially has a mandate to handle all types of issues relating to the internal security of the Union. The ISS mentions serious organised crime, terrorism, cybercrime, cross-border crime and disasters. The Commission communication² on the EU Internal Security Strategy in Action (ISSiA) expresses these in five objectives concerning international crime networks, prevention of terrorism and radicalisation and recruitment, security in cyberspace, border management and resilience to crises and disasters.

Further development of COSI tasks – beyond organised crime

COSI has these first years focused on topics connected to creating a general framework for coordination, evaluation and fostering of cooperation on an overarching level between agencies and national authorities.

When it comes to more specific internal security topics, COSI has for the first part of its existence focused more specifically on creating a coherent framework for COSI's coordinating and evaluating role as regards *organised crime*, quite rightly so as it is one of the great challenges to the internal security of the Union. Such a structure now exists for organised crime through the policy cycle, even though it will be the subject of fine-tuning for some time to come.

As outlined above, it is clear, in the Treaty on the Functioning of the European Union (TFEU) Article 71, in Article 2 of the Council Decision on COSI³ and in the ISS and ISSiA, that the issues under COSI's topical remit go beyond organised crime to cover the coordination of all types of operational actions of authorities in the field of internal security.

It is true that a general framework that fosters cooperation or improved structures for national authorities to work together also indirectly improves the work on specific threats to internal security. Taking organised crime as the starting point, there are now other specific topical areas that COSI should consider how to address in its work.

² doc. 16797/10 JAI 990

³ Council Decision 2010/131/EU of 25 February 2010, OJ L52, 3.3.2010, p 50.

The fight against terrorism

Alongside organised crime, the argument can be made that terrorism is the main threat against the internal security of the Union. Events both inside the EU, as well as external security concerns which affect our internal security, continue to challenge us in finding a common approach in tackling these threats.

Terrorism has intermittently been on the agenda of COSI, with the spring of 2013 seeing several terrorism-related topics being discussed and even having an extraordinary meeting with the PSC to discuss the events in Sahel and Maghreb.

Given the somewhat – in some cases great – difference in nature of the fight against terrorism as compared to more traditional crime fighting approaches (the national security dimension, effects of attacks, perpetrators, authorities involved etc.), the model for COSI's work with this topic should and indeed needs to differ from the approach adopted for organised crime.

A large part of current operational counter-terrorism cooperation between national law enforcement authorities and security and intelligence agencies lies outside EU structures (*e.g.* work carried out in the Police Working Group on Terrorism and the Counter-terrorism group). The national security dimension of counter-terrorism efforts also extricates parts of it from more operational coordination on the EU level.

Article 4(2) of the Treaty on European Union (TEU) states that national security remains the sole responsibility of each Member State and Article 73 TFEU states that Member States can organise between themselves and under their responsibility cooperation and coordination between the competent national authorities responsible for safeguarding national security.

Regardless of this, the transnational nature of terrorism and its perpetrators makes it a clear threat also to the common internal security of the Union. It is therefore important that the work against terrorism, at least when it affects the EU as a whole, is coordinated so that it can be conducted efficiently and focused on common identified and prioritised threats.

In that respect there are clear and explicit, albeit limited, counter-terrorism tasks for EU agencies such as Europol in the law-enforcement sector as well as entities working in the external security dimension. The Council Working Party on Terrorism, TWP, is also active in ascertaining a complete picture of the internal aspects of terrorism in the EU. The Working Group COTER covers terrorism's international aspects.

Also, the comprehensive work of the EU Counter-Terrorism Coordinator (CTC) is important in that that his work spans both the external and internal security dimensions. The CTC has achieved much in coordination and stimulating counter-terrorism work under EU auspices.

“...based, above all, on national and EU threat assessments and priorities.”

What tool should then be used to identify common internal security threats and set priorities for the shared work to be carried out? The ISS envisaged that COSI would base its activities on “national and EU threat assessments and priorities” when carrying out its work. In the Committee’s current work structure developed for organised crime this is clearly the case, where the SOCTA is the tool used to achieve this. A similar coherent product does not, however, exist for terrorism.

For terrorism, threat assessments are normally produced for national consumption. On EU level, the EU Intelligence analysis centre (IntCen) within the EEAS produces reports, threat assessments and analyses *inter alia* on the threat from terrorism. They are often based on consolidated versions of reporting and contributions from Member States’ national security and intelligence agencies, as the EU does not have an intelligence collection capability of its own.

Europol produces each year the Terrorism situation and trend report (TE-SAT). While not being a threat assessment *per se*, the TE-SAT reports on acts of terrorism within the EU and seeks to identify trends and developing phenomena.

It is clear that the threat reporting and analysis on terrorism done by the IntCen directly relates to the internal security of the Union. These reports are shared with the Council working groups on terrorism (internal – TWP as well as external – COTER). There is ample argument that COSI is also an appropriate recipient of these, at least those affecting the internal security dimension. IntCen should be invited to present these to COSI on a regular basis. IntCen could also be invited to share its work programme with COSI, being a relevant preparatory body of the Council.

Worth mentioning here are also some of the specific actions being carried out in the process of strengthening the ties between the external and internal security dimensions in the EU (CSDP and FSJ), a process of great importance and pertinence to COSI's work. Of special concern in this context of threat assessments is the work of developing threat and risk assessments that cover both the internal and external dimensions of security (with special emphasis on the internal security dimension).⁴ It is important that COSI continues to be involved in this process and that it follows the different actions being carried out.

It can also be noted that the solidarity clause (Article 222(4) TFEU) indicates that the European Council shall regularly assess the threats facing the Union in order to enable it and Member States to take effective action. Such an assessment mechanism is not yet fully developed, but will be the topic for discussion on the implementation proposal of the solidarity clause currently being negotiated.

COSI's role in coordinating the EU's common work in countering terrorism needs to take into account the special nature of these efforts, with due regard to work being done multilaterally outside the EU framework as well as on a national security level. The reality on the ground is that national counter-terrorism work is carried out by security services and some law enforcement authorities, to a large extent falling within the national security exception from EU mandate.

In conclusion, COSI should probe the possibilities of addressing the topic of terrorism in the context of the Committee's competences and tasks. Guiding principles for this process as regards terrorism should be that:

⁴ See the Road map on Strengthening ties between CSDP and FSJ, doc. 18173/11, lines of action 3 and 4 under area 1.

1. **COSI should only act where it adds value and where work on countering terrorism clearly falls under EU mandate**
2. **due regard should be given to national and multilateral work on counter-terrorism carried out outside the EU framework**
3. **the work of the Counter-Terrorism Coordinator shall be taken into account and possible shared tasks between the CTC and COSI identified**
4. **existing threat assessments on terrorism should be used and developed to guide the coordinating work of COSI**

A way forward

The main aim of this discussion paper is to initiate a discussion on COSI addressing the topic of terrorism as an internal security threat falling under its remit. As lines of responsibility with national actors and the EU's mandate are not as clear when it comes to terrorism as with organised crime, careful consideration and discussion needs to be initiated on how COSI best can address this issue and add value in coordination of efforts currently carried out under EU auspices.

1. **A way forward can be to start out with delegations sharing their *initial written views* on the topic with an *orientating discussion* later following in COSI.**
2. **A *working paper* on a process for handling terrorism issues in COSI could be produced for further consideration by the Committee.**
3. **Finally, the IntCen can be invited to *brief COSI* at regular intervals *on the current threat from terrorism*, perhaps in the setting of joint COSI/PSC meetings. IntCen can also be invited to share its work programme with COSI.**