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NOTE

From: Presidency
To: Working Party on Frontiers/Mixed Committee
(EU-Iceland/Liechtenstein/Norway/Switzerland)
Subject: Foreign Terrorist Fighters
- Application of the Schengen Border Code - Follow-up
- Update on progress on the preparation of risk indicators

A. Political guidelines

At the high - level meetings devoted to counter-terrorism following the Paris and Copenhagen attacks (in particular, the informal meeting of JHA Ministers in Riga on 29 and 30 January 2015, the meeting of Heads of State and Government on 12 February 2015 and the JHA Council on 12-13 March 2015), various measures to combat terrorism were discussed and endorsed.

At the informal meeting of JHA Ministers in Riga on 29 and 30 January¹ it was highlighted that the then recent terrorist attacks, the counter-terrorism measures which were then in force and the growing threat posed by the foreign terrorist fighters all over the world sent a clear and strong message that counter-terrorism efforts have to be reinforced both at national and EU level. In the context of the Riga Joint Statement, Ministers concluded regarding Schengen framework as follows:

“- We consider that beyond the current efforts to make full use of existing Schengen framework, a targeted proposal to amend the Schengen Borders Code is a necessary step to reinforce external borders by making it possible to proceed to systematic checks on individuals enjoying the right of free movement against databases relevant to the fight against terrorism based on the common risk indicators.”

At their informal meeting on 12 February 2015, the Heads of State and Government underlined that the security of citizens is an immediate necessity and that existing tools must be better implemented and further developed, in particular in order to detect and disrupt terrorist-related travel, notably of foreign terrorist fighters.

In the same meeting a statement on terrorism pointed out the following regarding the Schengen regime:

"- full use [must] be made of the existing Schengen framework to reinforce and modernise external borders' control: we agree to proceed without delay to systematic and coordinated checks on individuals enjoying the right of free movement against databases relevant to the fight against terrorism based on common risk indicators;"

¹ doc. 5855/15.

The JHA Council on 12 and 13 March 2015¹ discussed the implementation of the measures contained in the aforementioned Statements and focused on a number of areas identified by the Presidency where results could be achieved in the coming months.

Ministers stressed the importance of the Council making progress in all these areas and agreed to return to all these issues at their next meeting, with a view to reporting to the European Council in June 2015.

Ministers agreed to implement without delay systematic checks in relevant databases of documents and persons on the basis of a risk assessment approach and invited the Commission to develop common risk indicators to be used by Member States in their risk assessments no later than June 2015.

It was also noted that implementation of these measures would be assessed and monitored by the Working Party on Frontiers as a matter of priority, with a view to reporting to the JHA Council in June 2015.

B. Implementation of the agreed measures

The Commission, in close cooperation with the Member States (Member States) and other stakeholders, has taken up two tasks, which are being carried out in parallel:

- one task having a wider scope – the implementation of the measures in order to enhance border checks to better identify foreign terrorist fighters, and
- one specifically focused task – the drawing-up of the common risk indicators, which would serve to better identify foreign terrorist fighters.

¹ doc. 7166/15.

As regards the first task the Commission:

- invited delegations to apply a set of informal recommendations¹ which were further developed in February 2015², addressing both how to interpret and apply in practice Article 7 of the Schengen Borders Code, and how checks against relevant databases could be intensified as regards persons enjoying the right to free movement within the existing legal framework;
- organised three meetings (on 10 November, 2014; on 9 February and on 15 April 2015) discussing the Commission's informal recommendations as regards checks on travel documents and Commission's interpretation of non-systematic checks on persons enjoying the right of free movement under Union law. As a result of the meeting on 15 April 2015 and the replies of the Member States to a questionnaire, the Commission submitted to the Working Party on Frontiers on 8 May 2015 a summary of the implementation actions undertaken by Member States³.
- The Commission is expected to issue an amendment to the Schengen Handbook on this basis by the end of May 2015.

As regards the second task, i.e. the common risk indicators, the Commission, in close cooperation with the Member States, prepared a list of common risk indicators in mid-April 2015 and submitted it to EUROPOL and to FRONTEX in order to receive their contributions. In line with the conclusions drawn by the JHA Council on 12-13 March 2015, the Commission plans to complete its work on these common risk indicators by the end of May 2015.

¹ doc.16880/14.

² doc.6891/15.

³ Although UK and IE do not participate in the application of the Schengen Borders Code, their replies have been included in the overview. Thus, this overview encompasses all EU Member States and Schengen associated countries.

Following the above discussion at the Frontiers Working Party on 8 May 2015, on the basis of the summary of the implementation actions undertaken by Member States, the Presidency would like to highlight the following:

- Member States have undertaken measures to implement the recommendations. Most of the Member States referred to the actions at national level aimed at awareness-raising among all relevant agencies (police/border guards and crime investigation services). These actions concerned both the foreign terrorist fighters' phenomenon in general and the recommendations of the Commission in particular.
- The intensification of the consultations of travel documents (of both TCN and persons enjoying the right of free movement) against relevant databases (SIS and Interpol's Database on Lost and Stolen Documents) are in place and is predominantly on the basis of risk assessment. The increase of checks has been mainly evidenced at airports in relation to certain specific destinations. To a lesser extent also land borders and sea borders have also been considered to need intensified checks on documents.
- There is currently no agreement among Member States as to the need of carrying out systematic checks on documents (only one carries out such checks and eleven have declared that they are ready to do so). Those which have concerns have invoked technical/practical/economic) concerns.
- Equally, a considerable number of Member States are not willing to carry out technical adaptations for separate consultation of travel documents and persons because of the above mentioned concerns.
- The number of checks on persons enjoying the right of free movement under Union Law has increased. Checks are carried out on those persons who fall within the risk assessment profiles (for example, checks are often performed on the basis of assessed risk destinations/place of origin). Several Member States have adapted their risk analysis products to the foreign terrorist fighters phenomenon.

- There has been no concrete increase in the number of seized documents, since the implementation of the measures on the automatic seizure of documents that are subject to an alert on the need to be confiscated. The most frequent reason for hits leading to the seizure of the documents is the document holder's failure to tell to the relevant authorities that the document previously reported as lost or stolen, has been subsequently found and used. None of the Member States reported seizure based on alert related to 'invalidated travel documents' as introduced on 1 February 2015.
- Member States declared willingness to employ the common risk indicators.
- There is currently no support among Member States on the necessity for a targeted amendment to the Schengen Borders Code.

Taking into consideration all the above points, the Presidency considers that, although substantial progress has been made, many of the measures agreed by the JHA Council on 12-13 March 2015 are still at the implementation stage. Member States are on the right track but there is still work to be done.

By way of conclusion, the Presidency would like to stress the necessity to put more effort into full implementation of the measures agreed. In this sense, the Presidency encourages Member States to make fuller use of the Schengen Information System (SIS) and Interpol's database on Stolen and Lost Travel Documents (SLTD), as well as to maximise efforts in order to achieve solutions for the systematic consultations of travel documents of all persons crossing the external borders against the above mentioned databases on the basis of a risk analysis approach. Furthermore, the Presidency encourages Member States to fully apply the risk assessment basis on checks on persons enjoying the right of free movement under Union. Based on an analysis of the risks for internal security and analysis of the threats that may affect the security of external borders, checks may be carried out systematically on those persons which fall under this risk assessment.