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From: Presidency

To: Working Party for Schengen Matters (SIS/SIRENE) / Mixed Committee  
(EU-Iceland/Norway/Switzerland/Liechtenstein)

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Subject: Joint Understanding on the list of criteria on when a person should be  
included in the SIS in relation to terrorism and terrorism-related offences

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1. On 15 March 2017, the Joint Terrorism Working Party (TWP) and the Working Party for Schengen Matters (SIS/SIRENE) met to discuss the various actions of the Roadmap falling within their joint competences. In particular, a lengthy discussion took place on Action 17 of the Roadmap regarding the possible agreement on a set of indicative criteria for entering alerts in the SIS in relation to persons involved in acts of terrorism or terrorism-related activities.

2. During the meeting, some delegations indicated their preference not to include any set of agreed criteria in the SIRENE manual, arguing that this would make it difficult to amend them if this proved necessary. It also removes some of the discretion which the national authorities should have in this area. These Member States would prefer to include any sub-set of criteria in the catalogue of recommendations and best practices on the use of the SIS. A few Member States also suggested waiting for the finalisation of the discussions on the new SIS proposals. Other Member States, however, argued that the need for such criteria cannot be placed on hold until the entry into force of the SIS proposals. The Presidency agrees with the view that the catalogue may be a more appropriate document for this purpose and that, considering the importance which the Roadmap on information exchange and information management attaches to this Action, agreeing on the criteria should not wait until the entry into force of the SIS proposals. The Presidency also reiterates that the list of criteria is by its very nature a living document which will need constant updating and reviewing.

3. Following the meeting, the Presidency received written comments from some Member States which ask for more flexibility regarding the choice of alert. Some Member States also suggested that the Presidency should not only take into consideration Article 36 alerts but also all other types of alerts. The Presidency reiterates that this list is not an exhaustive list and is always subject to constant updates whenever these may be required.

4. The Presidency, taking note of the various comments made by the Member States during and after the meeting held on 15 March 2017 has reviewed the set of suggested indicative criteria. Consequently, the Presidency suggests that, in the context of terrorism or terrorism-related activities, alerts **for discreet or specific checks** in the SIS could be considered on a case-by-case basis depending on what information or intelligence is available at national level or what type of investigation the entry of the alert is intended to support, whenever a person:

- 1) Is undergoing or will undergo criminal prosecution/s for terrorism or terrorism-related activities where an article 26 alert is not considered the right tool;
- 2) Is reasonably suspected of being a threat to internal or external national security as a terrorist or a person involved in terrorism related activities (general risk or threat);

- 3) Is a third-country national who for any reason cannot be expelled from the Schengen territory and is involved or suspected of being involved in terrorism or terrorism-related activities;
- 4) Is, on the basis of intelligence received by the competent national authorities responsible for public or national security, suspected of being in any way involved directly or indirectly in acts of terrorism or terrorism-related activities;
- 5) Is reasonably suspected of preparing to commit acts of terrorism or terrorism-related activities (specific risk or threat);
- 6) Is known for involvement in terrorism or terrorism-related activities (e.g. convicted for such conduct) and authorities have reasonable grounds for suspecting that he/she may again perpetrate or attempt to perpetrate acts of terrorism or terrorism-related activities;
- 7) Is reasonably suspected of attempting to travel to join a terrorist group where the issuing of an Article 26 alert is considered not adequate in the circumstances;
- 8) Is reasonably suspected of having travelled to join a terrorist group and returned or is awaited to return where an Article 26 is not considered adequate.

5. The Presidency therefore invite delegations to take into account the changes made and agree on this list of criteria as an initial joint understanding of when a person should be entered in the SIS for discreet or specific checks in the context of terrorism or terrorism-related activities for inclusion in the catalogue of recommendations and best practices for SIS.

Finally, the Presidency would invite Europol and European Border and Coast Guard Agency to continue working on updating the list of criteria referring to foreign terrorist fighters (FTFs) or terrorism-related activities involving as much as possible experts in the use of the Schengen Information System (SIS) and the exchange of supplementary information, whenever this is necessary.