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From: Presidency / EEAS Services / COMMISSION Services / GSC
To: Standing Committee on Operational Cooperation on Internal Security
(COSI)
Political and Security Committee (PSC)

Subject: Cooperation between CSDP missions/operations and JHA agencies

Delegations will find attached the outcome of discussions drafted jointly by the participants of the workshop on CSDP-JHA Next steps - Pilot Project Operation Sophia which was held on 9-10 NOVEMBER 2017 under the auspices of the General Secretariat of the Council. It reflects a first exchange on the potential added value of the concept of a crime information cell for EUNAVFORMED Operation Sophia as well as the challenges to be further addressed, including budgetary resources, duration and legal framework. This report reflects the discussions in the workshop, without prejudice to the institutions' final positions on the concept.

This joint exercise was organised as the follow-up of the COSI-PSC joint meeting of 26 September 2017. It involved participants from Presidency, EEAS (SECPOL, CPCC, CMPD, EUMS INT, INTCEN), COMMISSION, GSC, EU CTC, EUROPOL, EBCGA, EUROJUST and EUNAVFORMED Operation Sophia.

Introduction

The EU Global Strategy (June 2016), the Renewed Internal Security Strategy (October 2017) and the European Agenda on Security (April 2015), highlight the strong nexus between internal and external EU security. Improving linkages between CSDP missions/operations and JHA agencies is a key component of this activity, and is emphasised as a priority for action in in the fields of both countering migrant smuggling¹, and terrorism². The European Council on 19 October 2017 called for further action to enhance information and data sharing within the EU, between Member States, JHA agencies, and CSDP missions and operations, as well as with international partners, to address trafficking and smuggling networks; and in this context for operational joint investigation teams to be extended to relevant countries.

In this context, based on an EEAS non-paper (WK 9396/2017 REV 2), and on discussions that took place in the joint COSI-PSC meeting of 26 September 2017, Member States invited relevant actors to make concrete progress to improve information sharing between CSDP and JHA actors and to start developing a concept for a dedicated crime information cell that could be embedded in a CSDP mission/operation. EUNAVFORMED Operation Sophia was referred to as being particularly well suited for a pilot project. Relevant EU institutions, bodies and agencies met on 9-10 November 2017 for a workshop to discuss the concept of a crime information cell for Operation Sophia and to reflect in general on the idea of a crime information cell in CSDP missions/operations.

In accordance with the conclusions from the COSI-PSC joint meeting (26 September), this paper constitutes an update to Member States and will be presented to both committees on 21 November 2017. It outlines the key findings from the workshop. The Estonian Presidency also aims at reporting on progress achieved to the Home Affairs Ministers on the December JHA Council and possibly at the European Council later that month.

¹ Malta Declaration (3 February 2017) and Central Mediterranean - alleviating the pressure - Implementation Plan (7 November 2017).

² Foreign Affairs Council Conclusions of 19 June 2017, on EU external action on CT.

Key Considerations from CSDP-JHA workshop – pilot crime information cell project

Operation Sophia

All participants agreed that EUNAVFORMED Operation Sophia already has substantive cooperation with JHA agencies; notably with the European Border and Coastguard Agency (EBCGA) and the European Migrant Smuggling Centre at Europol³ as well as with Eurojust. This existing cooperation, as well as the specific and unique characteristics of the Operation (including the nature of its mandate, and its area of operation being on the high seas rather than on the sovereign territory of a host country) provides opportunities for further enhancing collaborative working, and quick progress. However it was noted that EUNAVFORMED Operation Sophia is not representative of the majority of CSDP missions/operations, notably in that its mandate allows collection of personal data and cooperation with JHA agencies. Therefore the solutions identified through a pilot project on EUNAVFORMED Operation Sophia may not be necessarily replicable, although lessons learnt could be useful for later reflection on the development of a further tailored approach to other missions/operations.

The creation of a crime information cell within EUNAVFORMED Operation Sophia should be seen as a mechanism by which current cooperation and information sharing is further enhanced. Its establishment should be within the existing mandate without requiring the setting up of a new legal entity and should not infringe on the competences and responsibilities of the Commanding Officers of the Warships, in accordance with their respective national legislations. It was noted that although the primary objective of EUNAVFORMED Operation Sophia is to disrupt migrant smuggling and human trafficking networks, the information collected in the course of this activity may also have relevance to counter terrorism efforts.

³ For full details please refer to EEAS non-paper ref WK 9396/2017 REV 2.

It was noted that the main purpose of the crime information cell should be to ensure that any information that is collected by EUNAVFORMED Operation Sophia, which is relevant for crime prevention, investigation and prosecution, or more broadly border security is made available to the relevant Member States authorities and JHA agencies, according to their mandate, in the fight against migrant smuggling, trafficking of human beings and other forms of cross-border crime and terrorism. In addition, the cell should ensure that the information is collected and stored in a way that will allow for its use in possible criminal proceedings both at national and judicial cooperation levels, according to the legal framework of the countries where jurisdiction regarding the crimes concerned is, or is likely to be established. The cell would operate on the basis of reciprocity to ensure maximum benefit for all parties. Accordingly, EUNAVFORMED Operation Sophia would receive from JHA agencies the criminal information relevant for the fulfilment of its mandate and contributing to its force protection and would provide feedback on the information provided by JHA agencies. A firm objective of the cell would need to be the increased timely sharing of relevant personal data in order to identify, prevent and disrupt criminal activity within Member States. The sharing of this personal data would be strictly in accordance with current legislation on data protection. It was also noted that although the initial focus of the pilot project should be the sharing of information, it would also be important to improve judicial cooperation, and thus to ensure that judicial dimension of CSDP/JHA cooperation would be adequately addressed in further developments.

The nature of the data and information to be collected and shared was felt to be well known. Europol and the EBCGA in preparation for the workshop had identified further information that would be relevant, and which they in turn could offer EUNAVFORMED Operation Sophia. It was noted that in addition, given the current levels of cooperation between JHA agencies and the Operation, it would be useful to undertake a visual mapping exercise of the current information flows between all parties to further identify gaps that the crime information cell may be able to fill.

It would also be important to consider the role and value of existing structures and information hubs, in particular the role of INTCEN and EU MS INT in processing and analysing classified intelligence. The crime information cell would solely focus on criminal information⁴, and not on intelligence per se, noting Member State responsibility in this field. However, further collaboration could be necessary between INTCEN/ EU MS INT and JHA agencies in the exchange of strategic analysis to maximise knowledge on current threats. **Based upon the discussions and issues highlighted above the participants noted that:**

- EUNAVFOR MED Operation Sophia would be in the position to host a crime information cell on the Flag Ship (Force Head Quarter)⁵ for a pilot project during a trial period, providing the logistic support, dedicated working spaces (fully compliant with safety and security regulations) and real time satellite communications (voice and data). The deployment of the crime information cell could start if a number of conditions were met (identification of law enforcement experts, budget, possible amendment of the OPLAN and Terms of Reference).
- JHA Agencies expressed their full support and readiness to further strengthen concrete efforts in reinforcing the links between CSDP and JHA and between law enforcement and the military in the field of countering migrant smuggling, trafficking of human beings, organized crime and terrorism.
- This cell could count up to 10 law enforcement experts and would operate in a safe and secured environment for staff and information, within the current legal framework, in respect of the data protection rules making the most of the transmission channels already in place (SIENA and JORA) with JHA agencies. The crime information cell would be responsible for the enhancement of exchange of information between CSDP and JHA agencies and would address the possible issues related to classification at its roots, based on what was already discussed with COM, EEAS and EU JHA agencies in relation to the implementation of the Malta Declaration as regards to enhanced information sharing in the field of counter migrant smuggling.

⁴ including criminal intelligence as allowed by Europol Regulation (EU) 2016/794

⁵ EUNAVFORMED SOPHIA informed that they would be ready from mid-December 2017, subject to the conditions listed above.

- The following categories of law enforcement experts may be required: Member States judicial and law enforcement officers notably with military status, JHA agencies staff. Budget and staffing would be defined on the basis of the operational needs.
- Participants also underlined the need to draft Terms of Reference for the crime information cell pilot project in EUNAVFORMED Operation SOPHIA including a chain of command and addressing, among other issues, the relations with existing structures (European Migration Liaison officers and other Member States and EU agencies Immigration Liaison Officers, the CT experts in EU delegations, the Information Clearing House⁶ in Europol, and the EU Policy Cycle). In order to draft the Terms of Reference an exhaustive list of types of information collected and exchanged both at strategic and operational levels including personal and non-personal data would be needed.
- Lessons learnt stemming from the mapping of existing bottlenecks and possible solutions on information sharing on migrant smuggling, which was conducted for the implementation of the Malta Declaration, should be taken into account when drafting the Terms of Reference so as to avoid duplication and increase the added-value of the crime information cell.
- In order to improve the collection of information, EBCGA offered to expand the collection implemented within Operation TRITON and to deploy de-briefers on ships participating in EUNAVFORMED Operation SOPHIA as appropriate. The crime information cell would then be in the position to facilitate the exchange of information with JHA agencies and provide the necessary feedback, focusing on facilitation of illegal migration, migrant smuggling, cross-border crime and terrorism. In addition to the acquisition of strategic information, the system would provide the collection of personal data of suspect activities. In addition EBCGA offered to exchange surveillance information beneficiary to both parties.

⁶ An analytical cell being created by Europol to collect, analyse and de-conflict information from different stakeholders relevant to activity to tackle organised crime groups facilitating illegal migration

- EUNAVFORMED Operation Sophia could benefit from further cross checking of information by JHA agencies of all relevant databases which offers an opportunity to identify possible links to organised crime and terrorism and to obtain a clear and comprehensive picture of illicit activities. This may add benefit in increasing the security of its assets and crews in the Area of Operation.
- Some technical mechanisms are already in place in respect of communication and encryption channels. Further work would be necessary to ensure that classification and encryption channels are used in a way conducive to good cooperation within the new framework of a crime information cell, and that all information is stored appropriately and in accordance with current legal requirements. Lessons could be taken from existing discussions regarding the framework of information sharing concerning migrant smuggling. Europol offered to provide training for SIENA as the secured communication channel already in place for exchanging of information between EUNAVFORMED Operation Sophia and Europol and will fully commit the Information Clearing House to work actively in this project. At the same time, it would be essential for the crime information cell participants to ensure full cooperation and timely information exchange with the Information Clearing House, through adequate arrangements to be foreseen in the Terms of Reference.
- It would be vital that a thorough evaluation of the effectiveness of the pilot project is carried out in real time to ensure its success and make sure that any lessons learnt are captured into future CSDP-JHA work. Parallel to the activity outlined specific to the proposed pilot criminal information cell project in EUNAVFORMED Operation Sophia, ongoing work would be necessary to consider the development of a further tailored approach to other missions/operations.

References

Strengthening military, law enforcement and judicial information exchange in counter-terrorism	ST 12347 2017 REV 1
Revised EEAS non-paper on "enhancing cooperation between CSDP Missions/Operations and JHA Agencies"	WK 9396 2017 REV 2
Malta Declaration by the members of the European Council on the external aspects of migration: addressing the Central Mediterranean route	43/17
European Council meeting (19 October 2017) – Conclusions	EUCO 14/17
Outcome of the informal joint ministerial HOME AFFAIRS/FAC DEFENSE lunch of 18 May 2017	COREU CFSP/SEC/0288/17 (EU RESTRICTED)
Military advice on "Strengthening military, law enforcement and judicial information exchange in counter-terrorism" and enhancing cooperation between CSDP Missions/Operations and JHA Agencies	ST 14149/17 (EU RESTRICTED)