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| Title / Subject | Military Advice on "Strengthening military, law enforcement and judicial information exchange in counter-terrorism" and "enhancing cooperation between CSDP Missions/Operations and JHA Agencies" - Revision3 |

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Please find attached the military Advice on the Counter Terrorism Coordinator (CTC) cover note on "**Strengthening military, law enforcement and judicial information exchange in counter-terrorism**" and the EEAS non paper on "**enhancing cooperation between CSDP Missions/Operations and JHA¹Agencies**" - **Revision3.**

¹ Justice and Home Affairs (JHA)

Military Advice on "Strengthening military, law enforcement and judicial information exchange in counter-terrorism" and "enhancing cooperation between CSDP Missions/Operations and JHA Agencies"

References:

- A. CTC cover note on "Strengthening military, law enforcement and judicial information exchange in counter-terrorism", 12347/17 Rev1, of 21 September 2017.
- B. Revised EEAS non-paper on "enhancing cooperation between CSDP Missions/Operations and JHA Agencies", WK 9396/2017 Rev2, of 22 September 2017.
- C. Suggestions for crisis management procedures for CSDP crisis management operations, 7660/2/13, of 18 June 2013.
- D. EU Concept for Military Intelligence Structures in EU Crisis Management and EU-led Military Operations/Missions, 16361/13, of 18 November 2013.
- E. Revised Guidelines on the use of "Visiting Experts" in the context of civilian CSDP missions, EEAS 7128/16, of 16 March 2016.
- F. Council Decision on the security rules for protecting EU classified information, 2013/488/EU, of 23 September 2013.
- G. Commission Decision on the security rules for protecting EU classified information, 2015/444, of 13 March 2015.
- H. Decision of the High Representative of the Union for Foreign Affairs and Security Policy on the security rules for the European External Action Service, HR DEC(2013)006, of 19 April 2013.
- I. Common Approach on sharing EU classified information with EU institutions, agencies, offices and bodies, Council doc 6074/17, of 8 February 2017.
- J. CMPD Food for Thought Paper "From strengthening ties between CSDP/FSJ actors towards more security in Europe", 10934/16, of 05 July 2016.

A. INTRODUCTION AND AIM

1. On 26 September 2017, the PSC invited the EUMC to provide Military Advice on the CTC cover note on "Strengthening military, law enforcement and judicial information exchange in counter-terrorism" (Ref. A) and on the revised EEAS

non-paper on "enhancing cooperation between CSDP Missions/Operations and JHA Agencies" (Ref. B).

B. CONSIDERATIONS

2. The EUMC welcomes the work done by the CTC and the EEAS/ DSG CSDP and highlights its support in the ongoing discussion on enhanced cooperation and information exchange between CSDP Missions/Operations and JHA Agencies.
 3. Being aware of the importance of an enhanced cooperation between CSDP Missions/Operations and JHA Agencies especially in the sphere of counter-terrorism and irregular/illegal migration, the EUMC recognises the need to bolster such cooperation on both sides. This cooperation has to be seen under reciprocity, providing a win-win situation for JHA Agencies as well as for CSDP Missions and Operations.
- 1) CTC Cover letter on "Strengthening military, law enforcement and judicial information exchange in counter-terrorism"**
4. Beyond raising awareness on all levels of command on the need to preserve collected evidence on the battlefield, specialized units such as military police or "gendarmerie"-type units may be entrusted with the collection, storage and handling of information likely to be used for prosecution purpose. Further the proper employment of other units/experts, specialized in law enforcement, justice/border security and sharing of information/intelligence has to be considered.
 5. The EUMC highlights that willing Member States could support this initiative in various forms (Training initiatives, PESCO, EDA-projects, etc).
 6. The EUMC emphasises the need to garner additional details from CSDP Missions/Operations, as well as from other potential information providers as mentioned in the Scenarios 1 and 2, thus informing the further discussion.
 7. The EUMC highlights that the mentioned build up of forensic expertise in military forces has to be further detailed as it is not seen as a core task for military CSDP Missions/Operations. The EUMC welcomes the idea of embedding EU or national law enforcement, justice and/or border security experts in military CSDP Missions/Operations as far as mandated by the

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Council, within means and capabilities and who will report to the military Mission/Operations Commander.

8. The EUMC highlights the possibility to create "Crime Information Cells (CIC)" by using national Military Police Forces or Gendarmerie Forces which are already available and trained for investigation purposes.
9. The EUMC acknowledges the need to encourage Member States to share their information/intelligence collected in theatre with EU institutions, offices and bodies as referred to in Scenario1.
10. The EUMC highlights that existing national, European (EU data protection regime and the EU charter of fundamental rights) as well as host-nation laws have to be taken into consideration especially for collection and handling of personal data. Also it should be recognised that in many EU MS the military does not have the legal authority to conduct law enforcement tasks.
11. The EUMC stresses that for military CSDP Missions/Operations the scene for possible information/intelligence exchange with Mission/Operation and non-Mission/Operation actors is set according to Ref. C and Ref. D. Arrangements have to be reflected in the CONOPS and/or OPLAN and constraints on the operational side have to be taken into account.
12. The EUMC acknowledges the idea of a workshop with US experts on possible fields of data exchange and highlights the responsibility of the EU Commission for this endeavour.
13. The EUMC also welcomes the idea by the CTC to invite Member States and third parties to share their national best practices and experiences. A questionnaire prepared by the EU Commission could be forwarded to the Member States inviting them to contribute.
14. The EUMC notes that the possibility to get access to NATO's Biometric enhanced watch list and network analysis information should be further explored.
15. The EUMC welcomes the initiative of inviting and involving EUROJUST, EUROPOL, FRONTEX and INTERPOL for further discussions.
16. The EUMC also welcomes the idea of an EEAS hosted workshop, involving all relevant internal and external stakeholders, to include CSDP actors, CT experts and Commission bodies.

2) Revised EEAS non-paper on "enhancing cooperation between CSDP Missions/Operations and JHA Agencies"

17. The EUMC recalls the need to gather further data about the possibilities and constraints reflected in the non-paper from CSDP Missions/Operations as well as from JHA Agencies, thus informing the further discussion.
18. Further, the EUMC recalls its understanding that cooperation and information exchange in particular goes both ways. For the military side relevant information from the JHA Agencies serving operational or security purposes, i.e. Force Protection etc. are of great importance.
19. In the areas of situational awareness and early warning at the political-strategic level, the EUMC highlights the role of SIAC² and the need for JHA Agencies to further link up to the SIAC community.
20. The EUMC notes two bodies that can play a key role to enhanced cooperation with JHA Agencies and military CSDP Missions/Operations:
 - a. The OHQ of a military CSDP Operation is well suited to process any information gathered in theatre as well as information received from contributing Member States and Troop Contributing Nations.
 - b. For non-executive military CSDP Missions the MPCC is the appropriate link to JHA Agencies.
21. In this context the EUMC recalls the need to consider the legal preconditions, as all three above mentioned structures (SIAC, OHQ and MPCC) in general are not mandated to collect, store and disseminate or share personal data collected in theatre or by JHA Agencies.
22. The EUMC recalls the need for a review of the Mission/Operation mandates to set the legal framework for enhanced cooperation with JHA Agencies.
23. The EUMC also welcomes the idea of establishing further permanent JHA Agency liaison officers and subject experts to military CSDP Missions/Operations as well as the possibility to associate military liaison officers to JHA Agencies.
24. The enhanced usage of "Visiting experts" (Ref. E) to civilian Missions has to be seen as an additional possibility to strengthen the areas of main effort of civilian Missions or JHA Agencies. Established "Military Advisors" within EU

² Single Intelligence Analysis Capacity (SIAC), consisting of the EU Intelligence and Situation Centre and the EU Military Staff Intelligence Directorate

Delegations and civilian Missions could also act as the military liaison to JHA Agencies.

25. The EUMC strongly supports the need for future proofed IT services based on structured communication capabilities that allow the appropriate handling, storing and disseminating of classified information to all relevant EU stakeholders according to their needed classification level.
26. The EUMC highlights the need for standardised security procedures and standards as a precondition for possible standardised classified information/intelligence exchange between additional EU institutions and bodies.
27. The EUMC also highlights the already existing possibility of marking classified information/intelligence "Releasable to JHA Agencies" if the preconditions for sharing classified information are met by the respective entity, in accordance with the Security Rules of the Council, Commission or the EEAS (Ref. F, G, H).
28. In this context the EUMC welcomes the use of the "Common Approach on sharing EU classified information with EU institutions, agencies, offices and bodies" (Ref. I), as mentioned in the non-paper, but highlights the fact that the Common Approach does neither cover civilian nor military CSDP Operations where access to classified information is needed. Thus EUMC highlights the responsibility of the Council to decide whether such information can be shared.
29. The EUMC acknowledges the possibility to invite JHA experts to CSDP Mission/Operation planning activities as well as for CSDP Mission/Operation mandate reviews as deemed appropriate.
30. The EUMC welcomes the initiative of reciprocally targeted training sessions which could be conducted by willing Member States, the ESDC as well as by JHA Agencies.

C. RECOMMENDATIONS

31. The EUMC recommends continued consultation between JHA actors, the CT Coordinator, DSG CMPD and the EUMS and to request further EUMS expertise on improving cooperation between CSDP Missions/Operations and JHA agencies.
32. The EUMC recommends to gather additional information on possible fields of cooperation. Especially the areas of possible Member States support, enhanced

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awareness and training as well as standardised solutions for embedding of law enforcement, justice and/or border security experts in military CSDP Missions/Operations have to be considered in detail and reflected by appropriate arrangements.

33. The EUMC further recommends to shape legal preconditions by reviewing Mission/Operation mandates and synchronising identified cooperation needs with existing legal obligations and concepts.
 34. Further the EUMC recommends to focus on mentioned three bodies, named SIAC, MPCC and OHQs as the main counterparts for JHA Agencies in regard to military CSDP Missions/Operations.
 35. The EUMC recommends to work on standardised security procedures and standards and on an integrated and future proof IT system that allows the appropriate handling, storing and disseminating of classified information to all relevant EU stakeholders according to their needed classification level.
 36. The PSC is invited to agree the recommendations of this Military Advice.
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