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NOTE

from : the EU Counter-Terrorism Coordinator
to : Council/European Council
Subject : EU Counter-Terrorism Strategy - Discussion paper

Introduction

On 19/20 June 2008, the European Council welcomed the recommendations made by the EU Counter-Terrorism Coordinator (referred to hereafter as CTC) in his report¹. This report assesses the progress made in recent months, and the priorities for future action.

¹ 9417/08

1. Information sharing

1.1. Toward an EU strategy on data sharing

The CTC is very satisfied with the re-convening of the ad hoc group on information exchange and the fact that discussions in this group have shown that, next to the work on the implementation of the Swedish Framework Decision and the Prüm Decisions, there is a need and willingness to address the question of a vision and strategy on JHA data exchange matters in a broader and coherent way.

To facilitate this strand of work, the CTC has convened a meeting of selected delegations and the Commission to discuss the preparations necessary for developing a data exchange strategy and in particular the tasking during 2009 notably in view of the post-The Hague programme. This concerns both the work done on IT support for data exchange¹ and the need to speed up definition of the business requirement, thereby also integrating several existing specific proposals. The governance of EU information exchange needs to be addressed, on the basis of but also going beyond the Commission proposal for establishing a mechanism for the management of large-scale IT systems.

Given the above work on vision and strategy, governance of this file within the Council structures should be improved. It would therefore be useful to establish the ad hoc group as a proper and fully-fledged Council working group with a clear and comprehensive mandate and pragmatic working methods.

¹ Such as the results of COPE 07 and COPE 08, the Common Requirements Vision (CRV), the Universal Message Format (UMF).

1.2. Systematic transmission of information to Europol and Eurojust

Decision 2005/671/JHA of 20 September 2005 provides for the systematic transmission of information to Europol and Eurojust.

EUROPOL

In its report of 24 October 2008, Europol confirms the evaluation carried out in its previous report¹ whereby the implementation of Decision 2005/671/JHA remains unsatisfactory. Europol highlights three types of obstacle to the systematic transmission of information relating to investigations:

- the refusal by the judicial authorities in certain Member States to transmit information relating to investigations in progress;
- Some agencies with dual competencies as Law Enforcement and as Security Services are experiencing legal difficulties in identifying what can be shared with Europol.
- the requirement laid down in Article 2(3) of the Decision, that the information affects, or is likely to affect two or more Member States.

The CTC calls on the relevant Council working party to consider how these difficulties may be resolved, if necessary by amending Decision 2005/671/JHA.

EUROJUST

In its report, Eurojust states that the implementation of the Decision 2005/671/JHA has been satisfactory with regard to judgments rendered and European Arrest Warrants issued. On the other hand, Eurojust receives little information on the various requests for mutual legal assistance in the field of terrorism. Such information would allow Eurojust to detect links between European Arrest Warrants and letters rogatory, to alert the relevant national authorities and to perform the coordination task which is central to its mandate.

¹ 9612/08 RESTREINT UE.

JOINT INVESTIGATION TEAMS

The CTC invites the Member States to inform Europol and Eurojust systematically of the creation of joint investigation teams on terrorism and to involve them, in accordance with procedures to be established on a case-by-case basis. The seminar held by the Presidency in Toulouse on 17 and 18 July 2008 showed the importance of systematic involvement of Europol and Eurojust. It would allow the two agencies to increase their expertise in the complex field of terrorism, to build a relationship of trust with the competent national authorities and show in practice the added value they can provide.

1.3. Cooperation between Europol and Eurojust

Further to the Council's request¹, Europol and Eurojust have amended their cooperation agreement. The draft will be soon submitted to the Council for approval.

The CTC welcomes the changes made in the draft cooperation agreement, which goes in the direction suggested in his report on priorities for further action within the EU Counter Terrorism Strategy, issued in May 2008. Detailed provisions on the exchange of information have been included with the aim to facilitate a systematic, reciprocal and timely flow of information between the two bodies and to improve Eurojust's involvement in Europol's Analysis Work Files. The possibility to agree on the temporary posting of representatives of one organization in the other organization's premises should also improve the information exchange.

An assessment of the effectiveness of the cooperation agreement should be made through the annual reports to be produced by both Eurojust and Europol to the Council.

¹ 9718/08.

1.4. Sharing Internet-related information

As detailed in its report, Europol has launched the second phase of the Check the Web project, which should be implemented in December 2009. This new phase will increase the number of accounts allocated to each Member State (currently limited to 5) and improve online searches and access to confidential documents and audio and video messages.

The CTC requests the three Member States which have not yet done so to activate their accounts and to designate contact points. He also invites all Member States which carry out analyses of extremist Islamic sites to add information and analyses to the portal, since only eight of them have contributed so far.

Europol mentions two problems which are preventing the "Check the Web" project from achieving its objectives and which need to be resolved quickly:

- the time required for accreditation, which is too long (56 weeks), and
- While the JSB has acknowledged the fact that there is a need for Check the Web to include some personal data, their extreme interpretation of the data protection rules means that a number of high value analysis documents received from Member States cannot be input in the system, some of them because they contain the name of well-known terrorists such as Osama Bin Laden...

1.5. Exchange of information at national level

The final report on the first round of peer evaluation of national anti-terrorist arrangements¹ called on all Member States to establish a central body responsible for coordinating the exchange and analysis of information on terrorism. The CTC welcomes the decisions by the Polish and the Czech authorities to set up such a body, and requests Member States which do not have a body of this kind to establish one. The CTC also reiterates his conviction that it would be advantageous to hold regular meetings of experts from the central bodies to follow up the possibilities for cooperation identified at the meeting held in Madrid on 9 April 2008 at the invitation of the Spanish Government².

¹ 12168/3/05.

² 9417/08, point 1.5, p. 5.

1.6. Exchange of information with the United States

The High-level Contact Group on data protection and data sharing (HLCG) has identified 12 common data protection principles (with some diverging views relating to redress) in a Final Report to the EU-US summit of 10 June 2008¹. The EU-US Summit acknowledged that the best way to match effective sharing of law enforcement data with the requirements of privacy and data protection is through a binding international agreement that addresses all issues identified in the HLCG report. The report also highlighted a number of outstanding issues in this area which might give rise to further discussions in preparing the negotiation of such an agreement.

2. Radicalisation and recruitment

In the last six months, progress in the implementation of the "Prevent" strand of the EU Action Plan on Counter-Terrorism remained uneven. At the high-level meeting on radicalisation and recruitment on March 5, the CTC asked five Member States to take the initiative in various areas mentioned in the EU Action Plan on Combating Radicalisation and Recruitment in order to reinforce EU cooperation in this area. Since then, a sixth Member State has volunteered to lead on another topic.

Al Qaeda leaders have said that their propaganda effort is of equal importance to their armed struggle. Media Strategy is thus a fundamental element of the Counter Terrorism effort, as recognised again in the newly revised Action Plan against Radicalisation and Recruitment. There is a real need to inject new life into the Media Strategy originally agreed in 2006. The UK will hold a two day session in late January/Early February with interested Member States to review the current guidance on counter terrorism communications, by reviewing the effectiveness of the current arrangements. This will particularly focus on the perspective of the Institutions, and make recommendations accordingly. The CTC will then present the results to key policy makers on Counter-Terrorism as early as possible next year.

¹ 9831/08

Spain offered to present a proposal on the training of imams. At TWG on 5 September, the Spanish delegation presented a study on this subject. A questionnaire has now been sent to all Member States, which will be followed up as necessary. On the basis of the information received Spain will put together a map containing the situation in each Member State, with a view to publishing the results in June 2009.

As lead country for work on the internet, Germany intends to take the Check the Web initiative a step further and also deal with the question of preventing terrorist content on the internet. With a view to doing this, financial assistance from the Commission has been applied for under the "Prevention of and Fight against Crime" (ISEC) financial programme for the joint German, Dutch, Czech and British project "Exploring the Islamist Extremist Web of Europe - Analysis and Preventive Approaches". The results of this project will be shared with all Member States as basis for further discussions.

Sweden volunteered to be the lead nation in submitting proposals for EU action in order to enhance the capacities of local police officers to recognise and counter radicalisation. In order to fulfil its task, Sweden has collected information from interested Member States both at Ministry level and from Security Services. Based on the experiences from contributing Member States, Sweden will draw conclusions and suggest possible measures to enhance the role of the community police in preventing radicalisation. The complete result will be presented at the Terrorism Working Party on November 17.

The Netherlands is currently developing an initiative for exchange of information and experiences regarding the role of local authorities in countering radicalisation and recruitment. A preliminary Dutch proposal, which will be presented in TWG on 17 November, will include the following elements: establishment of an informal European Policy Planners Network (EPPN), consisting of officials working on the prevention of radicalisation, which would adopt a joint method of benchmarking and peer evaluation; a conference of European cities with a series of workshops to exchange experiences on the role of local authorities; and European sponsoring of further research into the local dynamics of polarisation and radicalisation.

Denmark is currently developing a project for de-radicalisation which the CTC strongly supports. The purpose of the project is to develop a best practice model for individual de-radicalisation of young people who have been identified as being radicalised and who can not be reached by other more general initiatives for preventing radicalisation and recruitment.

The CTC is grateful for the work these six Member States have done and looks forward to more detailed proposals from Sweden and the Netherlands.

One other important initiative should be mentioned here: the Franco-German-Austrian project to develop a practical handbook for prison employees confronted with the phenomena of radicalisation and recruitment. The handbook is an outstanding document that deserves to be used by practitioners throughout the Union.

The French Presidency has undertaken a revision of the Action Plan for Combating Radicalisation and Recruitment in order to take into account new insights as well as recent developments within the European Union. The CTC much welcomes this initiative. He believes the revised Action Plan usefully refers to a number of new initiatives of the Council and the Commission and to new community legislation adopted in the last three years. The revised Action Plan will make it easier for Member States and EU institutions to effectively and comprehensively counter radicalisation and terrorist recruitment. In this context, a series of excellent academic studies on this subject, carried out at the instigation of the European Commission and publicly available on the Commission's website, provide an excellent basis for future work.

The atmosphere in which we can discuss the religious aspects of radicalisation has been improved by the progress made in the EU's cooperation with the Alliance of Civilisations. The CTC welcomes Member States' agreement on a "light" framework of cooperation with the Alliance of Civilisations, based on an exchange of letters accompanied by an action plan for the period 2008-2010 (as detailed in 14862/1/08).

3. External relations

It is impossible to separate the internal and external dimensions of counter-terrorism. The most serious challenges we face outside the EU, all have complex connections inside the EU. In his last report the CTC identified the key priorities as Pakistan, the Sahel, and support for the international system. To this list the CTC would add one more: the transatlantic relationship. The election of a new US President is a major opportunity to deepen what is already our closest counter-terrorism relationship, based on a closer perception of how to fight terrorism in all its aspects within a common perception of the rule of law, and the importance of dealing with terrorists as the criminals they are.

The EU is already well established as the leading promoter of multi-lateral approaches to international problems. This is equally the case in Counter-Terrorism. One of the CTC's closest working relationships is with Mike Smith, Director of the UN CTED. He has visited Brussels twice in the last year, attending relevant working groups and giving a press conference here on the anniversary of 9/11. The CTC has been to New York, talking to key players within the UN system inside and outside the secretariat. His address to the General Assembly session which reviewed the UN's Global Strategy showed how much the EU is a model of how regional organisations can push forward the international agenda.

The EU is a major force in international development, and we can be rightly proud of the effort we are making. We do not do this to counter terrorism. However, it would very much help our efforts if we could do more to show how much we are actually doing in practice to address the causes that terrorist groups claim we ignore - for example our support to the Palestinians. More generally, the CTC has started a wider discussion with development colleagues about the whole question of the relationship between development and security. The best and most sustainable form of CT is a well governed State able to exercise proper control over its own territory and respond to the needs of all its people. Conversely, insecurity and terrorism can quickly wipe out the gains of development programmes. We need to make sure that the EU's development policies respond properly to this challenge.

In particular, the CTC has been working with the Presidency and colleagues across the Council Secretariat and the Commission to promote such a holistic consideration of the security challenges facing the countries of the Sahel, and also Pakistan.

Al Qaeda in the Islamic Maghreb (AQIM) is a growing concern across Europe, as shown, for example, in the BND's 10th Annual Conference in October. We need to equip the fragile States of the Sahel, such as Niger and Mali, to be able to confront this menace before it can gain a strong foothold in an area from which it would be difficult to eradicate. These countries, which are among the very poorest on earth, are confronted by an explosive cocktail of security challenges including organised crime, and the smuggling of drugs, weapons and people. The Commission and Council Secretariat will shortly produce a paper with concrete proposals for how we can help them tackle these challenges. We need also to act before AQIM starts to exploit the connections between Europe and the Maghreb to become a threat here too. In this respect we need to do more to translate expressions of political interest in CT co-operation from Algeria and Morocco into real operational action.

Pakistan represents an equally great challenge. The threat is huge, and multi-dimensional. It threatens us, and it threatens Pakistan itself. And Pakistan is now a nuclear State. Terrorism threatens our interests inside Pakistan and Afghanistan, but it also feeds on discontent among alienated young Pakistanis in Europe. The areas of Pakistan which the Government finds it hardest to reach provide havens to which alienated Europeans have travelled to become terrorists.

Next month, the Management Board will make key decisions on the use of the Stability Instrument. For the first time, this will contain a specific provision on Counter-Terrorism. This is a small beginning but it is an important beginning to support action to address the key challenges in Pakistan and the Sahel, and to help the UN CTED in moving forward international implementation of the Global Counter-Terrorism Strategy.

4. Organisation of work within the Council

In his November 2007 report, the CTC explained the reasons why the Council's structures relating to the fight against terrorism should be reorganised in the more general framework of preparations for the entry into force of the Reform Treaty.

Waiting for this to happen, the Presidency has suggested to explore ways to improve the efficiency of the preparatory work within the existing structures of the Council. An informal group met twice (16 September and 10 November) to explore synergies between the two main groups dealing with terrorism (Terrorism Working Party and COTER). The CTC supports this process. Yet the need for a more significant reorganisation of the Council structures will still have to be considered in due time.

5. Implementation

Addendum 1 to 14862/08 shows the status of transposition by the Member States of the instruments adopted by the Union and the Community, and the status of ratification of the Conventions adopted by the Union or concluded in the Council of Europe or the United Nations.

Once again, the CTC has to voice strong concern that instruments which are crucial to improving the prevention and combating of terrorism have still not been transposed or ratified.

The situation is particularly acute with regard to:

- the 2005 Directive on money-laundering and terrorist financing and the 2006 Directive on the retention of telecommunications data/access to internet,
- the Framework Decisions of 2003 on the freezing of property and of 2005 on cyber crime,
- the Convention of 29 May 2000 on mutual assistance in criminal matters, and its Protocol of 16 October 2001,
- the two agreements between the European Union and the United States of 2003 concerning extradition and mutual assistance in criminal matters.

6. Varia

In addition to the points raised in his two previous reports, the CTC wishes to draw the attention of the Council/European Council to the following issues:

6.1. Terrorist financing

Last July, the Council adopted the draft Revised Strategy¹ which the CTC had submitted to it. Without waiting for the implementation report which he is due to submit next January, the CTC considers it necessary to step up the work currently being done on the possible misuse of charitable organisations as a conduit for terrorist financing.

6.2. Security-related research

At the Third European Security Research Conference (SRC-08) held in Paris on 29 and 30 September, Mr Gijs de Vries presented the interim report by the European Security Research and Innovation Forum (ESRIF), which he chaired from September 2007 to October 2008.

The report proposes establishing an EU Security Label. The Label should help nudge standardisation and certification processes toward a harmonised application of security measures and quality as the criteria for market access for security products and services. The concept will be formulated in a technology-neutral, performance-oriented way that underlines conformity with the required standards.

Such an EU Security Label would stimulate innovative technologies that provide the best value for money in the long term, while ensuring interoperability. By introducing a compulsory 'privacy & freedom-compliance requirement', the Label would at the same time express respect for European civil liberties. It could become a common reference point for security providers, end-users and legislators by creating a coordinated accreditation process for test facilities and auditors, while encouraging appropriate organisations to apply.

¹ 11778/1/08.

It would be very valuable if Ministers of Home Affairs could further intensify their participation in ESRIF'S work and indicate to it what their requirements in terms of internal security will be over the next 10 or even 20 years. In this connection, the CTC welcomes the initiative by France to set up a European Network of Internal Security Technology Departments. Since the Commission has announced that it will submit a Communication on Security Research to the Council in 2009, the CTC requests the Czech and Swedish Presidencies to examine how this issue can best be addressed by the Council bodies.

6.3. Security of explosives and CBRN threat

The CTC welcomes the steady implementation of both the EU Action Plan on Enhancing the Security of Explosives and the Conclusions on CBRN risks and on bio-preparedness adopted by the Council in December 2007¹.

In this context, the CTC emphasises the importance of ensuring consistency between the package of policy measures on CBRN to be proposed by the Commission in June 2009 and the new lines of European Union action to combat the proliferation of weapons of mass destruction and their means of delivery² to be adopted by the Council in December.

Finally, the CTC strongly supports the proposal made by experts at the seminar on prevention measures against CBRN threats organised by the Presidency in Paris on 30-31 October 2008 to create at Europol (as a subset of the European Bomb Data System) a secure IT tool to enhance the exchange of information in the CBRN field³.

¹ for more details, see doc. 14862/1/08 pp 8 and 19

² CFSP/SEC/1949/08.

³ 15170/08

7. Conclusions

The CTC welcomes the renewed energy given by the Presidency and the Commission over recent months to the implementation of key aspects of the EU Counter-Terrorism , such as radicalisation, civil protection, cybercrime/terrorism, PNR and the CBRN threat.

In the months to come, the EU will have to develop further its CT policy towards Sahel, Pakistan and explore quickly with the new US administration how to reinforce the CT Transatlantic Partnership. The CTC urges Member States to speed up the implementation/ratification of legal instruments which the EU has agreed are essential to improve the prevention and the fight against terrorism.
