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**NOTE**

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from: EU Counter-Terrorism Coordinator  
to: Council/European Council

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Subject: EU Counter-Terrorism Strategy - Discussion paper

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I have submitted separately my annual reports on the implementation of the Counter Terrorism Strategy (17594/11) and on Terrorism Financing (15062/11). In order to assist the Council in making further progress, I have, as usual, made a non-exhaustive selection of what seem to me to be the key issues for debate in the coming months.

**Issue I:** Understanding the threat

In past discussion papers I have referred to the difficulty of keeping track of the evolving threat, in particular from Al Qaeda and its affiliates, but also from other groups. In my 2009 Discussion Paper I wrote:

*"While militant Islamist terrorism today still constitutes the biggest threat facing Europe as a whole, a number of Member States continue to face their own indigenous terrorist problems, and we should not lose sight of the longer term possibility that other fringe groups could resort to political violence on a European scale as has happened in the past.*

*The threat from terrorism thus remains significant, but more importantly it is constantly evolving both in response to our attempts at combating it, and to new opportunities that present themselves. The emergence of self-starting "lone wolves" (or small groups) that have no organisational connections, but work entirely from material they find for themselves on the internet is a particular example."*

This judgement remains essentially correct. As I have pointed out in the implementation report, Al Qaeda core is now a shadow of the organisation which organised the attacks on 9/11, however its franchises, especially AQAP, have shown great imagination in finding gaps in our security measures and AQIM is openly seeking to derive material and ideological advantage from events in Libya and spread its presence south through alliance with Boko Haram. And both organisations are linked through Al Shabab.

However, the attacks in Norway and now recent events in Germany have again brought home the fact that the threat of terrorism does not come from a single source. The JHA Council in September already heard a number of ideas on how to increase cooperation in countering the threat of right wing extremism, especially from Europol. This work clearly needs to be pursued especially since, as observed in the TE - SAT report for 2010, right wing groups have proved themselves very effective in the use of internet based social media in order to spread their message and attract recruits. Again we see that terrorists are no less able to take advantage of advances in technology than any other part of society, criminal or not.

History shows us that political violence has been born from all religions and ideologies, and we need now to be alive to the possibility that adverse economic conditions within Europe itself could in addition start to produce conditions conducive to the spread of violent left wing or anarchist ideologies. The EU's response must be two-fold. First, in line with the Council Conclusions of 6 June on links between Internal and External aspects of counter terrorism, the EU Sitcen and Europol need to work together to give policy makers the most comprehensive possible description of the threats which we face now and are likely to face in the future. This then needs to be used effectively to support policy making. The latest air cargo security regulation (see below) was a pilot for the use of a systematic risk assessment methodology focussing on the terrorist threat towards aviation security. This brought together experts from Transport and Justice and Home Affairs to develop a common understanding of a sector specific risk. The Commission has announced its intention in its Communication “Internal Security Strategy in Action” to develop an all-hazards approach to threat and risk assessment. The experience and methodology being developed in the current risk assessment process in cargo security should provide a good example and basis for other areas.

Secondly, we need to be clear in our policy making about exactly what we are fighting, which is violence in support of an extremist agenda of any kind. In the final analysis of course, bombs themselves have no ideology – and responses such as the protection of critical infrastructure are obviously equally valid for all types of terrorism. However we need still to be clear that these measures are taken to confront an objective assessment of risk and the need for them must not be explicitly or implicitly blamed on any ethnic or religious group from which terrorism might emerge. Some aspects of counter-terrorism, for example the construction of a counter narrative, are inevitably specific to specific ideologies – but many aspects of radicalisation are to do with other factors such as feelings of inadequacy or isolation, where ideology only comes along later to provide an *ex-post facto* justification for a path to violence that has in fact already been embarked on for other reasons. I hope that the work of the RAN network will give us deeper insights into these processes.

We still need also to work more effectively on constructing and communicating narratives to counter terrorist violence. We have been working on this since the revised Media Communications Strategy of 2007, and there was considerable contact among communicators on Counter Terrorism issues in preparation for the events to commemorate the 10th Anniversary of the 9/11 attacks. The time may have come for us to revisit this strategy to see what has worked and what lessons could be learned in expanding it to confront a broader range of ideologies by developing general messages against the use of violence in parallel with messages specific to individual ideologies.

We are often criticised that by communicating on counter terrorism in the context of specific religions or ideologies we encourage the idea that some are more prone to terrorism than others, in particular that we associate Islam with terrorism. However, it is precisely the need to challenge misconceptions which makes the need for a proper strategic approach so essential. If we do not talk about these issues we will simply leave people to fall back on their pre-existing prejudices.

***Issue II:*** Increasing Internal/External coherence

The opportunity presented to improve the effectiveness of the EU's overall Counter Terrorism policy by improving coherence between Internal and External policy was recognised in Conclusions adopted by the Council in June. We now need to give life to these in order to be able to report real progress when the first review of the Conclusions is due at the end of next year.

If the EU is to be an effective international actor in its own right, it needs to present a distinctive approach which shows where it can add value to the efforts of others. Counter Terrorism expertise is necessary not only in DG Home, but also in DG Justice, for example in the context of the negotiations of the umbrella agreement with the US on data protection principles, which is meant to facilitate data sharing. Counter Terrorism expertise is needed not only in Brussels, but also in key Delegations especially as the EU is just beginning implementation of its first projects specifically aimed at Counter Terrorism. Working in such a politically sensitive area requires careful attention to relationship building, and is very resource intensive. But the eventual rewards are worth the effort.

As a key part of its commitment to the international rule of law and human rights, the EU has been promoting globally a criminal justice and law enforcement approach to the fight against terrorism, based on the rule of law and human rights. Over the past decade, the EU has also developed what is internationally the most comprehensive model of cooperation in criminal justice and law enforcement. Traditional mutual legal assistance and extradition instruments have been complemented with real time cooperation in EUROPOL and EUROJUST, as well as the mutual recognition principle in criminal procedure (e.g. European Arrest Warrant, European Evidence Warrant, Joint Investigation Teams, European Investigation Order under preparation). EU Mutual Legal Assistance and Extradition Agreements with third countries such as the US and Japan have created a modern framework for cooperation in criminal justice.

I very much look forward to the upcoming communication from DG Justice on the external dimension of justice issues. The EU could productively support Member States by negotiating mutual legal assistance and extradition agreements with third countries to strengthen judicial cooperation, as mentioned, for example in the summit level EU-India Counter Terrorism Declaration. The possibilities for cooperation with third countries through EUROJUST should also be strengthened, including financially, for example by posting EUROJUST liaison officers in third countries and by concluding cooperation agreements with more countries.

DG Justice should play an active role in the Global Counter-Terrorism Forum's rule of law and justice group, and be fully associated with EU strategies such as for the Sahel, in which justice reform is important. DG Justice is already involved in assistance programmes for the Justice Sector, as is the case in the feasibility assessments for Tunisia, and should play an even stronger role.

The most important opportunity to advance the rule of law, human rights and a criminal justice approach to the fight against terrorism is the Arab Spring. The Minister of Interior of Tunisia has already approached the EU for assistance in Security Sector Reform. The EU, given its huge experience in transforming totalitarian security systems after 1989, should respond to the Tunisian request for assistance as a priority, designing, together with the Tunisian government a

comprehensive strategy for assistance in Security Sector Reform (SSR) reform, which would be fully in line with the “deep democracy” principle endorsed by the European Council. SSR needs a broad and comprehensive approach, starting with the legal framework, re-drafting of the Constitution and the laws to ensure independence of the judiciary, democratic control of the armed forces, limits to the authority of security agencies and oversight mechanisms.

In order to be effective this kind of reform should not consist of a series of piecemeal projects which do not address the core of the issue, which is transformation of the security sector. There must be a broad strategy if reform is to achieve the depth and sustainability needed for long term success. This applies not only in Tunisia but also to opportunities in Morocco, Libya and Egypt. Above all, it applies to the EU's most challenging Counter Terrorism relationship, with Pakistan. Recent events have shown the limits of the military approach to Counter Terrorism in Pakistan. The EU is already active in supporting the criminal justice approach, but this has been difficult because of the sheer scale of the problems facing Pakistan and the losses it has been incurring, and because of the wider need to improve the capacity and effectiveness of all aspects of the justice system. A holistic programme to develop the rule of law is needed not only for Counter Terrorism but also for economic development. Given the scale and depth of the problems, this will have to be a long term endeavour but needs to start now.

In the transatlantic context, the EU has continued its very useful dialogue with the State Department Legal Adviser Harold Koh. The US Administration has banned “enhanced interrogation techniques” and secret detention. However, Military Commissions continue for alien terrorist suspects, where the first death penalty trial has started. Political pressure against regular criminal trials of alien AQ related terrorist suspects is increasing. Legislation currently pending in Congress, which the Administration has threatened to veto, would not only make Guantanamo closure impossible, it would also prohibit criminal trials in regular courts. This is attracting adverse attention in Europe and is making it more difficult, for example to persuade the European Parliament to back cooperation agreements essential to Europe's security such as on PNR or TFTP. It would be in the EU's interest to engage Congress, as the US Administration has been engaging the European Parliament, to explain how Europe has been able to implement effective counter terrorism supported by effective guarantees of human rights and fundamental freedoms.

### **Issue III:** The technical response to an evolving threat: Security related research

The 7<sup>th</sup> Framework Programme (2007-2013) first introduced security related research as a topic for EU support. The € 1.4 Billion earmarked to promote security-related research was heavily over-subscribed, and the programme as a whole marked a successful step forward in supporting Member States in the field of security. In my last discussion paper I had already presented recommendations on how to ensure progressive, applicable and reliable security solutions in future. The discussion of the 8<sup>th</sup> Framework Programme (“Horizon 2020”) is now entering its decisive stage setting the agenda for EU research activities up to 2020. Security related research will be one of the elements in a joint objective “Tackling Societal Challenges” together with “Socio-economic Sciences and Humanities”. The Commission has also announced a Communication on a "Security Industrial Policy" for the first half of 2012. It is thus a good moment to take up this issue again.

#### **New structure in FP 8 – the need to guarantee independent funding of security projects**

It is essential that security related research remains an independent element under the Framework Programme. Security research is a very complex issue – including aspects like privacy by design, integrating data protection elements to assure full respect of fundamental rights. We need modern and highly innovative solutions to deliver more effective security while being at the same time less intrusive. It will be difficult to concentrate on this challenging objective if the security community and industry stakeholders have to engage in an annual debate and competition on how to share funding with another area under “Tackling Societal Challenges”. Only a constant budget line would allow a steady pace for security related research – independent from immediate perceptions of the security threat (high or low).

#### **All security stakeholders should underline the need for sufficient funding**

In times of budget constraints in both the Member States and the EU, sufficient funding for new, innovative solutions is even more important. Technology can help produce solutions allowing for more effective deployment of resources to overcome likely cuts in personnel and budget in the coming years, especially in manpower intensive areas like security screening. During the budget negotiations the Justice and Home Affairs sector should intervene to ensure sufficient funding.

### **Find ways to overcome the fragmented market: standardisation and certification**

A European Industry policy in the field of security is essential to sustain EU competitiveness and prevent a further increase in European dependence on external suppliers in key product areas. This is already a major concern in the field of cyber and cyber security. A first step is to find ways to overcome the fragmented security market.

This means continuing to find ways to reduce fragmentation in security procurement and in security related research. I welcome the Commission's decision to mandate a horizontal study of the current standardisation 'landscape' in the field of security and to develop a work programme.

We should also further develop validation processes and certification procedures. I welcome the idea of the Commission to examine ways to certify procedures for developing solutions and to examine methods for mutual recognition of national certification and direct EU certification.

### **Strengthen Public Private Partnerships (PPP)**

Security related research is prime example of the need for PPPs. We should support the plans of the Commission to enhance the possibility of pre-commercial procurement under the new Framework Programme. EUROSUR is a very good example demand can be structured to develop concrete solutions in line with the actual needs of the security agencies in the field.

### **ENLETS (European Network of Law Enforcement Technology Services**

In this context the work of ENLETS (European Network of Law Enforcement Technology Services, created during the French Presidency in 2008 under the auspices of the Law Enforcement Working Party) should be supported and intensified.

### **Develop a culture of forward planning in the field of Justice and Home Affairs**

Police and law enforcement still do not have the same culture of forward planning and scenario building which is commonplace in the military sector. If the Justice and Home Affairs community is to be an intelligent sponsor of research it needs to find ways to articulate its future needs in order to give clear direction. The risk otherwise is that research budgets will be directed towards what academics wish to study or industry wants to sell – not what law enforcement really needs.



## **Justice and Home Affairs – Military synergies**

Asymmetric threats and the increasing possibility that terrorists and criminals will bring experience from conflict zones back with them to Europe, mean that law enforcement should also learn directly from operational experience in the military arena (for example on Improvised Explosive Devices). This could be explored in a joint strategic workshop of those responsible for research from Member States, Justice and Home Affairs agencies, the European Commission and EDA.

## **Security Related Research as agenda item at the JHA informal in 2012**

Winning an appropriate level of funding for security related research, changing the procurement planning culture of law enforcement agencies, and setting the agenda for an industrial policy in the security sector will all require strong political leadership. Ministers of Justice and Home Affairs could take this up during the next informal meeting under the Danish Presidency.

## ***Issue IV:*** How to further increase transport security

By its nature, transport infrastructure must be easy to access and this creates an inevitable level of risk. How to simultaneously assure its security will always be a challenge and how to increase transport security remains a central element of our common counter terrorism efforts. I welcome the new regulation on EU-inbound cargo and mail adopted during the summer. The Commission, supported by the Member States has worked hard to implement the report of the High-Level Group on cargo security and has presented a timely, innovative and ambitious response.

But we cannot be complacent, given the constant evolution of the threat we have to continue our efforts and speed up the implementation of the measures agreed. We must also be careful about flights within Europe as a number of major aviation security incidents (“shoe bomber”, Transatlantic “liquid plot”) have originated inside the EU, and strict measures on certain categories of flight could simply lead to the threat being displaced.

There are several key areas of implementation which need further work:

- Member States have to speed up their known consigners validation programmes.
- Relevant services in the Transport and Justice and Home Affairs sectors should examine jointly with the EEAS and technical assistance community how to mobilise increased support for high risk countries in the field of Aviation Security.
- **Mutual recognition** - In a single area of freedom, security and justice and a common market there is a clear need to have the same rules for aviation security. This applies not only within the EU, but if we are to create a transatlantic area of freedom security and justice and a transatlantic common market, it must be an objective to go for mutual recognition of transport security measures between the US and the EU and not for a series of bilateral solutions. This requires further efforts internally to implement the common regulation on aviation security appropriately and credibly so that the US can be persuaded that such a collective approach can effectively deliver its security needs.
- **Explosives detection** - There is a continuing need to work on improved detection technologies (see above). Member States need to continue their own efforts and call upon the Commission to ensure enough funding in this sector in the relevant programmes.
- Effective implementation of security measures, especially in a fast paced industry such as aviation, needs close exchange between all the relevant stakeholders (airlines, consigners etc). On the one hand these partners possess relevant security information on their business partners and processes in Third countries. On the other hand they need relevant information on the threat situation on the ground. Therefore I would like to reiterate the need to have properly established special environments in the Member States to enable the exchange of sensitive information with the private sector.

**Issue V:** How to tackle Terrorist financing more effectively

My most recent report on the implementation of the revised Strategy on Terrorist Financing (doc 15062/11) highlighted that recent trends in terrorist financing have shown that terrorism and crime tend to be increasingly linked with each other, that terrorist groups rely increasingly on ransom money for their financing (amounts which in some places far exceed any other financing methods) as well as being increasingly dependant on cash couriers and informal remittances.

Making implementation of the Strategy more effective requires:

- Full implementation of Council Decision of 2007 (2007/845/JHA) on Asset Recovery Offices (ARO), which would promote fast EU-wide tracing of assets derived from crime, including terrorism (Three Member States have not yet identified/notified Asset Recovery Offices (AROs)).
- Member States to consider ratification as soon as possible of Council of Europe Convention No. 198 on laundering, search, seizure and confiscation of the proceeds from crime and on the financing of terrorism (only 12 have done so)...
- EU Member States to have access to bank account data which allows the possibility to determine the holders of accounts “within a reasonable time”, as required by the Protocol of 2001 to the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union. (only a minority can do this).
- Better coordination within the Council - discussion on the different aspects of terrorist financing within the Council is fragmented between RELEX (sanctions), CP 931, COTER, TWG and Customs Working Party. No group has overall responsibility. Within the Institutions responsibilities are divided between the Commission, the EEAS, and Europol, and the same is true in Member States.
- Addressing the possible abuse of non-profit organizations for terrorist financing purposes is an important issue which the EU should address as soon as possible. In the Stockholm Programme, the Council called on the Commission to promote increased transparency and responsibility for charitable organizations. The Commission had envisaged a communication for 2011, which should be tabled as soon as possible.

- Improved operation of Financial Intelligence Units: (FIU).net. The FIU.net project aims at improving cooperation between Member States' FIUs which is crucial to fight money laundering and terrorist financing. After a transition phase it will be embedded into Europol by January 2014 with a view to promoting synergies between FIUs and Europol. The few Member States that are not yet connected should do so as soon as possible. The applications of Croatia, Iceland, Liechtenstein and Norway should be regarded positively.
- Cooperation with the private sector on terrorist financing is crucial. Information flow from both sides has to be ensured. A Commission study on this issue has shown the need to improve information flow from FIUs to the private sector. The lack of an appropriate feedback to the private sector on its reporting behaviour and quality limits overall effectiveness and Member States should look at improving feedback to the private sector. The creation of a trusted environment for exchanging information between intelligence and law enforcement agencies on one side and financial institutions on the other side should be encouraged. Financial institutions have a lot of information and knowledge from which the intelligence agencies can also benefit.
- The EU should look into whether its Strategy on Terrorism Financing should be updated. There are three sensitive files with possible wide-ranging consequences: The Kadi case before the European Court of Justice (application of the UN sanctions regime), the development of an EU Terrorist Financing Tracking System and the possible development of an EU internal sanctions system based on Art. 75 TFEU. Furthermore, the FATF is in the final phase of reviewing its Standards and revised Recommendations should be adopted in February 2012. The Commission (DG MARKT) has already started work on a proposal for an amendment to the Third Anti Money Laundering Directive that will take into account the revised FATF Standards planned to be adopted in October 2012. Terrorist financing behaviours and methods of money transfer are constantly changing and we need to distinguish effectively between illegitimate activity and the large majority of legitimate remittances which need to be facilitated in order to support the livelihood and welfare of many of the poorest people in developing countries.

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