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NOTE

From: General Secretariat of the Council
To: Delegations
Subject: Criminal justice response to the phenomenon of foreign fighters
- Compilation of replies

Further to the request for contributions set out in CM 5005/14, delegations will find in the annexes to this note an updated compilation (including the contribution of the Netherlands) of the replies provided by Member States about the existing or planned national measures implementing the operative paragraph 6 of the UN Security Council Resolution 2178(2014) as follows:

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AUSTRIA

The Federal Ministry of Justice has the honour to submit the following comments:

The Austrian Penal Code criminalises the following offences relevant to the phenomenon of foreign fighters: terrorist group (§ 278b of the Penal Code), terrorist offences (§ 278c of the Penal Code), financing of terrorism (§ 278d of the Penal Code), training for terrorist purposes (§ 278e of the Penal Code) and providing instructions for the commission of a terrorist offence (§ 278f of the Penal Code). In practical terms, the most relevant legislative provisions related to the phenomenon of so-called foreign terrorist fighters are in §§ 278b (terrorist group) because not only the participation in combat operations, but also leaving to join them can be qualified as (at least attempted) support for a terrorist group.

Domestic jurisdiction for offences abroad:

All such offences are classified as "offences with intent" (*Vorsatzdelikte*); an attempt pursuant to § 15 of the Penal Code is also a punishable offence, in accordance with the general principles of the Penal Code. Such offences are always punishable if they were committed in Austria (§ 62 of the Penal Code).

Offences of this kind committed outside Austria can be prosecuted under Austrian law - regardless of whether they are liable to prosecution under the law of the place in which the crime was committed - if the following conditions are met: if the perpetrator was an Austrian national at the time of the offence, or if he or she subsequently acquired Austrian nationality and still holds it when the criminal prosecution commences, or if the perpetrator has his or her domicile or habitual residence in Austria (see points 9 and 10 of § 64(1) of the Penal Code).

Re point 6 of UN Resolution 2178:

Although Austria does think that point 6a of UN Resolution 2178 requires further clarification, it is assumed for the time being that this point has basically been implemented by § 278b of the Penal Code (terrorist group). Legally speaking, the offence covered by § 278b of the Penal Code is a separately defined preparatory offence (*Plöchl* in the Vienna Commentary on the Penal Code, 2nd Edition, § 278b, paragraph 14), the purpose being to criminalise terrorist activities even in the initial stages and in advance (*Plöchl* Loc. cit. paragraph 1f). Given the reference to § 278(3) of the Penal Code, the manner of participation in a terrorist group also covers providing information or assets or participation "in another manner" in the knowledge that this will further the group or its criminal acts (*Plöchl* in the Vienna Commentary on the Penal Code, 2nd Edition, § 278b Rz 11).

Participation "in another manner" within the meaning of § 278(3) of the Penal Code covers, as a general clause, all other acts of participation in the activities of a criminal organisation (see for example *Plöchl* Loc. cit. § 278 paragraph 39).

As soon as the perpetrator embarks on an activity, there is possibly an attempt pursuant to § 278b of the Penal Code, but participation has been completed. Whether the planned terrorist offence has been carried out or attempted is of no significance for the completion of the offence.

As for *mens rea*, case-law has found, precisely in the case of foreign fighters, that it can be inferred from the journey and its purpose. There is obviously the requisite knowledge (§§ 278b(2) in conjunction with 278(3) of the Penal Code) that the terrorist group would be furthered; however, it is really from the external events that the intention (§ 5(2) of the Penal Code) of furthering the objectives of the group can clearly be inferred i.e. the fact of wanting to travel to the site of the combat operations in order to participate in or support them.

It should, however, be noted that the wording of the Resolution is aimed purely at "terrorist acts" which may, but do not necessarily have to, occur in support of (the objectives of) a terrorist organisation. Special implementing measures are therefore also currently being examined but the relevant consultations have not yet been concluded.

International requirements:

Austria largely satisfies existing international requirements and in some cases even goes beyond them (see §§ 278e and 278f).

With regard to the most recent developments such as, for instance, Security Council Resolution 2178 of 24 September 2014, Austria supports the initiatives launched in the context of the Council of Europe - in particular by CODEXTER - and suggests that they be taken into account in further discussions within the EU to avoid duplication and join forces on fighting terrorism.

BELGIUM

Belgian anti-terrorist criminal legislation is to be found in Book II, Title I of the Belgian Criminal Code related to terrorist offences (Articles 137 to 141ter of the Belgian Criminal Code).

These provisions have been introduced by Law of 19 December 2003 criminalizing terrorist acts and direction of and participation to a terrorist group in order to implement EU Framework Decision 2002/475/JHA. They have been further amended by Law of 18 February 2013 introducing criminalization of public provocation to commit a terrorist offence, recruitment for terrorism, as well as active and passive training for terrorism. These last changes in 2013 have notably been introduced in order to fulfil obligations under Framework Decision 2008/919/JHA and the Convention of the Council of Europe on the prevention of terrorism of 2005.

Concerning the UN Security Council Resolution 2178(2014), the Belgian anti-terrorist legislation appears to be largely in compliance with its requirements, in particular through the following provisions:

- Article 140 of Belgian Criminal Code (“participation to and direction of a terrorist group”)
- Article 140quater of Belgian Criminal Code (“active training for terrorism”)
- Article 140quinquies of Belgian Criminal Code (“passive training for terrorism”, in Belgium or abroad)
- Article 141 of Belgian Criminal Code (“furnishing material means, including financial support, to commit a terrorist offence”)

The Belgian Government is currently assessing if the Belgian anti-terrorist legislation should be complemented in case the offences covered by Paragraph 6 of UN Council Resolution cannot be linked to an actual terrorist group.

BULGARIA

According operative paragraph 6 of Resolution 2178 (2014) of the UN the States shall prosecute the acts under points a), b) and c) of paragraph 6:

“6. Recalls its decision, in resolution 1373 (2001), that all Member States shall ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice, and decides that all States shall ensure that their domestic laws and regulations establish serious criminal offenses sufficient to provide the ability to prosecute and to penalize in a manner duly reflecting the seriousness of the offense:

(a) their nationals who travel or attempt to travel to a State other than their States of residence or nationality, and other individuals who travel or attempt to travel from their territories to a State other than their States of residence or nationality, for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts, or the providing or receiving of terrorist training;

(b) the wilful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to finance the travel of individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training; and;

(c) the wilful organization, or other facilitation, including acts of recruitment, by their nationals or in their territories, of the travel of individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training.”

Relevant provisions of the Penal Code:

Special provision, Chapter one "Crime against the Republic"

Section IV „Other crimes“:

Art. 108a. (New, SG 92/02) (1) (amend. – SG 33/11, in force from 27.05.2011) Who, for the purpose of causing commotion and fear to the population, or threat or compel a body of the authority, a representative of the public or a representative of a foreign country or of an international organisation, to do or omit something in the sphere of his functions, commits a crime according to Art. 115, 128, Art. 142, para 1, Art. 143, Art. 143a, Art. 216, para 1 and para 5, Art. 326, Art. 330, Art. 334, Art. 334, Art. 337, Art. 339, Art. 340, Art. 341a, Art. 341b, Art. 344, Art. 347, para 1, Art. 348, Art. 349, Art. 350, Art. 352, para 1, 2 and 3, Art. 354, Art. 356f, para 1, Art. 356h shall be punished for terrorism by imprisonment from five to fifteen years, and when death has been caused - by imprisonment from fifteen to thirty years, life imprisonment or life imprisonment without an option¹.

¹ The provision of Art. 108a para. 1 refers to the following provisions of the Penal Code:

Art. 108a para. 1 - Who creates confusion and fear in the population or threatened or forced to authority, a public figure or representative of a foreign state or an international organization to do or omit something in the range of its functions, commit an offense by:

Art. 115 Homicide

Art. 128 Serious Bodily Harm

Art. 142 Kidnapping

Art. 143 Compulsion

Art. 143a Holding a hostage

Art. 216 para 1 and 5 Illegally Destruction and Damaging of another's chattel or things real

Art. 326 Transmition by a radio, telephone or in any other way false calls or misleading signs for help, accident or alarm

Art. 330 Arson

Art. 333 Explosion

Art. 334 Flooding

Art. 337 Manufactures, processes, alters, repairs, works out, stores, trades, transports, imports or exports explosives, firearms, non-firearms, chemical, biological or nuclear weapons, munitions and pyrotechnic articles without having the right according to a law or without a permit

Art. 339 Acquires, keeps or submits to another explosives, firearms, chemical, biological or nuclear weapons, munitions for firearms or pyrotechnic articles without having due permit

Art. 340 Damages a railway rolling stock or a railway, an aircraft, an automobile, an electric transport vehicle (trolley bus, tram and the like, designated for public transportation) or installations or their appliances, a tunnel, a bridge or support wall along the roads, or damages or allows damaging, strand or sink a ship, thus creating danger for the life of another or for substantial damaging of another's property

Art. 341a Places in an aircraft a device or a substance which can destroy it or cause it a damage rendering it unfit for flying or creating danger for its safety while the flight

Art. 341 b Adversely occupies an aircraft on the ground or during flight, or establishes control over such an aircraft

(2) (amend. – SG 33/11, in force from 27.05.2011) Who, in any way whatsoever, directly or indirectly, gathers or provides financial or other resources in relation to committing a crime under para 1, knowing or expecting that they will be used for such a purpose, shall be punished by imprisonment of three to fifteen years and a fine of up to thirty thousand levs.

(3) (new – SG 33/11, in force from 27.05.2011) Whoever recruits or trains persons or groups of persons for the purpose of committing a crime under para 1 shall be punishable by imprisonment from two to ten years.

(4) (prev. text of para 3 – SG 33/11, in force from 27.05.2011) The subject of the crime under para 2 shall be seized in favour of the state or if it is missing or expropriated its equivalence shall be awarded.

Art. 344 Removes or moves a sign or a signal used for providing the traffic safety of the railway and water transport, as well as of the electric transport, places such a false sign or gives a false signal, thus exposing to danger the life or the property of somebody

Art. 347 para I Damages a telegraph, telephone or teletype installation or line, television or radio installation or electrification installation, thus disconnecting or frustrating the communications

Art. 348 Builds, keeps or uses a radio device which broadcasts in the ether without a written permit

Art. 349 Deliberately places or admits an object dangerous for the life or the health in a well, spring, water pipe or in other appliance designated for general use, where or by which drinking water is drawn

Art. 350 Prepares foodstuff or beverages for general use in such a way that they create or contain substances dangerous for the health, as well as those who sell, offer for sale or in any other way circulates such foodstuff or beverages

Art. 352, pollutes or admits pollution of the soil, the air, water streams, basins, underground waters, the territorial or internal sea waters or sea waters, thus rendering them dangerous to people or animals and plants or unfit for using for cultural and household, health, agricultural and other economic needs

Art. 354 Without due permit produces, acquires, keeps, alienates or submits to another strongly active or poisonous substance, not being a narcotic substance, placed under a permit regime

Art. 356f damages a nuclear material, a nuclear installation or another source of ionising radiation, thus causing a substantial property damage or damage to the environment or creates a danger for the life and the health of another

Art. 356h Violates the rules for the nuclear or radiation safety

shall be punished for terrorism by imprisonment from five to fifteen years, and when death has been caused - by imprisonment from fifteen to thirty years, life imprisonment or life imprisonment without an option.

Art. 109. (1) (Amend., SG 99/89; Amend., SG 92/02; amend. - SG, 75/06, in force from 13.10.2006) *Who forms or leads an organisation or a group having the goal of committing crime under this chapter shall be punished by imprisonment of up to twenty years, but no longer than the punishment stipulated for the respective crime.*

(2) (Amend., SG 92/02; suppl. - SG, 75/06, in force from 13.10.2006) *Who is a member of such organisation or group shall be punished by imprisonment of up to ten years, but no longer than the punishment stipulated for the respective crime.*

(3) (new – SG 33/11, in force from 27.05.2011) *Where the organization or group aims at committing a crime as per Art. 108a, the punishment shall be, as follows:*

1. *under para 1 – imprisonment from ten to twelve years;*
2. *under para 2 - imprisonment from two to ten years.*

(4) (Suppl., SG 95/75; Amend., SG 92/02; suppl. - SG, 75/06, in force from 13.10.2006; prev. text of para 3 - SG 33/11, in force from 27.05.2011) *A participant in the organisation or group who voluntarily surrenders to the authorities, discloses everything known to him about the organisation or group, thus facilitating substantially the discovery and the proving of crime committed by it under this chapter shall be punished under the conditions of art. 55.*

(5) (Amend., SG 92/02; suppl. - SG, 75/06, in force from 13.10.2006; prev. text of para 4 - SG 33/11, in force from 27.05.2011) *Not punished shall be a participant in the organisation or group who voluntarily delivers himself up to the authorities and discloses the organisation or group before another crime is committed by it or by him under this chapter.*

Art. 110. (Amend., SG 99/89; Amend., SG 92/02) *For preparation of a crime according to art. 95, 96, 99, 106 and 107 and Art. 108, para 1 the punishment shall be imprisonment of up to six years.*

General, Chapter II “Crime”

Section II “Preparation and Attempt”

Art. 17. (1) *Preparation is the provision of resources, finding accomplices and, in general, creation of conditions for committing the planned crime before its fulfilment.*

(2) *The preparation is punishable only in the cases stipulated by the law.*

(3) *The perpetrator shall not be punished when, by his own motives, he has given up the commitment of the crime*

Art. 18. (1) *The attempt is the started commitment of a deliberate crime whereas the act has not been completed or, though completed, the social dangerous consequences of this crime stipulated by the law or wanted by the perpetrator have not occurred.*

(2) *For an attempt the perpetrator shall be punished by the penalty stipulated for the committed crime, taking into consideration the degree of fulfilment of the intention and the reasons for which the crime has remained unfinished.*

- (3) *The perpetrator shall not be punished for an attempt when, by his own motives:*
- a) *he has given up to complete the commitment of the crime or*
 - b) *has prevented the occurrence of the criminal consequences.*

Art. 19. In the cases of art. 17, para 3 and art. 18, para 3, if the act in which the preparation or the attempt have been expressed, contains the signs of another crime the perpetrator shall be responsible for this crime.

Section III. Implication

Art. 20. (1) Accomplices in a deliberate crime are: the perpetrators, the abettors and the accessories.

(2) Perpetrator is the one who participates in the very commitment of the crime.

(3) Abettor is the one who has deliberately persuaded somebody else to commit the crime.

(4) Accessory is the one who has deliberately facilitated the commitment of the crime through advice, explanations, promise to provide assistance after the act, removal of obstacles, providing resources or in any other way.

Art. 21. (1) All accomplices shall be punished by the penalty stipulated for the committed crime, taking into consideration the nature and the degree of their participation.

(2) The abettor and the accessory shall be responsible only for what they have deliberately abetted or helped the perpetrator.

(3) When due to a definite personal quality or relation of the perpetrator the law proclaims the act as a crime responsible for this crime shall also be the abettor and the accessory for whom these circumstances are not present.

(4) The particular circumstances due to which the law excludes, reduces or increases the punishment for some of the accomplices shall not be taken into consideration regarding the rest of the accomplices with respect of whom these circumstances are not present.

The abovementioned national legal provisions are adopted in compliance with the Council Framework Decision of 13 June 2002 on the fight against terrorism (2002/475/JHA) amended and supplemented with Council Framework Decision of 28 November 2008 (2008/919/JHA).

An interagency mechanism is established – working group on expert level to the Ministry of Foreign Affairs which is working on the analysis of the Resolution of the Security Council of the United Nations and also has the task to draft proposals for urgent measures including possible amendments in the existing legislation.

In the process of analysing of the legislation, Bulgaria is thoroughly following the discussion at EU level on the review of the Council Framework Decision on the fight against terrorism in view of incriminating of the travels abroad and the training for the purposes of participation in terrorist acts (foreign fighters).

CYPRUS

Following the discussions held at the last CATS meeting 11th November 2014 on the effective criminal justice response to the phenomenon of foreign fighters and in light of doc. CM 5005/14, the Republic of Cyprus would like to inform the Presidency and the General Secretariat of the Council of the following:

Counter Terrorism legislation in Cyprus, Law 110(I)/2010, fully complies with Council Framework Decisions 2002/475/JHA, 2008/919/JHA .

As regards the specific offences included in OP 6 of UN Security Council Resolution 2178(2014), these are not regulated explicitly in the L110(I)/2010.

Following domestic consultations with the Attorney General's Office, the Ministry of Justice and Public Order will proceed to examine possible amendments to the existing legislation in order to incorporate the requirements set out in OP 6 of the Resolution.

CZECH REPUBLIC

The recently adopted United Nations Security Council resolution UNSCR 2178 (2014) requires all States to establish in their domestic legislation as serious criminal offences the following:

- travel or attempt to travel for the purpose of perpetration, planning, preparation of, or participation in, terrorist acts, or providing or receiving terrorist training;
- financing of such travel
- organisation or other facilitation, including acts of recruitment, of such travel.

In the Czech Republic, described activities are prosecuted under Section 311 of the Criminal Code (No. 40/2009 Coll. (hereinafter as “CC”)) or under Sections 20 or 24 of the CC with respect to explanatory provisions of Section 111 of the CC.

The offence of Terrorist Attack (Sec. 311 of the CC) is in accordance with mentioned provisions considered a particularly serious crime, where also the mere preparation of the act (Sec. 20 of the CC) is punishable. At the same time, this crime is covered by the principle of universality under Section 7 of the CC, therefore it is prosecuted under Czech laws even if the crime was committed abroad by a foreign national or a person with no nationality and who does not have a permanent residence in the territory of the Czech Republic.

With respect to how the crime of Terrorist Attack is drafted it is possible to say that all activities of the United Nations Security Council resolution specified above are prosecuted as preparation or accessory to the crime except for financing of terrorism, which is a crime on its own (Sec. 311 al. 2 of the CC). Please note that with respect to the explanatory provisions of Sec 111 of the CC the preparations of this crime and accessory to this crime are crimes as well.

In addition, allow me to inform you that the Czech Republic is currently discussing an amendment to the crime of Terrorist Attack in order to hold the entire terrorist group (and not only its members or individuals) criminally liable.

In conclusion the Czech Republic has sufficient legal provisions to prosecute relevant activities related to terrorism and its phenomenon of foreign fighters.

Section 311

Terrorist Attack

(1) A person who intends to damage the constitutional establishment or the defensibility of the Czech Republic, disrupt or destroy the fundamental political, economic or social structure of the Czech Republic or international organisations, seriously intimidate the population or illegally compel the Government or another public authority or international organisation to do something, or fail to do or suffer, and,

a) performs an attack threatening the life or health of a person with the aim of causing death or grievous bodily harm,

b) seizes hostages or performs kidnapping,

c) destroys or damages public facilities, transport or telecommunications system, including information systems, fixed platforms on the continental shelf, energy, water, medical or other important facilities, public spaces or property to a greater degree to endanger lives, equipment safety, systems, or an open space, or to put a property in danger of large-scale damage,

d) disrupts or interrupts the water supply, electricity, or any other fundamental natural resource to endanger lives, or to put property in danger of large-scale damage,

e) hijacks an aircraft, ship or other means of passenger and freight transport, or takes control over it or destroys or damages the navigation device or interferes in its operation to a greater degree, or communicates false important information and thereby endangers the lives or health of people, the safety of such means of transport, or puts property in danger of large-scale damage,

f) illegally produces or otherwise acquires, possesses, imports, transports, exports or otherwise provides or uses explosive, nuclear, biological, chemical or other weapons, or carries out illicit research and development of nuclear, biological, chemical or other weapons or combat equipment or explosives prohibited by law or by an international treaty, or

Concerning the provision or collection of funds according to the paragraph 6(b) of the Resolution, section 5 of the chapter 34 a CC on the financing of terrorism could be applicable. As stated above, an amendment expanding the scope of section 5 to cover the funding of all the crimes in chapter 34 a will be in force as of 1.1.2015. At the same time, a new provision on financing of a terrorist group will be introduced. Even this provision could be applicable in this context. Furthermore, breaching the prohibitions in the Act on Freezing of Terrorist Funds (325/2013) is punishable as a regulation offence according to sections 1-3 of chapter 46 on offences connected to import and export.

Furthermore, financing can constitute inciting or aiding and abetting to the crime in question.

Paragraph 6(c) of the Resolution

Paragraph 6(c) of the Resolution deals with the criminal liability regarding the following conduct:

(c) the wilful organization, or other facilitation, including acts of recruitment, by their nationals or in their territories, of the travel of individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training;

Section 4 (Promotion of the activity of a terrorist group) and section 4 c (Recruitment for the commission of a terrorist offence) of chapter 34 a CC, both of which can also be committed in order to promote or being aware that his or her activity promotes, not only the main crime in section 1 but also the crime of preparation in section 2 of chapter 34 a of the CC, can be applicable to certain kinds of conducts under paragraph 6(c) of the Resolution.

Furthermore, organization, facilitation and recruiting can constitute inciting or aiding and abetting to a crime.

Concluding remarks

We are currently analyzing our national legislation in the light of the Resolution. Provisionally, the subparagraph 6(a) is the one needing most in-depth evaluating from the point of view of the Finnish legislation.

The obligations concerning criminalization according to the paragraph 6 of the Resolution are far reaching and when implementing it one must take into account human rights and fundamental freedoms. Rightly so, the Resolution, too, underlines the importance of respecting the human rights and fundamental freedoms.

The Finnish Constitution (731/1999), section 9 on the freedom of movement, paragraph 2, states:

Everyone has the right to leave the country. Limitations on this right may be provided by an Act, if they are necessary for the purpose of safeguarding legal proceedings or for the enforcement of penalties or for the fulfilment of the duty of national defence.

Finland considers it of outmost importance that the implementation of the obligations of the resolution fully respects the human rights and the principles of rule of law, legality and proportionality.

Penal Code of Finland (39/1889)

Chapter 34(a) – Terrorist offences (17/2003)

Section 1 – Offences made with terrorist intent

(1) A person who, with terrorist intent and in a manner that is conducive to causing serious harm to a State or an international organisation

(1) makes an unlawful threat, a false report of a danger, the aggravated invasion of public premises referred to in chapter 24, section 4, subsection 2, or the nuclear energy use offence referred to in chapter 44, section 10, shall be sentenced to imprisonment for at least four months and at most three years, (1370/2007)

(2) intentionally commits the offence of imperilment, an intentional explosives offence, a violation of the provisions on dangerous objects, or the public incitement to an offence referred to in chapter 17, section 1, shall be sentenced to imprisonment for at least four months and at most four years, (1370/2007)

- (3) *commits an aggravated theft or an aggravated theft for temporary use directed against a motor vehicle suitable for public transport or the transport of goods, sabotage, traffic sabotage, endangerment of health, aggravated damage to property, aggravated firearms offence or a defence supplies export offence shall be sentenced to imprisonment for at least four months and at most six years, (283/2012)*
- (4) *violates a ban on chemical weapons, violates a ban on biological weapons or engages in intentional aggravated pollution of the environment committed in the manner referred to in chapter 48, section 1, subsection 1(1) shall be sentenced to imprisonment for at least four months and at most eight years,*
- (5) *commits aggravated assault, aggravated trafficking in human beings, the taking of a hostage, aggravated sabotage, aggravated endangerment of health, a nuclear weapon offence or hijacking shall be sentenced to imprisonment for at least two and at most twelve years, (1161/2005)*
- (6) *commits the offence of killing shall be sentenced to imprisonment for at least four and at most twelve years, or*
- (7) *commits homicide shall be sentenced to imprisonment for at least eight years or for life.*
- (2) *A person who commits murder with terrorist intent shall be sentenced to life imprisonment.*
- (3) *An attempt is punishable.*

Section 2 – Preparation of an offence to be committed with terrorist intent

A person who, in order to commit an offence referred to in section 1, subsection 1(2)-(7) or subsection 2,

- (1) *agrees with another person or prepares a plan to commit such an offence,*
- (2) *prepares, keeps in his or her possession, acquires, transports, uses or gives to another an explosive, a chemical or biological weapon or a toxin weapon, a firearm or a dangerous object or substance, or*
- (3) *acquires equipment or materials for the preparation or a nuclear explosive, a chemical or biological weapon or a toxin weapon or acquires formulas or diagrams for their production,*

shall be sentenced for preparation of an offence to be committed with terrorist intent to a fine or to imprisonment for at most three years.

Section 3 – Directing of a terrorist group

(1) A person who directs a terrorist group, the activity of which has involved the commission of an offence referred to in section 1, subsection 1(2)-(7) or section 1, subsection 2 or a punishable attempt at such an offence or the offence referred to in section 2 shall be sentenced for directing of a terrorist group to imprisonment for at least two and at most twelve years.

(2) A person who directs a terrorist group in the activity of which only the offence referred to in section 1, subsection 1(1) has been committed shall be sentenced to imprisonment for at least four months and at most six years.

(3) A person who is sentenced for directing of a terrorist group shall also be sentenced for an offence referred to in section 1 or the punishable attempt of such an offence or an offence referred to in section 2 that he or she has committed or that has been committed in the activity of a terrorist group under his or her direction.

Section 4 – Promotion of the activity of a terrorist group (832/2003)

(1) A person who in order to promote, or aware that his or her activity promotes, the criminal activity referred to in sections 1 or 2 of a terrorist group

(1) supplies or seeks to supply a terrorist group with explosives, weapons, ammunition or substances or equipment intended for the preparation of these or with other dangerous objects or material,

(2) obtains or seeks to obtain or gives to a terrorist group premises or other facilities that it needs or means of transport or other implements that are especially important from the point of view of the activity of the group,

(3) obtains or seeks to obtain information which, if transmitted to a terrorist group, would be conducive towards causing serious harm to the State or an international organisation, or transmits, gives or discloses such information to a terrorist group,

(4) manages important financial matters of a terrorist group or gives financial or legal advice that is very important from the point of view of such a group, or

(5) commits an offence referred to in chapter 32, section 6 or 7,

shall be sentenced, unless the offence is punishable in accordance with section 1 or section 2 or unless an equally or more severe punishment is decreed elsewhere in law for it, for promotion of the activity of a terrorist group to imprisonment for at least four months and at most eight years. (1370/2007)

(2) What is provided above in subsection 1, paragraph [4] regarding legal advice does not apply to the performance of the functions of a legal counsel or attorney in connection with the pre-trial investigation of an offence, court proceedings or the enforcement of a sentence. (283/2012)

Section 4(a) – Provision of training for the commission of a terrorist offence (1370/2007)

A person who in order to promote, or aware that his or her activity promotes, the criminal activity referred to in section 1 or 2, arranges, attempts to arrange or provides training in the preparation or use of explosives, firearms or other arms or poisonous or other noxious substances or in another corresponding manner arranges, attempts to arrange or provides training, shall be sentenced, unless the offence is punishable in accordance with section 1 or section 2 or unless an equally or more severe punishment is decreed elsewhere in law for it, for provision of training for the commission of a terrorist offence to imprisonment for at least four months and at most eight years.

Section 4(b) – Receiving of training for the commission of a terrorist offence

A person who, in order to commit an offence referred to in section 1, subsection 1(2)-(7) or subsection 2, lets himself or herself be instructed in a way referred to in section 4 a § in the making or use of explosives, firearms or other weapons or noxious or hazardous substances, or in other with these comparable specific methods or techniques, shall be sentenced, unless the offence is punishable in accordance with section 1 or section 2, for receiving of training for the commission of a terrorist offence to a fine or to imprisonment for at most three years. (In force 1.1.2015)

Section 4(b) – Recruitment for the commission of a terrorist offence (1370/2007)

A person who in order to promote, or aware that his or her activity promotes, the criminal activity referred to in section 1 or 2, establishes or organizes a terrorist group or recruits or attempts to recruit persons into a terrorist group or otherwise commit the terrorist offences referred to in said sections, shall be sentenced, unless the offence is punishable in accordance with section 1 or section 2 or unless an equally or more severe punishment is decreed elsewhere in law for it, for recruitment for the commission of a terrorist offence to imprisonment for at least four months and at most eight years.

Section 5 – The financing of terrorism

(1) A person who directly or indirectly provides or collects funds in order to finance, or aware that these shall finance

(1) the taking of a hostage or hijacking,

(2) sabotage, aggravated sabotage or preparation of an offence of general endangerment that is to be deemed an offence referred to in the International Convention for the Suppression of Terrorist Bombing (Treaty Series 60/2002),

- (3) *sabotage, traffic sabotage, aggravated sabotage or the preparation of an offence of general endangerment that is to be deemed an offence referred to in the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (Treaty Series 56/1973), the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation (Treaty Series 43/1998), the Convention for the Suppression of Unlawful Act Against the Safety of Maritime Navigation (Treaty Series 11/1999) or the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf (Treaty Series 44/2000),*
- (4) *a nuclear explosives offence, endangerment of health, aggravated endangerment of health, a nuclear energy use offence or other criminalised offence directed at a nuclear material or committed through the use of nuclear material, that is to be deemed an offence referred to in the Convention on the Physical Protection of Nuclear Material (Treaty Series 72/1989), or*
- (5) *murder, homicide, killing, aggravated assault, deprivation of liberty, aggravated deprivation of liberty, aggravated trafficking in persons, taking of a hostage or aggravated disturbance of public peace or the threat of such an offence, when the act is directed against a person who is referred to in the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents (Treaty Series 63/1978), (1161/2005)*

shall be sentenced for the financing of terrorism to imprisonment for at least four months and at most eight years.

(2) Also a person who directly or indirectly provides or collects funds in order to finance or aware that they are used to finance the offences referred to in sections 1-4 or 4 a-4 c shall be sentenced for the financing of terrorism.

(3) An attempt is punishable.

(4) What is provided in the foregoing in this section does not apply if the offence is punishable as an offence referred to in subsection 1, paragraphs (1) through (5) or an attempt of such an offence or complicity in such an offence or, according to sections 1, 2 or 4 b or a more severe sentence is provided elsewhere in law for it.

Section 5 a – The Financing of terrorist group

A person who directly or indirectly provides or collects funds for a terrorist group referred to in section 6, paragraph 2 knowing of the groups' character as a terrorist group shall be sentenced for the financing of terrorist group to a fine or to imprisonment at most three years. (In force 1.1.2015)

Section 6 - Definitions

(1) An offender has a terrorist intent if it is his or her intent to:

- (1) cause serious fear among the population,*
- (2) unlawfully force the government of a state or another authority or an international organisation to perform, allow or abstain from performing any act,*
- (3) unlawfully overturn or amend the constitution of a state or seriously destabilise the legal order of a state or cause particularly harm to the state economy or the fundamental social structures of the state, or*
- (4) cause particularly extensive harm to the finances or other fundamental structures of an international organisation.*

(2) A terrorist group refers to a structured group of a least three persons established over a period of time and acting in concert in order to commit offences referred to in section 1.

(3) An international organisation refers to an intergovernmental organisation or to an organisation which, on the basis of its significance and internationally recognised position, is comparable to an intergovernmental organisation.

Section 7 – Right of prosecution

The Prosecutor-General decides on the bringing of charges for offences referred to in this chapter. In so doing the Prosecutor-General shall also designate the person who is to bring the charges.

Section 8 – Corporate criminal liability

(1) The provisions on corporate criminal liability apply to the offences referred to in this chapter.

(2) The provisions on corporate criminal liability apply also to robbery, aggravated robbery, extortion or aggravated extortion committed in order to commit an offence referred to in section 1 or section 2, subsection 1(3) of this chapter as well as to forgery or aggravated forgery committed in order to commit the offence referred to in section 1, subsection 1, paragraphs (2)-(7) or subsection 2, section 2, subsection 1(3), or section 4 or 5 of this Act.

FRANCE

The French authorities wish to declare that French anti-terrorism legislation is fully compliant with the provisions of paragraph 6 of United Nations Security Council Resolution 2178 (2014).

1. Criminalisation of travel for the purposes of terrorism

Point (a) of paragraph 6 provides that States must penalise "their nationals who travel or attempt to travel to a State other than their States of residence or nationality, and other individuals who travel or attempt to travel from their territories to a State other than their States of residence or nationality, for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts, or the providing or receiving of terrorist training".

Point (c) of paragraph 6 requires States to penalise "the wilful organization, or other facilitation, including acts of recruitment, by their nationals or in their territories, of the travel of individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training".

Those two types of behaviour are prosecuted and penalised in France on the charge of criminal association.

The scope *ratione loci* of French law is particularly broad with regard to terrorism, Article 113-13 of the penal code providing that "French criminal law applies to felonies and misdemeanours defined as acts of terrorism and penalised by Title II of Book IV committed abroad by a French national or by a person habitually resident on French territory".

In accordance with the provisions of Article 421-2-1 of the penal code, the existence of a criminal association formed with a view to the preparation of acts of terrorism requires:

- a group or association of persons having decided to act together,
- pursuing the aim of preparing acts of terrorism,
- and having all expressed support for the group in full knowledge of the facts and with the desire to provide effective assistance in the pursuit of the undertaking.

Criminal association in connection with a terrorist undertaking makes it possible to penalise participation in a group formed with a view to the preparation of acts of terrorism, which necessarily covers the organisation or preparation of such acts, but also and more broadly any related conduct. This text covers all actions preparatory to a terrorist act, whatever form those preparatory actions take (recruitment, training, ideological indoctrination, etc.).

On the basis of this text, simply belonging to a terrorist organisation is a punishable offence, without it being necessary to prove the affiliate's position or role, or even the felonies or misdemeanours the association intends to commit, it being possible for these to remain unspecified. Participation in the litigious association is punishable where the affiliate was aware of the purpose of the group even in broad terms and supported it voluntarily.

Furthermore, leading such a terrorist group is punished by 20 years' imprisonment under Article 421-5 of the penal code.

The act of leaving the French territory through facilitation networks for jihadist fighters or organising such networks can be prosecuted and penalised under French law because criminal association in connection with a terrorist undertaking is an offence.

Furthermore, Article 421-2-4 of the penal code, inserted by the law of 21 December 2012, makes it possible to prosecute the recruiting terrorist even when the individual targeted for recruitment has not responded to the solicitation (whereas terrorist criminal association requires there to be an understanding and therefore an agreement between at least two individuals): "Making another person offers or promises, offering that person gifts, presents or benefits of any kind, threatening or exercising pressure to make that person participate in a group or association provided for in Article 421-2-1 or to commit one of the acts of terrorism referred to in Articles 421-1 and 421-2 is punished, even where it was without effect, by 10 years' imprisonment and a fine of €150,000."

Participation in a criminal association in connection with a terrorist undertaking is therefore punishable when the acts are committed abroad by a French national or a person habitually resident on French territory. In this regard it is worth clarifying that in the past proceedings were already instituted on this basis in relation to acts committed abroad, where one of the acts constituting criminal association occurred on French territory (departure from France, contact with French nationals, terrorist plot hatched abroad but targeting France, etc.).

Finally, the offence of individual terrorist undertaking, introduced in a new article of the penal code, Article 421-2-6, by the law of 13 November 2014 strengthening anti-terrorism provisions, makes it possible to prosecute an individual who has spent time abroad in theatres of operations of terrorist groups and is preparing an act of terrorism in an isolated manner, where the person demonstrates an individual terrorist intention by possessing, seeking, procuring or producing articles or substances liable to create a danger to other persons.

Furthermore, the new offence of individual terrorist undertaking (Article 421-2-6 of the penal code), created by Act No 2014-1353 of 13 November 2014 strengthening anti-terrorism provisions, will make it possible to prosecute individuals who have spent time abroad in theatres of operations of terrorist groups and prepare an act of terrorism on their return.

In addition to penal sanctions, the law of 13 November 2014 provided French legislation with administrative police measures to prevent individuals with terrorist intent from travelling.

2. **Criminalisation of the financing or organisation of travel for the purposes of terrorism**

Point (b) of paragraph 6 requires States to penalise "the wilful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to finance the travel of individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training".

Such acts constitute the misdemeanour of financing a terrorist undertaking, which is penalised by Article 421-2-2 of the penal code. The penalty is 10 years' imprisonment.

That article therefore provides that "to finance a terrorist organisation by providing, collecting or managing funds, securities or property of any kind, or by giving advice for this purpose, intending that such funds, security or property be used, or knowing that they are intended to be used, in whole or in part, for the commission of any of the acts of terrorism listed in the present chapter, irrespective of whether such an act takes place" constitutes an act of terrorism.

This provision of criminal law makes it possible to prosecute directly persons who support terrorist activities by providing funds and persons, in particular financial advisers and intermediaries, who, in full knowledge of the facts, participate in the collection, management, concealment and transfer of funds.

It aims to combat the financing of terrorist activity in its entirety, and does not require that the individual offence for which the funds are intended be proven, but only that said funds are to be invested in the terrorist economy to help finance terrorist activity, at any stage in the criminal process.

CROATIA

The Republic of Croatia is a party to all relevant UN conventions and other international instruments dealing with the fight against terrorism, and accordingly has amended its criminal framework.

Furthermore, Croatia has implemented the Framework Decision 2002/475/JHA of 13 June on combating terrorism and subsequent Framework Decision 2008/919/JHA through the relevant provisions of Criminal Code (Official Gazette no. 125/11 and 144/12; hereinafter: CC/11) which provide criminal offences of terrorism, financing of terrorism, public provocation to commit a terrorist offence, recruitment for terrorism, training for terrorism, terrorist association and preparation of criminal offenses against the values protected by international law. In addition, effective, proportionate and dissuasive criminal penalties have been introduced for the mentioned criminal offences.

Therefore the existing legislative framework of the Republic of Croatia is sufficient for the prevention and suppression of terrorism and terrorism related offences in line with the Framework Decision 2002/475/JHA and the Framework Decision 2008/919/JHA.

Having in mind the legislative activities undertaken for the full implementation of all relevant anti-terrorism international instruments, Croatian criminal legislation is sufficient for effective respond to the various forms of potential terrorist threats and activities. In this context, certain activities of foreign fighters or those who recruit foreign fighters for terrorism could be brought under criminal offenses proscribed by CC/11, such as criminal offences of public provocation to commit a terrorist offence, recruitment for terrorism and training for terrorism.

However, the requirements of Security Council Resolution UN 2178/14 (UN SCR 2178) regarding the criminalization of certain activities (travel for the purposes of terrorism, financing of such travel, organization or facilitating such travel) go beyond the scope of the Framework Decision 2002/475/JHA and the Framework Decision 2008/919/JHA, and consequently beyond the scope of domestic law. In this regard, thorough analysis of national legislation is underway.

Therefore, we consider the Framework Decision 2002/475/JHA and the Framework Decision 2008/919/JHA are not fully adequate response to the phenomenon of *foreign fighters* to ensure effective joint EU legislative framework. Aspects that should be additionally consider are precisely the aspects which indicate UNSCR 2178.

HUNGARY

Following the request after the last CATS meeting, we would hereby submit the response provided by the Ministry of Justice of Hungary.

The chart below shows the national measures (relevant sections of the Penal Code, Act C of 2012, hereinafter referred to as Btk.) implementing OP 6 of the UN Security Council Resolution 2178(2014) concerning the phenomenon of foreign fighters.

<p><i>Recalls</i> its decision, in resolution 1373 (2001), that all Member States shall ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice, and <i>decides</i> that <u>all States shall ensure that their domestic laws and regulations establish serious criminal offenses sufficient to provide the ability to prosecute and to penalize in a manner duly reflecting the seriousness of the offense:</u></p>			
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<p>(a) their nationals who travel or attempt to travel to a State other than their States of residence or nationality, and other individuals who travel or attempt to travel from their territories to a State other than their States of residence or nationality, for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts, or the providing or receiving of terrorist training;</p>	<p>Terrorcselekmény előkészülete</p> <p>Btk. 315. § (1) bekezdés</p>	<p>Aki a 314. § (1) vagy (2) bekezdésében meghatározott büntett elkövetésére felhív, ajánlkozik, vállalkozik, a közös elkövetésben megállapodik, vagy az elkövetés elősegítése céljából az ehhez szükséges vagy ezt könnyítő feltételeket biztosítja, büntett miatt két évtől nyolc évig terjedő szabadságvesztéssel büntetendő.</p>	<p>Any person who instigates, suggests, offers to commit a crime defined under Article 314 Paragraph (1) or (2) or makes an agreement to joint commission concerning a crime defined under Article 314 Paragraph (1) or (2) or any person who – for the purpose of helping the perpetration – ensures the conditions that are necessary or facilitate the perpetration, is guilty of felony punishable by imprisonment between two to eight years.</p>
<p>(b) <u>the wilful provision or collection</u>, by any means, directly or indirectly, <u>of funds</u> by their nationals or in their territories <u>with the intention that the funds should be used</u>, or in the <u>knowledge that they are to be used</u>, in order to <u>finance the travel of individuals</u> who travel to a State other than their States of residence or nationality <u>for the</u></p>	<p>Terrorizmus finanszírozása</p> <p>Btk. 318. § (1) bekezdés</p>	<p>Aki terrorcselekmény feltételeinek biztosításához anyagi eszközt szolgáltat vagy gyűjt, vagy terrorcselekmény elkövetésére készülő személyt vagy rá tekintettel</p>	<p>Any person who provides or collects financial resources for ensuring the conditions of terrorist acts, or supports a person preparing to commit terrorist acts – or another person on behalf of such a person – with financial resources is guilty of a felony punishable by imprisonment between two to eight years.</p>

<p>purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training; and,</p>		<p>mást anyagi eszközzel támogat, büntett miatt két évtől nyolc évig terjedő szabadságvesztéssel büntetendő.</p>	
<p>(c) <u>the wilful organization, or other facilitation, including acts of recruitment, by their nationals or in their territories, of the travel of individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training;</u></p>	<p>Terrorcselekmény előkészülete Btk. 315. § (1) bekezdés</p>	<p>Aki a 314. § (1) vagy (2) bekezdésében meghatározott büntett elkövetésére felhív, ajánlkozik, vállalkozik, a közös elkövetésben megállapodik, vagy az elkövetés elősegítése céljából az ehhez szükséges vagy ezt könnyítő feltételeket biztosítja, büntett miatt két évtől nyolc évig terjedő szabadságvesztéssel büntetendő.</p>	<p>Any person who instigates, suggests, offers to commit a crime defined under Article 314 Paragraph (1) or (2) or makes an agreement to joint commission concerning a crime defined under Article 314 Paragraph (1) or (2) or any person who – for the purpose of helping the perpetration – ensures the conditions that are necessary or facilitate the perpetration, is guilty of felony punishable by imprisonment between two to eight years.</p>

IRELAND

The Irish Parliament is currently in the process of enacting legislation to cover preparatory terrorist activities. The Criminal Justice (Terrorist Offences) (Amendment) Bill 2014 creates three new offences: public provocation to commit a terrorist offence; recruitment for terrorism; and training for terrorism. The Bill has been passed by the Upper House (the Seanad) and it is expected to go before the Lower House (the Dáil) shortly and be enacted early next year. The Bill, when enacted, will implement Council Framework Decision 2008/919/JHA, which amended Council Framework Decision 2002/475/JHA on combating terrorism, and facilitate ratification by Ireland of the Council of Europe Convention on the Prevention of Terrorism. It will also serve to put in place certain key measures identified in UN Security Council Resolution 2178(2014), particularly in relation to OP6.

The Bill provides that the offence of “public provocation to commit a terrorist offence” is committed when a person distributes or otherwise makes available by whatever means of communication, a message to the public, with the intention of encouraging, directly or indirectly, the commission of a terrorist activity. A person who is convicted of the offence is liable on summary conviction to a fine of up to €5,000 or imprisonment for up to 1 year, or both; and on conviction on indictment to a fine or imprisonment for up to 10 years, or both.

A person is guilty of the offence of “recruitment for terrorism” if they recruit or attempt to recruit another person to engage in terrorist activity or other offences contained in section 6 of the Offences Against the State Act 1998, section 21 or 21A of the Offences Against the State Act 1939, or section 3 of the Criminal Law Act 1976. A person convicted of this offence is liable on conviction on indictment to a fine or imprisonment for up to 10 years, or both. OP6(c) of the UN Security Council Resolution specifically refers to “acts of recruitment” for the purpose of terrorism.

The offence of “training for terrorism” is committed where a person provides instruction or training in the skills of making or using firearms or explosives, nuclear material, biological, chemical or prohibited weapons or other such weapons or noxious or hazardous substances, as the Minister for Justice and Equality may prescribe, knowing that the skills provided are intended to be used for the purpose of terrorist activity. The offence also covers training in techniques or methods for use in terrorist activity. A person convicted of this offence is liable on conviction on indictment to a fine or imprisonment for up to 10 years, or both. OP6(a), (b) and (c) of the UN Security Council Resolution all make reference to terrorist training.

The Bill provides that it is an offence to carry out any of these three preparatory terrorist activities, whether within or outside the State. It is also an offence to provide, collect or receive funding for terrorism, including for incitement, recruitment or training. OP6(b) of the UN Security Council Resolution specifically deals with financing for terrorism, including preparatory activities such as training.

The Bill builds on and enhances existing counter-terrorism legislation in Ireland, such as the Criminal Justice (Terrorist Offences) Act 2005, which this Bill amends. That Act lists, in Schedule 2, a number of terrorist and terrorist-linked activities in which it is an offence to engage. The current Bill includes public provocation, recruitment and training for terrorism in the definition of “terrorist-linked activity”. Under the 2005 Act it is an offence to engage in terrorist activity or terrorist-linked activity or to engage in the financing of it.

Finally, Ireland notes that the Resolution calls on States to prosecute those who travel to engage in foreign fighting. It is already an offence under Irish legislation to engage in acts of terrorism, and preparatory terrorist activities will shortly be covered also, as indicated earlier. Specifically in relation to foreign fighters, Ireland will consider what implications there may be in terms of legislation, notwithstanding that there are considerable constitutional difficulties surrounding the issue of travel bans or confiscation of passports. In addition, and as been highlighted in other arenas, the processes of identification of individuals and evidence gathering where such prosecutions are concerned are not simple and this is a challenge facing many Member States. This is clearly reflected in the low number of successful prosecutions to date.

ITALY

The National Penal Code criminalises the following offences that might be deemed relevant to the phenomenon of foreign fighters

Art. 270 bis (terrorist criminal organization)

A person commits an offence (punishable from five to fifteen years imprisonment) if he/she sets up, directs, finances, participates in criminal groups aiming at committing terrorist acts (even in foreign countries or against foreign institutions).

Terrorist acts are listed in article **270 sexies of the penal code**, mirroring the terrorist acts as they are listed in the main international binding instruments.

Travelling to a foreign country with the purpose to plan, finance, commit a terrorist offence may be deemed as a misconduct falling within the criminal aims of a terrorist group

Article 270 ter of the Criminal Code,

A person commits an offence if he, apart from cases of complicity in the crime or aiding and abetting, gives shelter, food, hospitality, means of transport or communication” to participants in a terrorist association

A person found guilty of this offence is punished with the imprisonment up to four years.

Art. 270 quater

A person commits an offence if he recruits one or more persons to commit acts of violence and/or sabotage of public services for terrorism purposes

A person commits an offence if these acts are directed against a Foreign Country and/or an international Institution and/or an international organization.

A person found guilty of this offence is punished with the imprisonment from seven to fifteen years.

The recruited person is punished with the imprisonment from three to six years.

- A person commits an offence if he, apart from recruiting third persons, organizes, funds, instigates travels aimed at committing terrorism offences

The above mentioned rules do not apply for those who are held responsible of membership to a terrorist group.

Any person travelling from Italy to another State with the purpose to commit terrorist offences may be subject to preventive measures such as the withdrawal of the own passport

Art. 270 quinquies (training for terrorism purposes)

A person commits an offence if he/she trains or provides with information on the fabrication and use of explosive materials, weapons, noxious or hazardous chemical and/or bacteriological substances with the purpose to commit terrorist offences that are directed also against a Foreign Country and/or an international Institution and/or an international organization.

A person found guilty of this offence is punished with the imprisonment from five to ten years.

The trainee and anyone having acquired by himself/herself the skills on the fabrication and use of explosive materials, weapons, noxious or hazardous chemical and/or bacteriological substances with the purpose to commit terrorist offences are punished with the imprisonment from five to ten years.

The use of internet to carry on a training activity is an aggravating circumstance

The above mentioned rules do not apply for those who are held responsible of membership to a terrorist group.

Art 280 (attack against life for terrorism purposes)

A person commits an offence if he/she perpetrates an attack against the life and/or physical integrity of an individual for terrorism purposes

A person found guilty of this offence is punished with the imprisonment up to thirty years

Art. 280 bis (terrorist act perpetrated with the use of obnoxious substances/explosives)

A person commits an offence if he/she commits an act aimed damaging the property of third persons for terrorism purposes with the use of obnoxious substances and/or explosives

A person found guilty of this offence is punished with the imprisonment up to ten years

Article 289 bis (kidnapping for terrorism purposes)

A person commits an offence if he/she kidnaps a person for terrorism purposes

A person found guilty of this offence is punished with the imprisonment up to thirty years

In case of death of the victim A person found guilty of this offence is punished with life imprisonment

Art. 414 (instigation for terrorism purposes)

A person commits an offence if he/she publicly or openly instigates to commit one or more crimes

A person commits an offence if he makes apology of crimes.

A person guilty of this offence is punished with imprisonment from one to five years

The instigation to commit acts of terrorism or crimes against humanity or illegal apology of these crimes is an aggravating circumstance

The use of internet to carry on the instigation and/or the glorification of acts of terrorism is an aggravating circumstance

Liability of legal entities

The above listed crimes are predicate crimes for the liability of legal entities

Jurisdiction

The above listed offences can be prosecuted in Italy

- a) if they were perpetrated in whole or in part on the National territory (article 6 of the penal code);
- b) if the above listed offences targeting Italy were committed abroad regardless whether the perpetrator is a national or a foreigner (article 7 of the penal code);

Procedural rules

Terrorism cases in Italy are investigated, prosecuted and tried by independent prosecution offices and independent judges. A centralized judicial Authority (Direzione Nazionale Antimafia ed Antiterrorismo) has coordinating powers on the Prosecution Offices

Terrorism cases are not investigated/prosecuted/tried by military law enforcement agencies.

The investigation is directed and coordinated by the Prosecution Offices, that issue directives to Police forces and are responsible for the outcome of the investigation and the Prosecution in Court.

Police forces are in principle bound by the directives issued by the prosecutors. Prosecutors may, if they deem it necessary, carry on interrogations, interviews, searches.

Usually directives are issued and decisions are taken after open consultations and discussions between Prosecutors and Police officers.

It is to Police officers to take notice that a crime has been committed or planned and to report Prosecution Office. It is the Prosecutor to issue the directives about the investigations to police officers, that have to report to Prosecutors systematically. This system safeguards the independence and transparency of the investigation, since is is directed by independent law enforcement agencies such as the Prosecution Offices and scrutinized by independent judges.

Fight against terrorism needs a holistic and multidisciplinary approach. Usually Prosecutors and Police Officers are cooperated by interpreters, historians, religious experts. Interpreters, historians, religious experts are crucial to better understand the outcomes of the taped conversations and the material seized during searches, and when they give their assistance in interrogations and interviews.

The procedural rules that are enforced in the terrorism cases are similar to those provided for organized crime cases. The procedural system is adversarial and is inspired by article 6 of E.C.H.R.

No abuse in the prevention of terrorist acts (such as extraordinary renditions, illegal abductions) is granted and has been granted immunity so far.

Investigations are led by independent prosecutors. Intrusive investigation techniques (such as electronic surveillance) must be ordered (and adequately reasoned) by an independent Court, as well as any arrest warrant. Arrest warrants, at the request of the accused, may be reviewed by an independent chamber (different than the Court that issued the warrant) and by the Supreme Court.

Police Forces and Intelligence agencies, pursuant to an order issued by the Prosecutor may also carry on intercepts aimed at preventing (not investigating) the commission of terrorist acts. No use of the outcomes of these intercepts can be made in Court

Witnesses need to be examined and cross examined by both parties before the Court. Anonymous testimony is neither contemplated nor allowed.

Collaborators of justice are provided, if deemed necessary for their security, with procedural and non procedural protection measures, but they cannot testify anonymously, since their credibility must be fully verified by both parties and by the Court.

LATVIA

Latvia has implemented several requirements that are included in the operative paragraph 6 of the UN Security Council Resolution 2178(2014).

The liability for organising and supporting (aiding) terrorist acts is stated in Article 88 of the Criminal Law and the Article 20 of the Criminal Law states the liability for participation in the abovementioned crimes. Namely the paragraph 1 of Article 20 of the Criminal Law states that an act or failure to act committed knowingly, by which a person (joint participant) has jointly with another person (perpetrator), participated in the commission of an intentional criminal offence, but he himself or she herself has not been the direct perpetrator of it, shall be considered to be joint participation. Organisers, instigators and abettors are joint participants in a criminal offence. Paragraph 2 of Article 20 of the Criminal Law states, that a person who has organised or directed the commission of a criminal offence shall be considered to be an organiser. Paragraph 4 states that a person who knowingly has promoted the commission of a criminal offence, providing advice, direction, or means, or removing impediments for the commission of such, as well as a person who has previously promised to conceal the perpetrator or joint participant, the instrumentalities or means for committing the criminal offence, trail of the criminal offence or the objects acquired by criminal means or has previously promised to acquire or to sell these objects shall be considered to be an abettor. But paragraph 5 states that a joint participant shall be held liable in accordance with the same Section of this Law which provides for the liability of the perpetrator.

The Article 88³ of the criminal law states the liability for recruitment and training of persons for the commitment of terrorist acts.

Also Latvia is planning to establish an expert working group that would evaluate the requirements of the Resolution and look into possibility of making amendments to Criminal Law to implement the Resolution.