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Justice Response
- Updated Report

Delegations will find attached the partially declassified version of the above-mentioned document.



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European Union

ANNEX

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COVER NOTE

From:	Eurojust
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Subject:	Foreign Fighters: Eurojust's Views on the Phenomenon and the Criminal Justice Response - Updated Report

Delegations will find attached the updated report on Foreign Fighters : Eurojust's Views on the Phenomenon and the Criminal Justice Response.



This document was declassified

Date: 27 June 2023

By: The College of Eurojust

Foreign Fighters: Eurojust's Views on the Phenomenon and the Criminal Justice Response

Updated Report

November 2014

Table of Contents

NOT DECLASSIFIED	.....	2
NOT DECLASSIFIED	.....	4
1. NOT DECLASSIFIED	.....	6
2. NOT DECLASSIFIED	.....	11
3. NOT DECLASSIFIED	.....	12
4. NOT DECLASSIFIED	.....	31
5. NOT DECLASSIFIED	.....	41
6. NOT DECLASSIFIED	.....	46
NOT DECLASSIFIED	.....	49

Executive Summary

In the past months, media reports have warned of the ever growing number of foreign fighters joining the conflict in Syria, and since recently in Iraq, as well as an increased number of returnees. While not all who come back may pose a threat to the security and safety of the Member States, the real and present danger caused by returnees has been demonstrated by the shooting in the Jewish Museum in Brussels in May 2014. It illustrates that the problem of foreign fighters is common to the Member States and requires a common EU response.

The national policies adopted to counter the phenomenon of foreign fighters integrate diverse measures to prevent radicalisation and disrupt travel to participate in training and jihad, to re-integrate and, where necessary, to prosecute. The criminal justice response to the phenomenon has been shaped by the national legal frameworks, tools and mechanisms for addressing the challenges it creates. The countries in Europe continue updating their legal frameworks to better address the phenomenon of foreign fighters: in three Member States and Norway, the amendments were recently adopted; in a number of other States, legislative developments are underway.

A legal framework on combating terrorism must be effective to address the evolving threat posed by foreign fighters. To this end, Eurojust recommends that it should be assessed whether a revision of the FD on terrorism is required, in particular in view of UNSCR 2178(2014). International humanitarian law and its implications in cases of foreign fighters represent another issue that necessitates particular attention and analysis.

To date, the number of concluded court proceedings in relation to foreign fighters is significantly small compared to the estimated number of European fighters in Syria and/or Iraq. Investigations and prosecutions are largely affected by challenges related to the gathering of evidence that is admissible in court, particularly evidence regarding the activities carried out in the combat zone. Efficient tools to target various aspects of the phenomenon include, *inter alia*, sharing of information, joint investigation teams (JITs), financial investigations, etc. In a broader sense, the multi-disciplinary approach, which has been adopted in a number of Member States, is designed to enhance the efficiency of the national responses to the phenomenon by implementing preventive and repressive measures that have a complementary and reinforcing effect.

To address the challenges and enhance the effectiveness of the response, Eurojust will continue to encourage the Member States to refer relevant cases to Eurojust to ensure enhanced judicial cooperation and coordination. Eurojust's analysis of relevant case law and legislation seeks to promote the exchange of national practices and lessons learnt and thus help build successful prosecution cases. Essentially, the sharing of information has been recognised as a key tool to ensure an effective response to the phenomenon of foreign fighters. Due to the very nature of the phenomenon, national efforts can be successfully reinforced by building strategic partnerships at international level. Enhanced judicial cooperation among the Member States and with third States is further explored and promoted by Eurojust, as are other existing tools and mechanisms to support a holistic approach to the phenomenon and respond in the most efficient manner.

Based on Eurojust's analysis of the phenomenon of foreign fighters, the Member States' responses and the findings of this report, Eurojust has identified some conclusions and possible follow-up. They reiterate the need for a comprehensive approach to the challenges posed by the phenomenon and emphasize the added value of information exchange and cooperation.

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3.1. The Legal Framework

The key element of the national response to the foreign fighters' phenomenon is the national legal framework. An overview of the relevant national legal provisions was included in the Eurojust Report of November 2013. The overview presented the state of play with the implementation by the Member States of the Framework Decision 2008/919/JHA of 28 November 2008 amending Framework Decision 2002/475/JHA on combating terrorism. The Report stated that the Framework Decision 2008/919/JHA was implemented in almost all Member States (except Ireland, Greece and Lithuania, where the legislative process for the transposition of the Framework Decision on terrorism into national law was ongoing).¹

¹ Currently, only two Member States (Ireland and Greece) have not yet implemented the Framework Decision on terrorism, according to the "Report from the Commission to the European Parliament and the Council on the implementation of Council Framework Decision 2008/919/JHA of 28 November 2008 amending Framework Decision 2002/475/JHA on combating terrorism" (Brussels, 5.9.2014, COM(2014) 554 final). As reported to Eurojust, the implementation of Framework Decision 2008/919/JHA in Greece has been assigned to a legislative committee, which is expected to complete its tasks by the end of 2014.

In addition, the Eurojust Report of November 2013 presented an analysis of national legal provisions establishing the jurisdictional basis for terrorism-related crimes committed abroad and of the provisions criminalising the relevant conduct, particularly participation in terrorist training camps and terrorism-related travel. The conclusion was that the national legal frameworks, in general, were adequate to address the phenomenon of foreign fighters. However, Eurojust noted that not all relevant conduct was explicitly criminalised. Only in seven Member States (Belgium, Germany, Denmark, Spain, the Netherlands, Austria and the UK) were legal provisions present that specifically mentioned passive participation in terrorism-related training as a criminal act. Moreover, in none of the Member States were legal provisions present that would specifically criminalise travel by aspiring foreign fighters to conflict zones. Member States indicated that, in the absence of specific legal provisions, they might address this conduct by virtue of other, more general, provisions prohibiting terrorism. However, specific criminalisation would contribute to a more elaborated and comprehensive legal framework and increase the efficiency of the response to the phenomenon.

In the period since the Eurojust Report of November 2013, new legislative developments relevant to the phenomenon of foreign fighters took place in the Czech Republic, France, the Netherlands and Norway. In France, a new law was adopted that, inter alia, establishes a new terrorism offence, “individual planning and/or preparation of a terrorist act”, and sets up administrative arrangements that allow travel ban. In the Czech Republic, the amendments concerned the jurisdictional basis for crimes committed abroad. In the Netherlands, a legal provision concerning the financing of terrorism was introduced. In Norway, two new legal provisions criminalising passive participation in terrorist training and participation in a terrorist organisation were adopted. In addition, three Member States (Belgium, Denmark and Finland) have indicated to Eurojust that new legislative developments are expected in their national legal frameworks concerning foreign fighters. Detailed information per Member State on recent legislative updates and upcoming developments is presented in Annex 1. Annex 1 also includes information on the national legal frameworks of the Western Balkan countries and Turkey. These countries are currently very active in aligning their national legal frameworks with EU and international law on counter-terrorism.

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4.1. The Adequacy of the EU Legal Framework on Combating Terrorism

The goal of this section of the report is to address the adequacy of Framework Decision 2002/475/JHA on combating terrorism, as amended by Framework Decision 2008/919/JHA of 28 November 2008 (hereinafter these two framework decisions taken as a whole are referred to as “the FD on terrorism”) in the context of the evolving threat posed by foreign fighters. The FD on terrorism provided the basis for the approximation of criminal legislation on terrorist offences in the Member States. As noted in the Eurojust Report of November 2013 and in the Report of the Commission on the implementation of the Framework Decision 2008/919/JHA² published in September 2014, most Member States have adopted legislative measures in accordance with the provisions of this framework decisions. Some Member States went even further, criminalising not only the intentional acts introduced in 2008, but also other types of conduct, such as being recruited or receiving training for terrorism or provocation to prepare and instigate terrorist offences.

Assessing whether the provisions of the FD on terrorism proved to be sufficient and effective in relation to the prosecution and conviction of foreign fighters is difficult, as the number of trials and convictions in the Member States in this area remains small. Therefore, Eurojust has recently consulted the competent authorities of the Member States, the USA and Norway on the effectiveness of the FD on terrorism in responding to this phenomenon, and on whether they see a need for revision of the FD on terrorism. The results from the 21 responses received are as follows:

- Twelve respondents³ do not see a need to amend the FD on terrorism.

² COM(2014) 554 final.

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- Four respondents⁴ indicated that they could not express a view on this issue, three⁵ of them mainly due to the fact that their jurisdictions have not been confronted with the phenomenon of foreign fighters. These respondents did not object to a review of the FD on terrorism in the event that other Member States affected by this phenomenon would propose it.
- Three respondents⁶ called for a revision of the FD on terrorism. Two⁷ of these have indicated the types of conduct that should be deemed terrorist offences and included in the FD on terrorism, namely: seeking to be recruited for terrorism purposes, receiving training for terrorism, travel or attempt to travel for terrorism purposes, the financing of such travel and the facilitation or organisation of such travel.

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While this consultation shows that almost half of the respondents consider the provisions of the FD on terrorism sufficient, the following issues should also be taken into consideration when assessing at EU level its adequacy, notably:

- Not all respondents replied to this consultation; eight responses from the competent authorities of the Member States are pending.
- Most of the 12 respondents that do not see a need for a revised FD on terrorism come from Member States that have already adopted, are in the process of adopting or are considering adopting legislation that introduces terrorist offences that go beyond those included in the FD on terrorism, demonstrating that these Member States have already domestically identified the need to expand the list of terrorist offences included in the FD on terrorism and have

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domestically addressed the increased threat posed by the foreign fighters. The fact that only some Member States have done so shows a lack of common criminal justice approach at EU level, as the legislation of some Member States lags behind. The differences in criminalisation in the various Member States without common minimum standards risk creating prosecution gaps.

- The Member States that have not been affected by the phenomenon of foreign fighters may be confronted at any time with such problems, and therefore it is advisable that their legislation is prepared for addressing types of conduct that are currently not considered terrorist offences within the meaning of the FD on terrorism.
- Most of the responses were received prior to the adoption on 24 September 2014 of United Nation Security Council Resolution (UNSCR) 2178(2014). This Resolution calls on all State Parties of the United Nations to criminalise travel or attempt to travel abroad for a terrorist purpose, as well as the financing and the organisation or facilitation of such travel. These types of conduct are not covered by the FD on terrorism. Member States will need to consider whether their legislation needs to be amended in view of complying with the provisions of this Resolution. At EU level, the Member States as a whole may also wish to consider amending the FD on terrorism to incorporate the requirements of UNSCR 2178(2014). A similar situation occurred in 2008, when the FD on terrorism was amended to specifically include provisions on public provocation to commit a terrorist offence, recruitment for terrorism and training for terrorism. In doing so, the Council took note, among others, of UNSCR 1624(2005), which called upon States to take measures to prohibit by law the incitement to commit a terrorist act or acts, and to prevent such conduct.

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- In addition, practice shows that foreign fighters may travel to Syria (or Iraq) on their own to participate in terrorist activities and may not be part of a “terrorist group”. The FD on terrorism does not specifically address this situation and its provisions may not be sufficient to ensure that self-motivated foreign fighters that do not belong to a “terrorist group” can be prosecuted for terrorism. Moreover, given the difficulty in obtaining evidence from Syria or Iraq on the occurrence of terrorist offences, proving that a foreign fighter has participated in

the activities of a terrorist group in Syria or Iraq, as provided for in Article 2 of the FD on terrorism, is problematic.

In light of the above, Eurojust recommends a reflection on the revision of the legal framework for combating terrorism to address the evolving threat posed by the foreign fighters and to ensure a common reference for investigations and prosecutions. To this end, consideration could be given to the following:

- a) Expanding the list of terrorist offences, provided in the FD on terrorism, to include types of conduct that have been (or are in the process of being) criminalised in a number of Member States in their response to the foreign fighters threat, as well as those listed in UNSCR 2178(2014).
- b) Addressing the problems encountered in relation to the proof of existence of a “terrorist group”.
- c) Assessing whether the FD on terrorism adequately responds to situations where self-motivated foreign fighters travel on their own to conflict zones and are not part of a “terrorist group”.

While respecting the Member States’ wish to guarantee an effective and quick judicial response to the foreign fighter phenomenon through implementing UNSC Resolution 2178(2014) on a nationally based approach, adapting the EU minimum standards on combating terrorism to bring them in line with the legislation adopted in a number of Member States would send a strong political message, would provide a common minimum denominator for addressing the foreign fighter phenomenon and would allow a thorough comparison of experiences and informed decisions on the way forward.

In this context, Eurojust welcomes the debate at EU level launched on 10 October 2014 by the EU CTC on the measures needed to provide an effective criminal justice response to the foreign fighter phenomenon. Eurojust could assist further by hosting a strategic meeting devoted to assessing the need to update the EU legislation on combating terrorism in line with the development of the foreign fighter phenomenon. This meeting could gather practitioners from all Member States and/or, where appropriate, representatives of the Ministries responsible for revising terrorism legislation. The discussions could also focus on other topics of interest, such as the need for a common policy approach of the Member States towards returnees from a criminal justice perspective.

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6. Conclusions

The following conclusions and possible follow-up have been identified:

(1) The phenomenon of foreign fighters requires a common, comprehensive and cooperative approach.

The phenomenon has been rapidly evolving, growing in both scale and intensity. It is an EU rather than a national problem, and can only be addressed efficiently by a common cooperative effort. National authorities, to counter the phenomenon in the most efficient way, need to consolidate their efforts at both national and EU level to build a sustained response that is proactive and inclusive. In addition to the common approach, a common narrative is also needed to successfully prevent radicalisation and disrupt travel and participation in training and jihad. In particular, a common approach towards returnees could be considered. Eurojust can assist the national authorities by raising awareness and contributing to the discussion on the optimal strategies to reinforce such a common approach, at the level of judicial cooperation and sharing of best practice amongst judicial authorities.

(2) The national legal frameworks for combating terrorism in a number of Member States and third States are continuously evolving, particularly by introducing new terrorist offences. However, a risk exists that the legislation of some Member States will lag behind and that the differences in criminalisation in the various Member States, without common minimum standards, will create prosecution gaps.

Eurojust recommends that it should be assessed whether a revision of the FD on terrorism is required, in particular in view of UNSCR 2178(2014). The assessment could also address problems related to the proof of existence of a terrorist group, and to whether the FD on terrorism adequately responds to cases of self-motivated foreign fighters' travel to conflict zones. Eurojust could assist by hosting a strategic meeting devoted to such an assessment of EU legislation on combating terrorism in line with the development of the foreign fighter phenomenon. Eurojust will continue to compile and analyse the information concerning trials and convictions of foreign fighters to assess the possible implications of IHL in cases of foreign fighters.

(3) An efficient policy towards the phenomenon of foreign fighters requires a solid criminal justice response.

Particular focus should be placed on investigations and prosecutions of those who plan terrorist acts, as well as those suspected of recruitment, training, financing of terrorism, as well as incitement and public provocation to commit a terrorist offence. Eurojust could offer expertise and assistance to the national authorities when conducting financial investigations in cases involving foreign fighters.

Eurojust's analysis of relevant case law may further contribute to consolidating a common understanding of the complexity and dynamics of the phenomenon and identify reoccurring legal challenges and best practice. A first analysis of judgements on cases involving foreign fighters has been produced in issues 18 and 19 of the TCM, which is available to Member States who are conducting their own criminal proceedings related to the phenomenon.

(4) Coordination at EU level in addressing the legal challenges in the gathering and admissibility of e-evidence in terrorism cases would be beneficial.

Eurojust recommends exchanges of experience among the Member States, including the collection and dissemination of best practice and challenges encountered by national judicial authorities in using the information extracted from the Internet as evidence in terrorism cases. Bearing in mind that evidence needs to be gathered in full compliance with the rule of law, and recognising the major role of the Internet and social networks in the context of the foreign fighters' phenomenon, a harmonised approach at EU level may be necessary to address technical difficulties and legal challenges in the gathering and admissibility of e-evidence.

Eurojust also recommends that awareness and training sessions on the use of the Internet for terrorist purposes should continue to be organised for prosecutors and judges.

(5) The need to step up international judicial cooperation in cases of foreign fighters has become more evident.

Differences in national legal frameworks, as well as diverse national policies and practices related to investigations and prosecutions, may pose certain challenges in the context of the foreign fighter phenomenon. The systematic involvement of Eurojust in ongoing investigations and prosecutions in the Member States would allow for enhanced judicial cooperation and coordination. The Member States could benefit from Eurojust's experience in counter-terrorism matters in general, and in relation to foreign fighters, radicalisation and lone actors in particular. In relevant cross-border investigations, the setting up of a JIT could also be considered, where appropriate.

Eurojust will continue to build and strengthen trusted partnerships with third States, through both its operational and its strategic work. Further mutually beneficial initiatives and projects may be sought.

(6) The efficiency of the response to the phenomenon of foreign fighters may be further reinforced by the application of a multi-disciplinary approach.

The adoption of a comprehensive and cohesive policies at national level ensuring the engagement of all relevant public and private stakeholders should be considered. At EU level, cooperation among the JHA agencies, and in particular among Eurojust, Europol and Frontex is of particular added value, considering the complementarity of their mandates and powers, and should be enhanced.

Annex 1: Overview of Legal Updates in Member States and Current Legal Frameworks in Some Third States

An overview of the national legal frameworks of the Member States, Norway and **NOT DECLASSIFIED** applicable to the phenomenon of foreign fighters was provided in the Eurojust Report of November 2013. The overview focused particularly on national legal provisions establishing the jurisdictional basis for prosecution of terrorism-related crimes committed abroad and on provisions criminalising relevant conduct, particularly participation in terrorist training camps and terrorism-related travel.

The current section offers an update of the information available in the Eurojust Report of November 2013; it reflects the changes up to October 2014 in the national legal frameworks that have been shared with Eurojust. It also provides an overview of upcoming legislative developments.

Additionally, this section includes information on the legal frameworks applicable to the phenomenon of foreign fighters in Turkey and in some Western Balkan countries that was shared with Eurojust by legal experts from these countries in different meetings held at Eurojust in 2014.

Jurisdiction over terrorism-related crimes committed abroad

Czech Republic

The Czech Republic has adopted changes in its national legal framework concerning the jurisdictional basis for prosecution of crimes committed abroad. Section 8 of the Czech Criminal Code establishes the applicability of Czech criminal law to acts committed abroad by persons who do not have Czech nationality or a permanent residence permit, on the basis of the subsidiary principle of universality.

A new provision (c) has been added to Section 8, subsection 1, of the Czech Criminal Code, which establishes the jurisdiction in respect of such acts, if they constitute a crime also under the law effective in the territory where they were committed, if the offender is apprehended in the territory of the Czech Republic and if the foreign state or another authority, which had requested the extradition or surrender of the offender for the purpose of criminal proceeding or serving a sentence, requested the Czech Republic to conduct the criminal proceeding.⁸

⁸ Section 8, subsection 1, of the Czech Criminal Code reads as follows:

“(1) The law of the Czech Republic shall also apply to the assessment of criminality of an act committed abroad by a foreign national or a person with no nationality who has not been granted permanent residence in the territory of the Czech Republic if:

- a) the act is criminal also under the law effective in the territory of its commission, and
- b) the offender was apprehended in the territory of the Czech Republic and the offender was not extradited or transferred to another state or to another authority entitled to criminal prosecution,

Turkey

Under Article 11 of the Turkish Penal Code, a Turkish citizen having committed a terrorist offence abroad can be prosecuted in Turkey.⁹ Article 12 states that terrorist activities carried out by foreigners in a foreign country can be prosecuted in Turkey if directed against Turkish interests and if the offender is found in Turkey.¹⁰ No legal basis exists in Turkish legislation to prosecute terrorist actions if these are not committed against Turkey. Nevertheless, foreign individuals who committed terrorist activities abroad can be prosecuted in Turkey if their link to a terrorist organisation is proved, under the offence of being a member of a terrorist organisation.

-
- c) the foreign state or another authority which had requested the extradition or transfer of the offender for the purpose of criminal proceeding or the serving a sentence, requested the Czech Republic to conduct the criminal proceeding.”

⁹ Article 11 of the Turkish Penal Code reads as follows:

“Offences Committed By the Citizens

ARTICLE 11

(1) If a Turkish citizen, excluding the offences listed in Article 13, commits an offence in a foreign country which requires punishment with a minimum limit of less than one year imprisonment according to the Turkish laws, and if the offender is found in Turkey, then he is punished according to the Turkish laws provided that he is not convicted in the said foreign country for the same offense and there is possibility to proceed a trial in Turkey.

(2) Where the offence requires a punishment with a minimum limit of less than one year imprisonment, the trial is filed only upon rise of complaint by the injured party or the foreign country. In such case, the complaint has to be brought within six months as of the date of entry of the citizen into Turkey.”

¹⁰ Article 12 of the Turkish Penal Code reads as follows:

“Offences Committed By the Foreigners

ARTICLE 12

(1) If a foreigner, excluding the offences listed in Article 13, commits an offence in a foreign country causing injury to Turkey, which requires a punishment with a minimum limit of less than one year imprisonment, and if the offender is found in Turkey, then he is punished according to the Turkish laws. However, the trial is filed upon request of the Ministry of Justice.

(2) If the offence mentioned in the afore subsection is committed with the intention of causing injury to a Turkish citizen or a legal entity incorporated according to the Turkish laws and subject to special law, and if the offender is found in Turkey, then the perpetrator is punished according to the Turkish Laws upon complained of the injured party provided that that he is not convicted in the said foreign country for the same offense.

(3) If the aggrieved party is a foreigner, he is tried upon request of the Ministry of Justice in case of existence of the following conditions;

- a) Where the offence requires punishment with a minimum limit of less than three years imprisonment according to the Turkish Laws;
- b) Where there is no extradition agreement or the demand of extradition is rejected by the nation where the crime is committed or the person accused of a crime holds citizenship.

(4) A foreigner who is convicted of an offence in a foreign country within the scope of first subsection, or the action filed against him is extinguished or the punishment is abated, or the offence committed is not qualified for the prosecution, then a new trial can be filed in Turkey upon request of the Ministry of Justice.”

Serbia

In an effort to dissuade citizens from joining conflicts in Syria, Ukraine and elsewhere, on 10 October 2014, Serbia's Parliament approved amendments to its Criminal Code, introducing two new offences: the participation of Serbian citizens in war or armed conflict in a foreign state (Article 386a)¹¹ and organising participation in war and armed conflict in a foreign state (Article 386b)¹², including penalties for individuals who engage in recruitment, training, fund raising and equipment provision for the execution of the criminal act. The amendments provide for prison terms of six months to five years for individual fighters, up to eight years for those leaving an organised fighting unit and between two and ten years for those found guilty of recruiting mercenaries or volunteer fighters.

Bosnia and Herzegovina

A provision amending the Criminal Code of Bosnia and Herzegovina and criminalising fighting abroad was adopted on 6 June 2014 and came into force on 25 July 2014. The new Article 162b on "Unlawful Establishing and Joining Foreign Paramilitary or Parapolice Formations" punishes by imprisonment the organisation, direction, training, equipping or mobilisation of individuals or groups to join an armed conflict outside national territory.¹³

¹¹ Articles 386a of the Criminal Code of the Republic of Serbia reads as follows:

Article 386a

Participation in war or armed conflict in a foreign state

- (1) The citizen of Serbia who participates in war or armed conflict in a foreign state, as a member of military or paramilitary forces of the parties in conflict, and who is not a citizen of that foreign state, and is not a member of the official mission of an international organization whose member is Serbia, shall be punished with imprisonment from six months to five years.
- (2) If the offence specified in para. 1 of this Article is committed in a group, the perpetrator shall be punished with imprisonment from one to eight years.

¹² Article 386b of the Criminal Code of the Republic of Serbia reads as follows:

Organizing participation in war or armed conflict in a foreign state

- (1) Whoever, in an intention to commit a criminal offence referred to in the Article 386a of this Code, on the territory of Serbia recruits or incites another person to commit this offence, organizes a group or conducts a training of another person or group for commission of this offence, equips or makes available equipment for commission of this offence or provides or collects funds for commission of this offence, shall be punished with imprisonment from two to ten years.
- (2) For the offence specified in the para. 1 of this Article, the perpetrator shall be punished with punishment prescribed for this offence also when the persons whom he organizes are not the citizens of Serbia.

¹³ Article 162b of the Criminal Code of Bosnia and Herzegovina reads as follows:

"Article 162b.

(Unlawful Establishing and Joining Foreign Paramilitary or Parapolice Formations)

- (1) Whoever, in violation of the Law on Defence of Bosnia and Herzegovina or the Law on Service in the Armed Forces of Bosnia and Herzegovina, organises, directs, trains, equips or mobilises individuals or groups for the purpose of their joining in any way foreign military, foreign paramilitary or foreign parapolice formations that are acting outside the territory of Bosnia and Herzegovina, shall be punished by imprisonment for a term not less than five years.
- (2) Whoever joins in any way a foreign military, foreign paramilitary or foreign parapolice formation, trained, equipped or mobilised as provided by paragraph (1) of this Article, shall be punished by imprisonment for a term not less than three years.
- (3) Whoever procures or renders operable the means, removes obstacles, creates plans or makes arrangements with others or recruits another person or undertakes any other action creating the conditions for direct perpetration of this criminal offence, shall be punished by imprisonment for a term between one and ten years.
- (4) Whoever publicly, by way of public media, distributes or in any other way conveys a message to the public, which has the purpose of inciting another person to perpetrate this criminal offence, shall be punished by imprisonment for a term between three months and three years.
- (5) A perpetrator of the criminal offence referred to in paragraph (1) of this Article, who, by exposing the group, prevents the perpetration of the criminal offence or exposes the group prior to the perpetration of the criminal offence, shall be punished by imprisonment for a term between six months and three years, but may also be released from punishment.
- (6) Provisions of this Article shall not be applicable to the persons who have acquired in a lawful manner the citizenship of a foreign country recognized by Bosnia and Herzegovina in whose army or military formation they serve, or they serve military formations under control of governments internationally recognized by the United Nations, established on the basis of law."

Criminalisation of terrorism-related conduct

France

A new law that reinforces the national legal framework relating to the fight against terrorism was adopted on 4 November 2014 and came into force on 13 November 2014. The key elements of the new law establish a new terrorism offence, “individual planning and/or preparation of a terrorist act”, as a new legal tool to address terrorism acts committed by “lone actors”, set up administrative arrangements that allow travel bans to be imposed on individuals due to the risk of participation in terrorist activities abroad and reinforce the provisions that prohibit advocating terrorism.

The Netherlands

In the Netherlands, a new legal provision, Article 421 of the Dutch Penal Code, has been introduced to prohibit the financing of terrorism. The article, adopted by Act of 10 July 2013 and entered into force on 1 September 2013, stipulates that a person is guilty of financing terrorism if that person intentionally provides the means or information, or intentionally gathers, obtains, possesses or gives to others objects, which serve as financial support to the commission of a terrorist offence or an offence committed in preparation or in facilitation of a terrorist offence.¹⁴

¹⁴ Article 421 of the Dutch Penal Code reads as follows:

- “1. Anyone guilty of financing of terrorism (punishable with imprisonment not exceeding eight years or with a fine of the fifth category) is:
- a. He who for himself or for another deliberately provides the means or information or deliberately gathers, obtains, possesses, or gives to others objects, which in whole or in part, directly or indirectly, serve as monetary support for the commission of a terrorist offence or an offence made in preparation or in facilitation of a terrorist offence.
 - b. He who for himself or for another deliberately provides the means or information or deliberately gathers, obtains, possesses, or gives to others objects, which in whole or in part, directly or indirectly, serve as monetary support for the commission of one of the offences described in:
 - Articles 117 to 117b and Article 285, if the crime is directed against an internationally protected person or his protected goods;
 - Articles 79 and 80 of the Nuclear Energy Act, Articles 161quater, 173a and 284a, as well as Articles 140, 157, 225, 310 to 312 inclusive, 317, 318, 321, 322 and 326, if the offence concerns intentional unlawful acts relating to nuclear material;
 - Articles 162, 162a, 166, 168, 282a, 352, 385a to 385d;
 - Articles 92 to 96, 108, 115, 121 to 123, 140, 157, 161, 161bis, 161sexies, 164, 170, 172, 287, 288 and 289, if they concern deeds committed through the deliberate unlawful detonation of an explosive or other object, or through the release and spreading of an object, or perforation with an object with the aim of causing danger to the life of another, risk of fatal injuries to another, or substantial property damage.
2. Subjects are defined as all commercial and property rights.”

Norway

Two new legal provisions concerning terrorist training and participation in a terrorist organisation were introduced in the Norwegian Penal Code in June 2013. Section 147C of the Penal Code, which criminalises incitement to, recruitment and training for terrorism, has been amended by including a new subsection (d) providing for criminal liability for participation in terrorist training. Section 147D of the Penal Code, which criminalises participation in a terrorist organisation, has been introduced; it provides for criminal liability for founding, participation in, recruiting members to or giving economic or other material support to a terrorist organisation, when the organisation has taken steps by illegal means to achieve its objectives.¹⁵

Turkey

Article 3 of the Turkish Law on the Prevention of the Financing of Terrorism, adopted by the Turkish Grand National Assembly on 7 February 2013, allows the prosecution in Turkey of terrorism financing acts against interests of any jurisdiction or international organisation regardless of the location of the commission of the offence. In addition, Turkey has implemented the UN Security Council Decision on freezing of assets for a list of persons and organisations, including al-Qaeda and al-Nusrah.

Upcoming changes in the national legislation

Belgium

New legislative developments relevant the phenomenon of foreign fighters may be expected as result of the review of the applicability of the Belgian legal framework concerning mercenaries, particularly Article 2 of the Mercenary Act of 1979, currently conducted by the government, subject to the relevant Royal Decree to be drawn up by the Council of Ministers.

Denmark

The new Danish national action plan against extremism and radicalisation presented by the government on 19 September 2014 foresees national legislative developments to implement the proposed measures. The plan contains a wide range of initiatives, including the proposal for withdrawal of passports and issuance of travel bans for people suspected of participating in an armed conflict abroad. In addition, the plan proposes an amendment to the Danish Law on Social Services to enhance the possibilities for strengthened action in relation to persons over 18 years, including wider possibilities for municipalities to undertake outreach work in relation to persons who are at risk of radicalisation.

¹⁵ Section 147D of the Norwegian Penal Code reads as follows:

“Any person who founds, participate in, recruits members to or gives economic or other material support to a terrorist organisation, when the organisation by illegal means have taken steps to achieve their aim, shall be liable to imprisonment for a term not exceeding 6 years.”

Finland

Draft amendments to the Criminal Code that seek criminalisation of participation in terrorist training and for extension of the criminalisation of terrorist funding to all terrorism-related crimes is under consideration in the Finnish Parliament.

Serbia

To comply with the EU's accession process requirements in the field of counter-terrorism, the Serbian authorities have established a new strategy and action plan for the fight against terrorism. The action plan foresees the establishment of a national database and new mechanisms to foster inter-agency cooperation, as well as the adoption of a new law on freezing assets that are the proceeds of terrorism.

Montenegro

The Criminal Code defines different criminal offences related to terrorism, such as "Recruitment and training for the commission of criminal offences of terrorism" (Article 447 b) and "Terrorism financing" (Article 449). Amendments to the Criminal Code are currently under consideration to further align them with relevant international provisions on counter-terrorism issues. Within the context of the ongoing accession negotiations with the European Union, an action plan adopted by Montenegro provides clear guidance for future reforms based upon the comprehensive set of benchmarks established by the European Union in the field of counter-terrorism.