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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 a compilation 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:

Annex I - Austria
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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 1 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

g) puts people in general danger of death or grievous bodily harm or puts a stranger's property in danger of large-scale damage by causing fire or flood or the adverse effects of explosives, gas, electricity, or other similarly dangerous substances or forces, or commits another similar dangerous action or increases such general risk or hinders the prevention or mitigation, shall be punished by a prison sentence of five to fifteen years, or also in conjunction with such punishments by forfeiture of property.

*(2) The same punishment shall be imposed on a person
who threatens conduct referred to in [Subsection 1](#),
who publicly encourages such conduct, or
who supports such conduct, a terrorist or a member of a terrorist group financially,
materially or otherwise.*

(3) An offender shall be punished by a prison sentence of twelve to twenty years or also in conjunction with such punishments by forfeiture of property, or an exceptional punishment, if,

a) they committed an act referred to in [Subsection 1](#) as a member of an organised group,

b) they caused grievous bodily harm or death by committing such an act,

c) by committing such an act, a large number of people were left without shelter,

d) they caused the disruption of transport services to a greater extent by committing such an act,

e) they caused large-scale damage by committing such an act,

f) they procured another large-scale benefit by committing such act for themselves or another person,

g) they seriously threatened the international status of the Czech Republic or the status of an international organisation which the Czech Republic is a member of, by committing such an act or

h) they committed such act during a state of national emergency or war.

(4) Preparation is punishable.

New Amendment Section 311 al. 2 and 3:

- (2) *The same punishment shall be imposed on a person who threatens conduct referred to in Subsection 1, who publicly encourages such conduct, or who supports such conduct, a terrorist ~~or a member of a terrorist group~~, **terroristic group or its member** financially, materially or otherwise.*
- (3) *An offender shall be punished by a prison sentence of twelve to twenty years or also in conjunction with such punishments by forfeiture of property, or an exceptional punishment, if,*
- a) they committed an act referred to in Subsection 1 **or 2** as a member of an organised group, (...).*

Section 20

Preparation

- (1) *Conduct that is based in an intentional creation of conditions for the commission of a particularly serious crime ([Section 14 Subsection 3](#)), especially in its organisation, the acquisition or adaptation of the means or instruments for its commission, in conspiracy, unlawful assembly, in the instigation or aiding of such a crime, shall be deemed a preparation only if the criminal law applicable for a specific criminal offence expressly stipulates for it and an attempt or completion of a particularly serious crime did not occur.*
- (2) *Preparation is punishable pursuant to the criminal penalty set out for a particularly serious crime to which it leads, unless the criminal law stipulates otherwise.*
- (3) *Criminal liability for the preparation to commit a particularly serious crime shall expire if an offender voluntarily waived further conduct towards the commission of a particularly serious crime and*
- a) removed the risk to an interest protected by criminal law which occurred due to the attempted preparation, or*
- b) reported the preparation to commit a particularly serious crime at a time when the risk to an interest protected by criminal law which occurred due to the attempted preparation could still be removed; reporting must be performed to the public prosecutor or the police authority. A soldier may report it to their commander.*
- (4) *If there are several persons involved in an act, the criminal liability for the preparation is not void in the case of an offender who acted in such manner, despite their timely reporting or earlier participation in such act, if it is completed by other offenders.*
- (5) *The provisions of [Subsection 3](#) and [4](#) shall have no effect on the criminal liability of an offender for any other committed criminal offence which they have already committed by their conduct pursuant to [Subsection 1](#).*

Section 24

Accessory

(1) An accessory to a completed criminal offence or its attempt is a person who intentionally

a) plotted or managed (organiser) the commission of a criminal offence,

b) instigated the commission of a criminal offence in another person (instigator), or

c) allowed or facilitated the commission of a criminal offence by another person, in particular through the provision of means, removal of barriers, eliciting the victim to the place of an act, keeping watch during the commission of an act, providing advice, encouraging the resolve or vowing to participate in a criminal offence (accessory).

(2) The provision on the criminal liability and culpability of an offender shall be applied to the criminal liability and culpability of an accessory unless the criminal law stipulates otherwise.

(3) The criminal liability of an accessory shall expire if they voluntarily waived any further accomplicity in the criminal offence and

a) removed the risk to an interest protected by criminal law that occurred due to the attempted accomplicity, or

b) reported the accomplicity in a criminal offence at a time when the risk to an interest protected by criminal law which occurred due to attempted accomplicity could still be removed; reporting must be performed to the public prosecutor or the police authority. A soldier may report it to their commander.

(4) If there are several persons involved in an act, the criminal liability of the accessory is not void in the case of an offender who acted in such manner, despite their timely reporting or earlier participation in such an act, if it is still committed by other offenders.

(5) The provisions of [Subsection 3](#) and [4](#) shall have no effect on the criminal liability of an accessory for any other criminal offence which they have already committed by their conduct pursuant to [Subsection 1](#).

Section 111

Concept of a Criminal Offence

Criminal offence means an act that is judicially punishable and unless the individual provisions of the criminal law stipulate otherwise, also the preparation for the criminal offence, attempted criminal offence, organisation, guidance, and assistance.

Section 7
Principle of Protection and Principle of Universality

(1) The law of the Czech Republic assesses the culpability of torture and other cruel and inhumane treatment (Section 149), counterfeit and alteration of money (Section 233), presentation of counterfeit and altered money (Section 235), production and possession of counterfeiting equipment (Section 236), unauthorised production of money (Section 237), subversion of the Republic (Section 310), terrorist attack (Section 311), terror (Section 312), sabotage (Section 314), espionage (Section 316), violence against public authority (Section 323), violence against an official person (Section 325), counterfeiting and alteration of public documents (Section 348), participation in an organised criminal group pursuant to Section 361 Subsection 2 and 3, genocide (Section 400), attacks against humanity (Section 401), apartheid and discrimination against groups of people (Section 402), preparation for aggressive war (Section 406), use of prohibited means of combat and clandestine warfare (Section 411), war atrocities (Section 412), persecution of the population (Section 413), looting in the area of military operations (Section 414), abuse of internationally and State recognised symbols (Section 415), abuse of flag and armistice (Section 416) and harm of a parliamentarian (Section 417) even when such a criminal offence was committed abroad by a foreign national or a person with no nationality to whom permanent residence in the territory of the Czech Republic was not granted.

(2) The law of the Czech Republic shall also assess the culpability of an act committed abroad against a Czech national or a person without a nationality to whom permanent residence in the territory of the Czech Republic was granted if an act is punishable in the place of its commission and if the place where such an act was committed is not subject to any criminal capacity.

GERMANY

Germany welcomes the United Nations Resolution 2178 (2014) designed to confront the problem of foreign fighters. In recent years travel to conflict zones, especially Syria, for terrorism purposes has become a major security challenge for Germany.

Germany is currently examining the impact of Resolution 2178 (2014) on the counterterrorism provisions of German criminal law. In 2009, Germany introduced a special provision - section 89a of the Criminal Code - criminalising visits to a terrorist training camp in order to prepare a terrorist attack. German law enforcement agencies carry out a large number of investigations in connection with terrorism-motivated travel to conflict zones, especially on the basis of this provision. However, operative paragraph 6 (OP 6) of the UN Security Council Resolution 2178(2014) is – according to initial estimates – not covered by section 89a of the Criminal Code.

Germany will be taking legislative steps to adjust German penal provisions on terrorism in line with the provisions of the UN Resolution. According to initial estimates, section 89a (2) of the Criminal Code (StGB) will have to be supplemented with a further preparatory offence covering travel and the attempt to travel for terrorist purposes. Financing such travel is to be covered by new terrorism financing provisions. Presently, the intentional organisation or other facilitation of such travel is punishable under German criminal law, in particular under provisions on aiding and abetting.

Germany is expected to present a draft legislation to implement the UN Security Council Resolution 2178(2014) by the end of the year (2014)._____

DENMARK

The Presidency has invited delegations to submit information about existing national measures which are already in compliance with the requirements of the operative paragraph 6 (OP 6) of the UN Security Council Resolution 2178(2014), or have been adopted in implementation of OP 6 of the Resolution, or to inform about plans to do so.

Sections 114-114 e of the Danish Criminal Code criminalize terrorism, financing of terrorism, recruitment for terrorism, training for terrorism and facilitation of terrorism. If a person carries out or attempts to commit a specific terrorist act etc., or if a person does not himself commit out a specific terrorist act etc. but is complicit in the act, he may be liable for violation or attempted violation of Sections 114 or 114 e in accordance with the general rules on attempt and participation as an accomplice in the execution of a criminal offence, cf. Sections 21 or 23 of the Danish Criminal Code.

It follows from Section 21 of the Danish Criminal Code that acts aimed at inciting or assisting the commission of an offence are punishable as attempts if the offence is not completed.

It follows from Section 23 of the Danish Criminal Code that the penalty provision laid down for an offence shall apply to all persons who have aided, abetted, counseled or procured the commission of the offence.

Liability under Sections 114-114 e, cf. Section 21 or 23, requires intention as to the specific terrorist act etc.

The text of Sections 114-114 e of the Danish Criminal Code reads as follows (unofficial translation):

114. A penalty of imprisonment for a determinate term or for life for terrorism is imposed on any person who commits any one or more of the following acts with intent to seriously threaten a population or wrongfully coerce Danish or foreign public authorities or an international organisation to perform or fail to perform a duty, or to destabilize or overthrow the fundamental political, constitutional, economic or social structures of a country or an international organisation, where by virtue of its nature or the context in which it was committed the act is suited to inflict serious harm on a country or an international organisation:

- 1) Homicide pursuant to section 237 of this Act,*
 - 2) Gross violence pursuant to section 245 or section 246 of this Act,*
 - 3) Deprivation of liberty pursuant to section 261 of this Act,*
 - 4) Disturbance of traffic safety under section 184(1) of this Act, wrongful interference of the operation of ordinary means of public transportation etc. under section 193(1) of this Act or gross damage to property under section 291(2) of this Act, provided that these offences are committed in a way that may expose human lives to danger or cause considerable financial loss,*
 - 5) Seizure of means of transportation under section 183A of this Act,*
 - 6) Violation of the weapons and explosives legislation in particularly aggravating circumstances under section 192A,*
 - 7) Arson under section 180 of this Act, explosion, discharge of harmful gases, flooding, shipwreck, railway or other transport accidents under section 183(1) and (2) of this Act, health-endangering contamination of the water supply under section 186(1) of this Act and health-endangering contamination of things intended for general use etc. under section 187(1) of this Act,*
 - 8) Possession or use etc. of radioactive substances under section 192B of this Act.*
- (2) Similar punishment shall apply to a person who transports weapons or explosives with the intent referred to in subsection (1) above.*
- (3) Similar punishment shall further apply to a person who threatens to commit one of the acts mentioned in subsections (1) and (2) with the intent referred to in subsection (1) above.*

114 a. *Where one of the acts referred to in paragraphs 1) – 6) below is committed without the offence being covered by section 114 of this Act, the penalty may exceed the maximum penalty prescribed for the offence by up to half. If the maximum penalty prescribed for the offence in question is less than four years of imprisonment the penalty may, however, increase to imprisonment for a term not exceeding six years.*

- 1) Violation of sections 180, 181(1), 183(1) or (2), 183A, 184(1), 192A, 193(1), 237, 244, 245, 246, 250, 252(1), 266, 288 or 291(1) or (2) of this Act where the violation is subject to Article 1 of the Convention of 16 December 1970 for the Suppression of Unlawful Seizure of Aircraft, Article 1 of the Convention of 23 September 1971 for the Suppression of Unlawful Acts against the Safety of Civil Aviation or Article II of the Protocol of 24 February 1988 for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation.*
- 2) Violation of sections 180, 181(1), 183(1) or (2), 184(1), 237, 244, 245, 246, 250, 252(1), 260, 261(1) or (2), 266 or 291(1) or (2) of this Act where the violation is subject to Article 2 of the Convention of 14 December 1973 on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents.*
- 3) Violation of section 261(1) or (2) of this Act where the violation is subject to Article 1 of the International Convention of 17 December 1979 against the Taking of Hostages.*
- 4) Violation of sections 180, 181(1), 183(1) or (2), 186(1), 192A, 192B, 237, 244, 245, 246, 260, 266, 276, 278, 279, 279A, 281, 288 or 291(2) of this Act where the violation is subject to Article 7 of the IAEA Convention (the Convention on the International Atomic Energy Agency) of 3 March 1980 on Physical Protection of Nuclear Material.*
- 5) Violation of sections 180, 181(1), 183(1) or (2), 183A, 184(1), 192A, 193(1), 237, 244, 245, 246, 252(1), 260, 266, 288 or 291(1) or (2) where the violation is subject to Article 3 of the Convention of 10 March 1988 for the Suppression of Unlawful Acts against the Safety of Maritime Navigation or Article 2 of the Protocol of 10 March 1988 for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf.*
- 6) Violation of sections 180, 181(1), 183(1) or (2), 183A, 184(1), 186(1), 192A, 193(1), 237, 244, 245, 246, 250, 252(1), 266, or 291(2) of this Act where the violation is subject to Article 2 of the International Convention of 15 December 1997 for the Suppression of Terrorist Bombings.*
- 7) Violation of section 192B, 260 or 266 of this Act where the violation is subject to Article 2 of the International Convention of 13 April 2005 for the Suppression of Acts of Nuclear Terrorism.*

114 b. *Imprisonment for a term not exceeding ten years is imposed on any person who*

- 1) grants financial support, whether directly or indirectly, to;*
- 2) organizes or raises funds, whether directly or indirectly, for; or*
- 3) makes funding, other property, or financial or other similar services available, whether directly or indirectly, to;*

a person, a group or an association committing or intending to commit any terrorist act falling within section 114 or 114A.

114 c. *Imprisonment for a term not exceeding ten years is imposed on any person who recruits another person to commit or facilitate any act falling within section 114 or 114a or to join a group or an association for the purpose of facilitating the commission of illegal acts of this nature by the group or association. In particularly aggravating circumstances the sentence may increase to imprisonment for a term not exceeding 16 years. Especially situations involving offences committed in a systematic or organised manner are considered particularly aggravating circumstances.*

(2) *Imprisonment for a term not exceeding six years is imposed on any person who recruits another person to commit or facilitate any act falling within section 114b or to join a group or an association for the purpose of facilitating the commission of illegal acts of this nature by the group or association.*

(3) *Imprisonment for a term not exceeding six years is imposed on any person who accepts being recruited to commit any act falling within section 114 or 114a.*

114 d. *Imprisonment for a term not exceeding ten years is imposed on any person who trains, gives instructions to or otherwise teaches another person to commit or assist any act falling within section 114 or 114A knowing that such other person intends to use his skills for such purpose. In particularly aggravating circumstances the sentence may increase to imprisonment for a term not exceeding 16 years. Especially situations involving offences committed in a systematic or organised manner are considered particularly aggravating circumstances.*

(2) *Imprisonment for a term not exceeding six years is imposed on any person who trains, gives instruction to or otherwise teaches another person to commit or facilitate any act falling within section 114B knowing that such other person intends to use the skills acquired for such purpose.*

(3) *Imprisonment for a term not exceeding six years is imposed on any person who accepts being trained, given instruction or taught how to commit any act falling within section 114 or 114A.*

114 e. *Imprisonment for a term not exceeding six years is imposed on any person who otherwise facilitates the activities of a person, a group or an association committing or intending to commit an act falling within section 114, 114a, 114b, 114c or 114d.*

In October 2014 the Ministry of Justice requested the Standing Committee on Criminal Law to consider whether the provisions of the Danish Criminal Code are sufficient to counteract participation in armed conflicts abroad. The Standing Committee on Criminal Law was requested to consider in this connection whether the UN Security Council Resolution 2178(2014) gives rise to amendments or clarifications of the Danish Criminal Code on terrorist acts etc.

ESTONIA

After a primary review of the requirements of the operative paragraph (OP) 6 of the UN Security Council Resolution 2178(2014) we may confirm, that the Estonian Penal Code covers most of the actions mentioned in the OP 6 of the Resolution.

Terrorism and related actions are criminalized in Estonian legislation by the Division 3, of the Penal Code (Offences against State Power, entry into force 01.01.2008)

§ 237 Acts of terrorism

§ 237¹ Terrorist organization (Membership in a permanent organization)

§ 237² Organization of training or recruiting persons

§ 237³ Financing and support of act of terrorism and activities directed at it

link to Estonian Penal Code (in English) <https://www.riigiteataja.ee/en/eli/521082014001/consolide>

There is a need for additional analysis regarding more concrete criminalization of travelling or attempts to travel for the purpose of planning, or preparation of, or participation in, terrorist acts, or providing or receiving of terrorist training. Therefore, we cannot confirm possession of concrete regulations concerning criminalization of collection of funds for such kind of travelling.

FINLAND

As a follow-up to the discussion on criminal justice response to the phenomenon of foreign fighters held at CATS on 22 October 2014, at CATS on 11 November 2014 the Presidency invited delegations to submit information about the existing national measures which are already in compliance with the requirements of the operative paragraph 6 (OP 6) of the UN Security Council Resolution 2178(2014), or have been adopted in implementation of OP 6 of the Resolution, or to inform about their plans to do so.

Introduction

The Finnish criminal provisions on terrorist offences are concentrated in the chapter 34 a of the Criminal Code (CC) on terrorist offences. The chapter includes the following provisions: Section 1 – Offences made with terrorist intent, Section 2 – Preparation of an offence to be committed with terrorist intent, Section 3 – Directing a terrorist group, Section 4 – Promotion of the activity of a terrorist group, Section 4(a) – Provision of training for the commission of a terrorist offence, Section 4(c) – Recruitment for the commission of a terrorist offence, Section 5 – The financing of terrorism, Section 6 – Definitions, Section 7 – Right of prosecution and Section 8 – Corporate criminal liability.

The Finnish Parliament has very recently accepted provisions in a Bill introducing two new offences (Receiving training for the commission of a terrorist offence in 4 b § and Financing a terrorist group in 5 a § of the chapter 34 a) and expanding the scope of the criminalization of the financing of terrorism in section 5 to cover all crimes in chapter 34 a CC. The amendments will take effect as of 1.1.2015. Chapter 34 a with these amendments is annexed in the end.

Although many of the offences in chapter 34 a are of preparatory or promoting nature in relation to the main terrorist offence defined in section 1 of the chapter, even attempt of many of the offences in chapter 34 a is punishable.

Inciting as well as aiding and abetting is generally punishable pursuant to provisions in chapter 5 of the CC concerning all intentional offences of the CC. All terrorist offences in chapter 34 a CC are intentional offences.

According to the chapter 1, section 7(3) of the CC, an offence referred to in chapter 34 a committed outside of Finland is an international offence.

Paragraph 6(a) of the Resolution

In the paragraph 6(a) of the Resolution it is stated:

*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;

Concerning conduct described in the paragraph 6(a) of the Resolution, different sections of the chapter 34 a of the CC could be applicable in some cases. Offences made with terrorist intent are criminalized in Section 1 the attempt of which are also criminalized (CC 34 a:1(3)). For preparatory conduct section 2 of the chapter 34 a can be applied to. Moreover, the crimes according to sections 4 and 4 c of the chapter can be committed in order to commit the main offence of section 1, but also in order to commit the crime of preparation in section 2. The provision of training for the commission of terrorist acts and certain modes of attempting it are criminalized in section 4 a § of the chapter 34 a.

The new provision on receiving of training for the commission of a terrorist offence can be applicable to certain modes of conduct according to the paragraph 6(a) of the Resolution. It is to be noticed that the Finnish provision covers not only receiving training in physical forms such as in terrorist training camps, but also receiving training referred to in section 4 a via technical equipment such as the internet.

Even other criminal provisions could be applied to certain forms of conduct according to the paragraph 6(a) of the resolution. Thus, the preparation to commit a grave offence against life or health has recently been criminalized in section 6 a of the chapter 21 on homicide and bodily injury. Provisions on endangerment according to chapter 34 of the criminal code could become applicable in some cases as well. Especially concerning criminal terrorist acts committed by foreign fighters, provisions on war crimes and crimes against humanity in chapter 11 could actualize. Even other criminalisations must be paid attention to.

Paragraph 6(b) of the Resolution

Paragraph 6(b) of the Resolution concerns the criminal liability regarding

(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,

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 of 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.

<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>			
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(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;	Terrorcselekmény előkészülete Btk. 315. § (1) bekezdés	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.	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.
(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, or in the knowledge that they are to be used, in order to finance the travel of individuals</u> who travel to a State other than their States of residence or nationality <u>for the</u>	Terrorizmus finanszírozása Btk. 318. § (1) bekezdés	Aki terrorcselekmény feltételeinek biztosításához anyagi eszközt szolgáltat vagy gyűjt, vagy terrorcselekmény elkövetésére készülő személyt vagy rá tekintettel	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.

purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training; and,		mást anyagi eszközzel támogat, bűntett miatt két évtől nyolc évig terjedő szabadságvesztéssel büntetendő.	
(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>	Terrorcselekmény előkészülete Btk. 315. § (1) bekezdés	Aki a 314. § (1) vagy (2) bekezdésében meghatározott bűntett elkövetésére felhív, ajánlkozik, vállalkozik, a közös elkövetésben megállapodik, vagy az elkövetés elősegítése céljából az ehhez szükséges vagy ezt könnyítő feltételeket biztosítja, bűntett miatt két évtől nyolc évig terjedő szabadságvesztéssel büntetendő.	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.

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.

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.

LITHUANIA

Lithuanian delegation welcomes the initiative to share information about the national measures in the Member States related to the implementation of the operative paragraph 6 (OP 6) of the UN Security Council Resolution 2178 (2014).

The Law No. XII-497 amending the Penal Code of the Republic of Lithuania, which entered into force as of 2013 July 13, has comprehensively reviewed and improved the elements of terrorist offences, introduced new offences of public incitement to terrorism, recruitment for terrorism, training of terrorists, threatening to commit a terrorist offence, financing and support of terrorism, introduced definitions of “terrorist offences” and “offences linked to terrorism”, etc. The Law also brought necessary adjustments regarding criminalization of activities of criminal organisation.

With these amendments Lithuania has fully implemented the Council Framework Decision 2008/919/JHA of 28 November 2008 amending Framework Decision 2002/475/JHA and the Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime. In parallel it has also substantially reviewed the national provisions implementing the Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism.

Regarding the OP 6 of the Resolution 2178 (2014), the preliminary analysis of the national legal framework and related case law has shown that Lithuania already partially criminalises activities foreseen in point a of OP 6 and criminalises activities foreseen in points b and c of OP 6. Decision on the need to adopt additional legislative measures further criminalising certain activities foreseen in point a of OP 6 will depend on the forthcoming judgment of the Lithuanian Supreme Court in criminal case 1-22-256/2013, which is specifically related with the interpretation of the existing provisions of the Penal Code and foreign fighters phenomena.

Please find below the table of correspondence of the existing national measures in Lithuania with the OP 6 of the Resolution 2178 (2014).

OP 6 of Resolution 2178 (2014)	Penal Code of the Republic of Lithuania	Comments
<p><i>decides</i> 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:</p>	<p>Article 11. Crime</p> <p>1. A crime shall be a dangerous act (act or omission) forbidden under this Code and punishable with a custodial sentence.</p> <p>2. Crimes shall be committed with intent and through negligence. Premeditated crimes are divided into minor, less serious, serious and grave crimes.</p> <p>3. A minor crime is a premeditated crime punishable, under the criminal law, by a custodial sentence of the maximum duration of three years.</p> <p>4. A less serious crime is a premeditated crime punishable, under the criminal law, by a custodial sentence of the maximum duration in excess of three years, but not exceeding six years of imprisonment.</p> <p>5. A serious crime is a premeditated crime punishable, under the criminal law, by a custodial sentence of the duration in excess of three years, but not exceeding ten years of imprisonment.</p> <p>6. A grave crime is a premeditated crime punishable, under the criminal law, by a custodial sentence of the maximum duration in excess of ten years.</p> <p>Article 252¹. Interpretation of Concepts</p> <p>1. Terrorist crimes means the crimes referred to in Article 250 of this Code and the crimes referred to in Articles 251 and 252 of this Code when committed for terrorist purposes.</p> <p>2. Crimes linked to terrorist activities are the crimes referred to in Articles 249¹, 250¹, 250², 250³, 250⁴ and 250⁵ of this Code as well as the crimes referred to in Articles 178, 180, 181 and 300 of this Code if they aim at obtaining funds, instruments or means to commit terrorist crimes or support activities of a terrorist group the purpose whereof is the commission of terrorist crimes.</p> <p>3. Terrorist purposes mean the intention to seriously intimidate population or part of it or to unlawfully demand that an international organisation, the State or institutions thereof carry out certain actions or refrain from them, or to destabilise or destruct the main</p>	<p>Currently all relevant terrorist crimes and crimes linked to terrorism are punishable by a maximum sentence of at least six years of imprisonment, which means that they fall into categories of serious or grave crimes under the Penal Code of the Republic of Lithuania.</p>

	constitutional, political, economic or social formations of the State or an international public organisation.	
(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>Article 21. Preparation for Commission of a Crime</p> <p>1. Preparation for the commission of a crime shall be a search for or adaptation of means and instruments, development of an action plan, engagement of accomplices or other intentional creation of the conditions facilitating the commission of the crime. A person shall be held liable solely for preparation to commit a serious or grave crime.</p> <p>2. A person shall be held liable for preparation to commit a crime according to paragraph 1 of this Article and an article of this Code providing for an appropriate completed crime. A penalty imposed upon such a person may be commuted under Article 62 of this Code.</p> <p>Article 22. Attempt to Commit a Criminal Act</p> <p>1. An attempt to commit a criminal act shall be an intentional act or omission which marks the direct commencement of a crime or misdemeanour where the act has not been completed by reason of the circumstances beyond the control the offender.</p> <p>2. An attempt to commit a criminal act shall also occur when the offender is not aware that his act cannot be completed, because his attempt is directed at an inappropriate target or he is applying improper means.</p> <p>3. A person shall be held liable for an attempt to commit a criminal act according to paragraph 1 or 2 of this Article and an article of this Code providing for an appropriate completed crime. A penalty imposed upon such a person may be commuted under Article 62 of this Code.</p> <p>Article 250. Act of Terrorism</p> <p>1. A person who produces, acquires, stores, transports, transfers or otherwise uses of a firearm, ammunition, explosives, explosive, nuclear or radioactive materials for terrorist purposes, other sources of ionising radiation, as well as a person who creates, produces, acquires, stores, transports, transfers or otherwise uses of a chemical or biological</p>	The scope of compliance is still under assessment pending a final decision of the Lithuanian Supreme Court in a criminal case, related to foreign fighter phenomenon.

	<p>weapon or chemical substances or their precursors, micro-organisms, other biological materials or toxins for terrorist purposes shall be punished by imprisonment for a term of up to 8 years.</p> <p>2. A person who for terrorist purposes causes a flood or disrupts the supply of water, power or any other resources, or explodes, sets on fire or otherwise destroys or damages property on a large scale, violates the safety of an information system or electronic data of major importance for state government, the economy or the financial system, or disperses radioactive materials, biological or chemical hazardous substances, preparations or micro-organisms where this has caused or was likely to cause serious consequences as well as a person who for terrorist purposes causes a non-severe health impairment to one or more persons or poses threat to the life or health of many persons shall be punished by imprisonment for a term of up to 10 years.</p> <p>3. A person who causes a serious health impairment to one or more persons for terrorist purposes shall be punished by imprisonment for a term of 3 up to 15 years.</p> <p>4. A person who kills one or more persons for terrorist purposes shall be punished by imprisonment for a term of 8 up to 20 years or by life imprisonment.</p> <p>5. A person who commits the act provided for in paragraph 2, 3 or 4 of this Article where it was directed against an object of strategic importance to national security or where it has led to very serious consequences shall be punished by imprisonment for a term of 10 up to 20 years or by life imprisonment.</p> <p>6. A legal entity shall also be liable for the criminal acts provided for in this Article.</p>	
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	<p>Article 250⁵. Training of Terrorists</p> <p>1. A person who imparts to another person special knowledge or skills necessary to commit a terrorist crime or to take part in the commission of a terrorist crime, knowing that the person intends to use the knowledge or skills for terrorist purposes shall be punished by imprisonment for a term of up to 7 years.</p> <p>2. A legal entity shall also be liable for the criminal acts provided for in this Article.</p> <p>Article 251. Seizure of an Aircraft, Ship or Other Means of Public or Goods Transport or a Fixed Platform on a Continental Shelf</p> <p>1. A person who seizes an aircraft, ship or fixed platform on a continental shelf shall be punished by arrest or by imprisonment for a term of up to 5 years.</p> <p>2. A person who seizes an aircraft, ship or fixed platform on a continental shelf by using physical violence or threatening the use of violence shall be punished by imprisonment for a term from 3 up to 8 years.</p> <p>3. A person who seizes an aircraft, ship or fixed platform on a continental shelf by using a firearm, explosive or another means posing a threat to the life or health of the crew or passengers of the aircraft, ship or other means of public or goods transport or of the persons present on the fixed platform on a continental shelf shall be punished by imprisonment for a term of 5 up to 10 years.</p> <p>4. A person who commits the act provided for in paragraph 1, 2 or 3 of this Article for terrorist purposes shall be punished by imprisonment for a term of 5 up to 15 years.</p> <p>5. A person who commits the act provided for in paragraph 1, 2, 3 or 4 of this Article where this leads to an incident, accident or causes some other very serious consequences shall be punished by imprisonment for a term of 10 up to 20 years or by life imprisonment.</p> <p>6. A legal entity shall also be liable for the criminal acts provided for in this Article.</p>	
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	<p>Article 252. Hostage Taking</p> <p>1. A person who kidnaps or holds hostage a person and demands that an international organisation, the State or institution thereof carry out any action or refrain from actions, also a person who threatens the immediate killing or causing bodily harm to the person held hostage unless he is provided conditions to avoid detention, shall be punished by imprisonment for a term of three up to ten years.</p> <p>2. A person who commits the act provided for in paragraph 1 of this Article, where he kidnaps or holds hostage two or more persons, shall be punished by imprisonment for a term of three up to fifteen years.</p> <p>3. A legal entity shall also be held liable for the acts provided for in this Article.</p>	
<p>(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,</p>	<p>Article 250⁴. Financing and support of terrorism</p> <p>1. A person who directly or indirectly collects, holds or provides for funds or other property or rendered other material support to other person, seeking or with knowledge that this property, support or part of it should be used to commit a terrorist crime or a crime linked to terrorism or to support one or several terrorists, shall be punishable by imprisonment for a term of up to 10 years.</p> <p>2. A legal entity shall also be held liable for the acts provided for in this Article.</p>	<p>Fully compliant provided that a crime under point a) is criminalised under the Lithuanian legislation as a terrorist crime or a crime linked to terrorism.</p>
<p>(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</p>	<p>Article 24. Complicity and Types of Accomplices</p> <p>1. Complicity shall be the intentional joint participation in the commission of a criminal act of two or more conspiring legally capable persons who have attained the age specified in Article 13 of this Code.</p>	<p>Fully compliant provided that a crime under point a) is criminalised under the Lithuanian legislation as a terrorist crime or a</p>

<p>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>2. Accomplices in a criminal act shall include a perpetrator, an organiser, an abettor and an accessory.</p> <p>3. A perpetrator shall be a person who has committed a criminal act either by himself or by involving legally incapacitated person or the persons who have not yet attained the age specified in Article 13 of this Code or other persons who are not guilty of that act. If the criminal act has been committed by several persons acting together, each of them shall be considered a perpetrator/co-perpetrator.</p> <p>4. An organiser shall a person who has formed an organised group or a criminal association, has been in charge thereof or has co-ordinated the activities of its members or has prepared a criminal act or has been in charge of commission thereof.</p> <p>5. An abettor shall be a person who has incited another person to commit a criminal act.</p> <p>6. The accessory shall be a person who has aided in the commission of a criminal act through counselling, issuing instructions, providing means or removing obstacles, protecting or shielding other accomplices, who has promised in advance to conceal the offender, hide the instruments or means of commission of the criminal act, the traces of the act or the items acquired by criminal means, also a person who has promised in advance to handle the items acquired or produced in the course of the criminal act.</p> <p>Article 26. Criminal Liability of Accomplices</p> <p>1. Accomplices shall be held liable solely for the criminal acts as committed by the perpetrator which are covered by their intent.</p> <p>2. Where a perpetrator's criminal act was discontinued at the stage of preparation for commission of or an attempt to commit it, an organiser, an abettor and an accessory shall be held liable for complicity in preparation or attempt to commit the criminal act.</p>	<p>crime linked to terrorism.</p>
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	<p>3. Where there are the circumstances eliminating, mitigating or aggravating the liability of one of accomplices, they shall not be taken into account when determining the criminal liability of other accomplices</p> <p>4. An organiser, an abettor or an accessory shall be held liable under an article of the Code which provides for liability for an act committed by a perpetrator and under paragraph 4, 5 or 6 of Article 24 of this Code.</p> <p>5. Members of a criminal association shall be held liable under Article 249 of this Code as perpetrators regardless of their roles in the commission of a criminal act which is covered by their intent.</p> <p>Article 250². Recruitment for Terrorism</p> <p>1. A person who recruits another person to commit a terrorist crime or take part in the commission of a terrorist crime or participates in activities of a terrorist group the purpose whereof is the commission of a terrorist crime shall be punished by imprisonment for a term of up to 7 years.</p> <p>2. A legal entity shall also be liable for the criminal acts provided for in this Article.</p>	
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POLAND

In response to the request by the Presidency (document no. CM 5005/14), the Polish delegation presents below the provisions of Polish legislation which are in compliance with operative paragraph 6 (OP 6) of the UN Security Council Resolution 2178(2014) and ensure its full application.

The Polish criminal law any offence is considered to be a terrorist act if it carries a maximum penalty of at least 5 years of imprisonment and is committed for at least one of the following purposes:

- intimidation of many persons,
- compelling a public authority of the Republic of Poland or of another State or a body of an international organisation to undertake or abandon specific actions,
- cause serious disturbance to the constitutional system or to the economy of the Republic of Poland, another State or an international organisation.

Polish law has been amended in order to grant courts jurisdiction over terrorist acts which were committed within the territory of Poland and abroad, irrespective of whether they were committed by Polish nationals or not.

OP 6 (a)

The Polish legal system provides for the criminalisation of preparation for a commission of certain criminal offences. Preparation occurs if a person, with a view to committing a criminal offence, undertakes to create conditions conducive to the commission of the main offence. Preparation includes gathering resources, preparing instruments, drafting a plan of action, gathering information or conspiring with another person. This list is not exhaustive, though, therefore any action conducted with the view of committing an offence can be considered preparation, including travelling to a different State.

The very act of travelling to a different State may be considered as directly leading to the commission of an offence. In such an event it is penalised under ‘attempt’ which generally carries a more severe penalty than preparation.

Finally, while not all instances of preparation are criminalised, travelling for the purpose of participating in the activities of a terrorist organisation is criminalised as a separate offence, either as direct commission (if the person in question already belongs to a terrorist organisation) or as attempt (if the person is seeking to join one).

OP 6 (b)

Polish law directly penalises the gathering and provision (including offering) of funds and goods for the purpose of committing a terrorist act. Polish law goes even further by what is required by the Resolution as it penalises not only funding but also gathering or provision of material goods, e. g. providing a motor vehicle to be used to travel to a different State to commit a terrorist act would also fall within the relevant provision of Polish law.

OP6 (c)

Polish law recognises the concept of aiding another person in committing a criminal offence which encompasses all forms of facilitation of committing a criminal offence by another person. The acts set out in OP 6 (c) would therefore be considered aiding in committing the base offence.

Recruitment can also be penalised through the concept of ‘incitement’. In Polish law this concept is understood broadly and includes coercion, enticement, commissioning and simply hiring another person to commit a criminal offence.

PORTUGAL

In what concerns to the criminalization of the travel, intent to travel, organization, financing or facilitation of the travel to another State, for the purpose of committing, training or preparing others to commit a terrorist act (OP 6 of the UNSC Resolution) we can affirm that Portugal is preparing draft legislation on this subjects, still under consideration by a Working Group. We can inform, however, that the purpose of the envisaged amendments is to anticipate the criminalization of conducts, in order to encompass the phases prior to the effective participation in terrorist organizations such as organizing or financing the travel and the travel to another State other than the State of residence or nationality.

ROMANIA

The Romanian Law no.535/2004 on preventing and countering terrorism was amended in 2012, and the offences focus on multiple alternative actions which could cover the provisions stipulated by UNSC Resolution no.2178/2014. Still, the national law does not expressly incriminate the following:

- the travel or attempted travel with the purpose of staging a terrorist attack;
- the providing or collecting of funds, by any means, directly or indirectly, for financing or being aware of their use for terrorist travel, and also organizing or facilitating such travels by any other means, including by recruiting individuals.

However, the national legislation provides sufficient general rules to be used for punishing individuals, and any difficulties may be related to the probation of such deeds, and not to their incrimination.

In this respect, Law no.535/2004 on preventing and countering terrorism, with subsequent amendments, incriminates the following deeds:

1. Article.33 paragraph 1, point b): training or preparing a person how to use or assemble firearms, ammunition, explosives, any kind of explosive devices, chemical, biological, radiological or nuclear weapons, including any equipment specifically designed to be directly used in the preparation of chemical, biological, radiological or nuclear substances;

- paragraph 2 point a): facilitating border crossing, hosting or facilitating access to the targeted objectives for an individual who has carried out / participated or will participate / carry out a specific terrorism offense stipulated in paragraph 1 or in article 32, paragraph 1 or 3;

- paragraph 2 point e): taking part in the training / preparing process in order to know how to use the destructive means, lethal or toxic substances, firearms, any kind of explosive devices, ammunition, explosives, chemical, biological, radiological or nuclear weapons with the purpose to carry out a terrorist act;

2. According to article 33¹, an offence is also 'any act to recruit a person to carry out any of the acts stipulated by article 32, paragraph 1 and 3 and article 33'. Furthermore, article no.33² sanctions 'the act to urge the people, verbally, in writing or by any other means, to carry out any offences stipulated by Law no.535/2004'.

3. According to article 36, a terrorist financing offence is to provide or collect legal or illegal funds, directly or indirectly, knowing their future use (partially or totally) in acts of terrorism or to support a terrorist entity.

Perpetrating an offence in order to gain such funds, knowing their future use (totally or partially) in acts of terrorism or to support a terrorist entity is also an offence.

4. According to article 34, the attempt to perpetrate a terrorist act is also punished, where the attempt is defined as the producing or acquiring of such means and instruments or the undertaking of any measures to carry out such offences.

The attempted travel with the purpose of carrying out a terrorist act (the activities for which the travel takes place) is very hard to probate. Thus, the terrorist travel is an offence from the point of view of attempting to carry out terrorist acts.

Romania is examining the national legal framework in order to assess the necessity to be accordingly aligned / amended. _____

SWEDEN

We have been requested to submit information about existing national measures which are already in compliance with the requirements of the operative paragraph 6 (OP 6) of the UN Security Council Resolution 2178 (2014), or have been adopted in implementation of OP 6 of the Resolution, or to inform about our plans to do so.

Sweden fulfils its current international criminal obligations in the anti-terrorism field and has far reaching criminal legislation in place. In order to enable Sweden to fully meet also the penal law requirements of UN Security Council Resolution 2178 (2014), Swedish Government has appointed a committee of enquiry on 18 December 2014 with the task to analyse the Swedish penal legislation in light of OP 6 of UNSCR 2178 (2014) and to submit necessary proposals of legislative changes. The committee report is due on 18 June 2015.

Committee terms of reference

Implementation of certain repressive measures to prevent and combat terrorism

Decision taken at Government meeting on 18 December 2014

Summary

A special investigator will assess the need for legislative changes to ensure that Sweden can comply with the requirements laid down in UN Security Council resolution 2178 (2014) for repressive measures to prevent and combat terrorism. If the investigator considers that there is such a need, proposals will be submitted accordingly.

The investigator will also determine whether the repressive measures implemented by Sweden to prevent and combat the financing of terrorism satisfy the requirements laid down by the Financial Action Task Force (FATF), and will propose any necessary legislative amendments.

The investigator will report on his findings by no later than 18 June 2015.

Effective criminal law - a means of countering terrorism

Persons who travel abroad to take part in terrorist acts or terrorist training pose a threat to international peace and security. Effective criminal law is essential in order to counteract this. However, criminalisation constitutes just one of a number of possible measures. There is also a need for efforts to prevent radicalisation and recruitment. Such efforts are, for example, among the tasks which have been assigned to a national coordinator for the safeguarding of democracy against violent extremism.

On 24 September 2014, the UN Security Council adopted resolution 2178 (2014). The resolution was adopted in accordance with Chapter VII of the UN Charter and is therefore binding on all member states.

The resolution reaffirms that terrorism in all forms and manifestations constitutes a threat to international peace and security. It is noted that the terrorism threat has become more diffuse, with an increase, in various regions of the world, of terrorist acts including those motivated by intolerance or extremism. It also expresses grave alarm over the acute and growing threat posed by persons who travel abroad for the purpose of participation in terrorist acts or terrorist training, including in connection with armed conflict. According to the resolution, this is increasing the intensity, duration and intractability of conflicts. It is claimed that such persons may pose a serious threat to their States of origin, the States they transit and the States to which they travel. In addition, the resolution expresses grave concern that such persons are using their extremist ideology to promote terrorism.

Paragraph 5 states that Member States should, consistent with international human rights law, international refugee law, and international humanitarian law, prevent and suppress the recruiting, organising, transporting or equipping of individuals who travel to another State for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training. The same applies to the financing of their travel and of their activities.

Paragraph 6 requires that Member States' legislation must include provisions which provide the ability to prosecute and to penalise in a manner duly reflecting the seriousness of the offence.

Moreover, Sweden has given an international undertaking to criminalise the financing of terrorism within the framework of the Financial Action Task Force (FATF). The FATF is an international organisation whose objectives are to set standards and promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and the proliferation of weapons of mass destruction as well as other threats to the integrity of the international financial system. Sweden has been a member of the FATF since the organisation's establishment in 1989.

In Swedish law, provisions on terrorist and terrorism-related offences are laid down in the Act on criminal responsibility for terrorist offences (2003:148) (the Terrorist Offences Act), the Act on criminal responsibility for public provocation to commit and recruitment and training for terrorist offences and other particularly serious crime (2010:299), and the Act on criminal responsibility for the financing of particularly serious crime in some cases (2002:444) (the Financing Act).

The mandate to review criminal law in the light of UN Security Council resolution 2178 (2014)

Sweden has an obligation under international law to honour its international criminal law commitments in the field of terrorism. A special investigator will therefore determine whether Swedish legislation needs to be amended in order to comply with the criminal law requirements laid down in UN Security Council resolution 2178 (2014), and if so, in what way.

This mandate brings to the fore issues relating to the protection of fundamental rights and freedoms pursuant to the Instrument of Government and the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). It concerns *inter alia* the right to freedom of movement pursuant to Chapter 2, Section 8 of the Instrument of Government and Article 2 of Protocol No. 4 to the ECHR, and the right to freedom of expression and information pursuant to Chapter 2, Section 1 of the Instrument of Government and Article 10 ECHR. It is important that close attention be paid to the protection of fundamental rights and freedoms, and that any assessments carried out and any proposals submitted be compatible with both the Instrument of Government and the ECHR, as well as with Sweden's obligations under international law.

Finally, account should be taken of how the formulation of criminalisation proposals and delimitation of the acts which are to be criminalised affect the ability of civil society organisations and competent authorities to work effectively to forestall and prevent persons from travelling abroad for the purpose of participation in terrorist acts or terrorist training.

Does Swedish law need to be amended in order to comply with the resolution's requirement regarding travel or attempted travel?

Pursuant to paragraph 6(a) of the resolution, it will be a criminal offence for a State's nationals to travel or attempt to travel to a State other than their States of residence or nationality, or for other individuals to 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. The resolution does not define what precisely is meant by the term "terrorist acts".

There are no criminal provisions under Swedish law which directly address the types of travel in question. However, the concept of inchoate offences, and in particular the preparation of and conspiracy to commit offences, means that there are provisions which can be applied to acts perpetrated at an early stage in the planning of a terrorist offence. In order for travel or attempted travel, for the purpose indicated in the resolution, to constitute an offence under the Terrorist Offences Act, the conduct in question must fulfil the conditions necessary for preparation of or an attempt or conspiracy to commit a terrorist offence.

The requirement laid down in paragraph 6(a) also extends to individuals who travel or attempt to travel for the purpose of the providing or receiving of terrorist training. The resolution does not define what precisely is meant by that term. The Act on criminal responsibility for public provocation to commit and recruitment and training for terrorist offences and other particularly serious crime provides for specific criminal responsibility for certain acts which may precede a terrorist offence, including training. The provision in question covers cases in which someone communicates or attempts to communicate instructions on the production or use of explosives, weapons or harmful or dangerous materials which are particularly suitable for use in the commission of particularly serious crime, or on other methods or techniques which are particularly suitable for such a purpose. The offence of training is not criminalised at the stages of attempt, preparation or conspiracy. Moreover, it covers only individuals who *provide* training.

Consequently, it is doubtful whether the existing repressive measures are sufficient in the light of the requirements laid down by the resolution.

The investigator will therefore:

- determine the extent of the resolution's criminalisation requirement in respect of travel or attempted travel for the purpose stated, and analyse the need for legislative amendments in order to ensure that Sweden can comply with that requirement, and
- submit any necessary legislative proposals.

Does Swedish law need to be amended in order to comply with the resolution's requirement regarding the financing of travel?

According to paragraph 6(b) of the resolution, 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 referred to in paragraph 6(a) will constitute a criminal offence.

Under the Financing Act, it is a criminal offence to collect, provide or receive money or other property with the intention that such money or property should be used, or in the knowledge that it is to be used, in order to commit particularly serious crime. Any attempt to commit such a crime (but not the preparation of or conspiracy to commit it) is likewise a criminal offence. The acts whose financing is defined by the resolution as a criminal offence do not fall within the scope of what the Financing Act regards as particularly serious crime. Consequently, the financing of travel constitutes a criminal offence according to the Financing Act only to the extent that it can be demonstrated that the purpose of such financing is to commit particularly serious crime. In addition, the financing of such travel may constitute the preparation of a terrorist offence where it takes the form of providing money or other resources as payment for a criminal offence or in order to cover the costs of perpetrating such an offence.

Consequently, criminalisation under Swedish law may not fully satisfy the requirements laid down by the resolution.

The investigator will therefore:

- determine the extent of the resolution's criminalisation requirement in respect of the financing of travel, and analyse the need for legislative amendments in order to ensure that Sweden can comply with that requirement, and
- submit any necessary legislative proposals.

Does Swedish law need to be amended in order to comply with the resolution's requirement regarding the facilitation of travel?

Pursuant to paragraph 6(c) of the resolution, the organisation, 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 referred to in paragraph 6(a) will constitute a criminal offence. In accordance with the general principle on complicity as laid down in Chapter 23, section 4 of the Penal Code, responsibility for a particular act lies not only with the person who perpetrated it, but also with any person who encouraged it. An act should be considered to have been encouraged if a person has taken steps which facilitate or at least are likely to facilitate its perpetration. In order for the requirement laid down in that respect by the resolution to be satisfied by the complicity principle, the acts in question must be independent criminal offences or constitute the preparation of or an attempt or conspiracy to commit an offence. The extent to which that requirement can be satisfied by the provisions concerning complicity therefore depends on the investigator's conclusions regarding travel within the meaning of paragraph 6(a).

Consequently, it is uncertain whether the facilitation of travel pursuant to the resolution is fully reflected in current Swedish law.

The investigator will therefore:

- determine the extent of the resolution's criminalisation requirement in respect of the facilitation of travel, and analyse the need for legislative amendments in order to ensure that Sweden can comply with that requirement, and
- submit any necessary legislative proposals.

The mandate to review the Financing Act in the light of the FATF's criminal law requirements

The FATF has adopted 40 recommendations for measures to combat money laundering, terrorist financing and the proliferation of weapons of mass destruction. It monitors compliance with the recommendations via a mutual evaluation system. Within the framework of the fourth round of mutual evaluations, Sweden will be assessed in 2016.

FATF Recommendation 5 requires member countries to criminalise terrorist financing on the basis of the UN International Convention for the Suppression of the Financing of Terrorism, which was adopted in 1999. In addition, member countries must criminalise not only the financing of terrorist acts but also the financing of terrorist organisations and individual terrorists. The latter applies even in the absence of a link to a specific terrorist act or acts.

Under the Financing Act, it is a criminal offence to collect, provide or receive money or other property with the intention that such money or property should be used, or in the knowledge that it is to be used, in order to commit particularly serious crime (including those types of crime whose financing constitutes a criminal offence under the Convention). In order for criminal liability to be deemed to exist, the act in question must have been perpetrated at least in the knowledge that the property is to be used in order to commit particularly serious crime (see the Supreme Court's judgment of 14 April 2014 in case Ö 386-14).

In the FATF's evaluation of Sweden carried out in 2006, the measures implemented by Sweden to criminalise terrorist financing were judged to be broadly compatible with the recommendation in question. However, the fact that such criminalisation does not explicitly include the collection or provision of money or other property in the knowledge that it is to be used by a terrorist organisation or an individual terrorist (for any purpose) was regarded as a shortcoming.

Sweden was therefore urged to extend criminal liability in such a way as to make it an explicit criminal offence to collect or provide property in the knowledge that it is to be used by a terrorist organisation or an individual terrorist for any purpose.

It is important that Sweden honour its commitments with regard to the FATF. It is therefore appropriate to investigate whether Swedish legislation needs to be amended in order to comply with the requirements laid down in FATF Recommendation 5, and if so, in what way. In that connection, consideration should be given to how the formulation of criminalisation proposals and delimitation of the acts which are to be criminalised affect an individual's ability to contribute to humanitarian activities.

The investigator will therefore:

- determine whether, via the Financing Act, Sweden fulfils the requirements laid down in FATF Recommendation 5, and
- propose any legislative amendments which may be required in order to ensure that Sweden's commitments be honoured.

Participation in armed conflict

In the government's view, consideration should be given to the delimitation of criminal offences in relation to participation in an armed conflict outside Sweden where such participation takes place within the framework of a terrorist organisation. Criminal provisions in that area too could help to forestall, prevent and combat terrorism. However, this involves a number of difficult considerations which will require further analysis before any detailed instructions can be submitted to the investigator. Since it is important that the latter be able to commence work on the resolution's criminalisation requirements immediately, the government intends to come back with an additional directive at a later stage.

Working arrangements and report

Via the national coordinator for the safeguarding of democracy against violent extremism, the investigator will consult with and obtain information from representatives of the relevant bodies and authorities, and in particular the Swedish Security Service, the Swedish Prosecution Authority, the Swedish Bar Association and civil society organisations.

The investigator will keep himself abreast of and pay attention to any relevant work within the Government Offices and within the EU and other international fora.

The investigator will examine the current legislation and any ongoing legislative activity in countries which he considers to be of interest and will draw any international comparisons deemed to be justified, for example in relation to the implementation of UN Security Council resolution 2178 (2014).

Legislation and ongoing proceedings in other Nordic countries will be the subject of particular scrutiny and analysis.

The investigator will report on his findings by no later than 18 June 2015.

(Ministry of Justice)

SLOVAKIA

In the case of the fight against terrorism, Slovak law is based on the fulfilling of the international commitments undertaken by the UN, Council of Europe and the EU.

Respective provisions of the Resolution of the UN Security Council No. 2178(2014), dealing with the prosecution of traveling for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts, or the providing or receiving of terrorist training, are implemented in Article 419 of the Criminal Code of the Slovak Republic mostly in Para 2 and in Article 297 including the preparation and attempt which provide a substantive legal basis for punishing of the criminal offences of foreign fighters.

In addition, according to our point of view, this text is very similar to the provisions of the Convention of the Council of Europe on the prevention of terrorism (2005), which has been already implemented into the Slovak law.

Nevertheless, the legal analysis is still on-going at interdepartmental level, in order to comprehensively evaluate the possible scope for improving our legal framework. Appendix covers the relevant provisions of the Slovak Criminal Code, which provides the legal basis for the prosecution of such crimes related to this phenomenon.

*Selection of key provisions of the Slovak Criminal Code concerning acts of terrorism
(current version)*

Section 13

Preparation for an offence

- (1) *"Preparation for an offence" means an action consisting in intentionally organising an offence, procuring or adapting means or instruments for its commission, engaging in conspiracy or assembly with a view to, or instigating, ordering or abetting such an offence or in otherwise intentionally creating the conditions for its commission, where the offence was not committed and no attempt was made to commit it.*
- (2) *Preparation for an offence is punishable according to the tariff laid down for the offence at which it aimed.*
- (3) *Preparation for a offence ceases to be punishable if the perpetrator has voluntarily*
- (a) desisted from further actions aiming at the commission of the offence and has removed the danger to the interest protected by this Code which arose as a result of the preparation made, or*
 - (b) reported the preparation of the offence to a law-enforcement authority or to the police in time for the threat to the interest protected by this Code, which arose as a result of the preparation made, to be removed; to this end, members of the armed forces may inform their superior or service authority and persons serving a prison sentence, or held in custody, may inform the relevant Prison Warders and Court Guards Corps.*
- (4) *Notwithstanding the provisions of paragraph 3, any other offence committed by the perpetrator as a result of carrying out this action remains punishable.*

Section 14

Attempt to commit an offence

- (1) "Attempt to commit an offence" means an action, aiming directly at the commission of an offence, which the perpetrator has carried out with the intention of committing an offence, if that action did not result in the commission of the offence.*
- (2) An attempt to commit an offence is punishable according to the tariff laid down for the committed offence.*
- (3) An attempt to commit an offence ceases to be punishable if the perpetrator has voluntarily*
 - (a) desisted from further actions necessary for the commission of the offence and has removed the danger to the interest protected by this Code which arose as a result of the attempt made, or*
 - (b) reported the attempt to commit the offence to a law enforcement authority or to the police in time for the danger to the interest protected by this Code, which arose as a result of the attempt made, to be removed; to this end, members of the Armed Forces may inform their superior or service authority and persons serving a prison sentence, or held in custody, may inform the relevant Prison Warders and Court Guards Corps.*
- (4) Notwithstanding the provisions of paragraph 3, any other offence committed by the perpetrator as a result of carrying out this action remains punishable.*

Section 129

Groups of persons and organisations

- (1) For the purposes of this Code, "group of persons" means at least three persons.*
- (2) For the purposes of this Code, "organised group" means an association of at least three persons for the purpose of committing an offence, with a specific distribution of designated tasks among the individual members of the group, so that the group's activity is planned and coordinated, increasing the likelihood of the offence being successfully committed.*

(3) *For the purposes of this Act, "extremist group" means an association of at least three persons for the purpose of committing an extremist offence.*

(4) *For the purposes of this Act, "criminal group" means a structured group of at least three persons which exists for a certain period of time and acts in a coordinated manner with the aim of committing one or more crimes, the offence of money-laundering pursuant to Section 233 or one of the offences of corruption pursuant to Chapter Eight, Part Three of the Specific Part of this Code for the purpose of directly or indirectly obtaining financing or other advantages.*

(5) *For the purposes of this Act, "terrorist group" means a structured group of at least three persons which exists for a certain period of time for the purpose of committing the offence of terror or the offence of terrorism.*

(6) *"Activity performed for a criminal group or terrorist group" means intentional participation in such a group or other intentional activity for the purpose of*

(a) maintaining the existence of such a group or

(b) committing the offences referred to in paragraph 4 or 5 by means of such a group.

(7) *"Supporting a criminal group or terrorist group" means intentionally providing financial or other resources, services or cooperation or creating other conditions for the purpose of*

(a) maintaining the existence of such a group or

(b) committing the offences referred to in paragraph 4 or 5 by means of such a group.

Section 141

Dangerous groupings

A "dangerous grouping" means

- (a) a criminal group, or*
- (b) a terrorist group.*

Section 297

Establishing, planning or supporting a terrorist group

Whoever establishes, or plans, a terrorist group, is a member of such a group, acts for it or supports it is liable to a term of eight to fifteen years' imprisonment.

Terror

Section 313

Whoever, with the intention of harming the constitutional order of the Slovak Republic, intentionally kills or attempts to kill another person is liable to a term of 20 to 25 years' imprisonment, or life imprisonment.

Section 314

(1) Whoever takes a person hostage and threatens to kill, or cause bodily or other harm to, that person with the aim of enforcing the fulfilment of conditions which harm the constitutional order of the Slovak Republic is liable to a term of seven to twelve years' imprisonment.

(2) *The offender is liable to a term of 12 to 20 years' imprisonment if he commits the act referred to in paragraph 1*

- (a) *and in doing so causes serious bodily harm or death;*
- (b) *against a protected person; or*
- (c) *in an aggravated manner.*

(3) *A custodial sentence of 15 to 25 years' or life imprisonment shall be imposed on an offender who commits an offence referred to in paragraph 1*

- (a) *and causes the death of more than one person;*
- (b) *as a member of a dangerous grouping; or*
- (c) *in a crisis situation.*

Section 419

Terrorism and certain forms of participation in terrorism

(1) *A person who,*

- (a) *with a view to seriously intimidating a population, seriously destabilising or destroying the constitutional, political economic or social order of a state or the structure of an international organisation or forcing the government of a state or an international organisation to act or refrain from acting, threatens to commit a crime or commits a crime that endangers the life or health of persons, their personal freedom or property, or unlawfully makes, obtains, possesses, holds, transports, supplies or otherwise uses explosives, nuclear, biological or chemical weapons, or carries out unauthorised research and development of such weapons or weapons prohibited by law or international agreement;*

- (b) with a view to causing death or serious physical harm or major damage to property or the environment, possesses radioactive material or has or produces nuclear explosive devices or devices that disperse radioactive material or emit radiation which as a result of their radiological properties can cause death, serious physical harm or major damage to property or the environment;*
- (c) with a view to causing death or serious physical harm or major damage to property or the environment or forcing a natural or legal person, international organisation or state to act or refrain from acting, uses radioactive material or nuclear explosive devices or devices that disperse radioactive material or emit radiation which as a result of their radiological properties can cause death, serious physical harm or major damage to property or the environment, or uses or damages a nuclear reactor, including reactors installed on vessels, vehicles, aircraft or spacecraft, that is used as a source of energy for powering such vessels, vehicles, aircraft or spacecraft or for other purposes or operation or transport equipment used for the production, storage, processing or transportation of radioactive materials in a way that releases or can release radioactive material or by such conduct makes a threat in circumstances indicating that the threat is credible, or*
- (d) seeks to obtain radioactive material, nuclear explosive devices or devices that disperse radioactive material or emit radiation which as a result of their radiological properties can cause death, serious physical harm or major damage to property or the environment, or a nuclear reactor, including reactors installed on vessels, vehicles, aircraft or spacecraft, that is used as a source of energy for powering such vessels, vehicles, aircraft or spacecraft or for other purposes or operation or transport equipment used for the production, storage, processing or transportation of radioactive materials, making a threat in circumstances indicating that the threat is credible or using force is liable to a term of 20 to 25 years' imprisonment or life imprisonment.*

(2) *As referred to in paragraph 1, a person who*

(a) himself or by means of another person collects or provides financial or other resources that are intended, even if only partly, to be used or enabled to be used to commit a criminal offence as referred to in paragraph 1;

(b) provides or attempts to provide or participates in the provision of knowledge of a method or technique for producing or using explosives, nuclear, biological or chemical weapons or other similarly harmful or dangerous materials for the purpose of committing an act as referred to in paragraph 1;

(c) publicly incites or participates in inciting the commission of an act as referred to in paragraph 1 by defending or justifying such an act in the event that it is carried out and thus creating the danger that it will be carried out;

(d) requests that a person commit or participate in the commission of an act as referred to paragraph 1 or attempts to make or participate in the making of such a request, or

(e) plans to commit an act as referred to in paragraph 1 with a view to committing or facilitating the commission of that act.

(3) *A sentence of life imprisonment shall be imposed on an offender who commits an act as referred to in paragraph 1*

(a) that causes serious physical harm to or the death of more than one person;

(b) against a protected person;

(c) against the armed forces or similar groups;

(d) as a member of a dangerous grouping; or

(e) in a crisis situation.

(4) A person who commits an act as referred to in paragraph 2(a) and thereby facilitates the use of financial or other resources collected or provided for the purpose of committing or attempting to commit an act as referred to in paragraph 1 or who by such means himself uses such resources or commits an act as referred to in paragraph 2(d) and thereby facilitates the commission or attempt to commit an act as referred to in paragraph 1 is liable to life imprisonment.
