



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 8.6.2004  
SEC(2004) 688

**COMMISSION STAFF WORKING PAPER**

***Annex to the***

**REPORT FROM THE COMMISSION**

**based on Article 11 of the Council Framework Decision of 13 June 2002 on combating  
terrorism**

**{COM(2004) 409 final}**

## TABLE OF CONTENTS

1.	ANALYSIS OF NATIONAL MEASURES TAKEN TO COMPLY WITH THE FRAMEWORK DECISION .....	3
1.1.	Article 1: Terrorist offences .....	4
1.1.1.	National systems .....	4
1.1.2.	Assessment .....	7
1.2.	Article 2: Offences related to a terrorist group .....	10
1.2.1.	National systems .....	10
1.2.2.	Assessment .....	13
1.3.	Article 3: Offences linked to terrorist activities .....	15
1.4.	Article 4: Inciting, aiding or abetting and attempting .....	17
1.5.	Article 5: Penalties .....	20
1.5.1.	Article 5(3) .....	20
1.5.2.	Transposition into national criminal law of the obligation referred to in Article 5(2) .....	23
1.6.	Article 6: Particular circumstances .....	26
1.7.	Articles 7 and 8: Liability of, and penalties for, legal persons .....	27
1.8.	Article 9: Jurisdiction and prosecution .....	30
1.9.	Article 10: Protection of, and assistance to, victims .....	34
1.10.	Article 12: Territorial application .....	35
2.	TABLE OF NATIONAL MEASURES TAKEN TO COMPLY WITH THE FRAMEWORK DECISION .....	35

## 1. ANALYSIS OF NATIONAL MEASURES TAKEN TO COMPLY WITH THE FRAMEWORK DECISION

As a first overview it can be noted that the implementation of the Framework Decision has in most Member States required the adoption of new legislation or at least the amendment of certain internal provisions<sup>1</sup>. Only Spain and France did not adopt specific legislation to implement the Framework Decision. Terrorist offences were already covered by their respective Criminal Codes and other relevant legislation (namely the Spanish Organic Law 7/2000 of 22 December and the French Law of 15 November 2001). At the time of drafting (15 February 2004) other Member States (Germany and Ireland) had provided the Commission with draft legislation<sup>2</sup>.

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<sup>1</sup> In this sense, Belgium has amended its Criminal Code, the Preliminary Title of the Criminal Procedure Code and its Criminal Instruction Code, by means of the Law of 19 December 2003 on terrorist offences, which entered into force as from 8 January 2004.

To align internal legislation with the Framework Decision, as well as with other relevant international instruments on terrorism, Denmark adopted new legislation, namely the Act N° 378 of 6 June 2002 on the amendment of the Criminal Code, the Administration of Justice Act, the Act on competition and consumer conditions in the telecommunications market, the Weapons Act, the Extradition Act and the Act on the extradition of offenders to Finland, Iceland, Norway and Sweden, that entered into force the 8 June 2002.

Italy had already adopted specific legislation on terrorism before the entry into force of the Framework Decision (namely Law N°438 of 15 December 2001, Decree Law N°625 of 15 December 1979 and Law N°407 of 23 November 1998) but introduced new provisions regarding liability of legal persons by means of Law n°7 of 14 January 2003.

In Austria, existing provisions in the Criminal Code, the Code of Criminal Procedure or the Victims of Crime Act already satisfied some of the obligations imposed in the Framework Decision. The remaining obligations were transposed by means of the Criminal Law Amendment Act 2002 (BGB1.I Nr.135/2002) that entered into force on 1 October 2002. This Act was aimed at strengthening anti-terrorist measures and, in particular, was adopted to implement the UN convention for the Suppression of the Financing of Terrorism.

In Portugal, implementation has taken place by means of a new Law n° 52/2003 of 22 August 2003, whose explicit aim is to punish terrorist acts and terrorist organisations in compliance with the Framework Decision.

On 24<sup>th</sup> January 2003, Finland adopted an Act on the amendment of the Criminal Code to comply with the Framework Decision. This Act entered into force the 1<sup>st</sup> February 2003.

Sweden implemented the Framework Decision by means of Law (2003:148) of 24 April 2003 on punishment for terrorist offences. Law 2003:149 also introduced some changes in general rules on jurisdiction to align them with the Framework Decision. Both entered into force the 1<sup>st</sup> July 2003.

The centrepiece of the United Kingdom's counter-terrorist legislation is the Terrorism Act 2000, which came into force on 19 February 2001, applicable to all forms of terrorism: the so-called "domestic" terrorism as well as international terrorism and terrorism connected with the affairs of Northern Ireland. The counter-terrorism powers contained within this piece of legislation were enhanced by the Anti-Terrorism Crime and Security Act 2001. In addition to these existing provisions, rules on extra-territorial jurisdiction have been taken in the Crime (International Co-operation) Act 2003 that has recently received Royal Assent.

<sup>2</sup> In this sense, although the German Criminal Code already contained provisions regarding terrorist organisations, Germany informed the Commission that it was in the process of amending its legislation in order to comply further with the Framework Decision by means of a bill that was adopted the 17 October 2003 by the German Parliament (lower house).

Ireland has prepared a new Criminal Justice (Terrorist Offences) Bill 2002, not yet into force, in order to give effect to the Framework Decision, a number of other International Conventions, and to generally strengthen Irish law in relation to international terrorism. Part 2 of the Bill contains the measures primarily directed to implementation of the Framework Decision which will supplement existing provisions, in particular the Offences against the State Acts 1939-98.

Greece announced that the Framework Decision had already been incorporated in the national legal system and that the relevant Draft Law was ready and would soon be submitted to the Parliament. No further information or legal texts were provided. Moreover, the Commission received no information from Luxembourg and the Netherlands. Therefore, the remainder of this report will not refer to these three Member States.

## **1.1. Article 1: Terrorist offences**

Prior to the Framework Decision, only some Member States had specific legislation on terrorism. In the majority of Member States terrorist actions were just punished as common offences. The main aim of this key provision is to approximate the definition of terrorist offences in all Member States by introducing a specific and common qualification of certain acts as terrorist offences. Most terrorist acts are basically serious ordinary offences which become terrorist offences because of the motivation of the offender. The Framework Decision's concept of terrorism offences is thus a combination of two elements: an objective element, as it refers to a list of serious criminal conducts, as defined by reference to national law, and a subjective element, as these acts shall be deemed to be terrorist offences when committed with a specific intent.<sup>1</sup>

### *1.1.1. National systems*

The Belgium Criminal Code now expressly defines terrorist offences, reproducing the intentional element as defined in the Framework Decision, and then contains a long list of crimes which partially refers to specific existing offences under Belgium criminal legislation and partially describes conducts. It is expressly stated that the provisions on terrorism will not apply to actions by armed forces in the terms of Recital 11 of the Framework Decision and that they cannot be interpreted in a way that restricts fundamental rights or freedoms.

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<sup>1</sup> Article 1 (1). Each Member State shall take the necessary measures to ensure that the intentional acts referred to below in points (a) to (i), as defined as offences under national law, which, given their nature or context, may seriously damage a country or an international organisation where committed with the aim of:

- seriously intimidating a population, or
- unduly compelling a Government or international organisation to perform or abstain from performing any act, or
- seriously destabilising or destroying the fundamental political, constitutional, economic or social structures of a country or an international organisation, shall be deemed to be terrorist offences:

- (a) attacks upon a person's life which may cause death;
- (b) attacks upon the physical integrity of a person;
- (c) kidnapping or hostage taking;
- (d) causing extensive destruction to a Government or public facility, a transport system, an infrastructure facility, including an information system, a fixed platform located on the continental shelf, a public place or private property likely to endanger human life or result in major economic loss;
- (e) seizure of aircraft, ships or other means of public or goods transport;
- (f) manufacture, possession, acquisition, transport, supply or use of weapons, explosives or of nuclear, biological or chemical weapons, as well as research into, and development of, biological and chemical weapons;
- (g) release of dangerous substances, or causing fires, floods or explosions the effect of which is to endanger human life;
- (h) interfering with or disrupting the supply of water, power or any other fundamental natural resource the effect of which is to endanger human life;
- (i) threatening to commit any of the acts listed in (a) to (h).

Terrorist offences are now specifically punished in Section 114 of the Danish Criminal Code. This provision refers to a list of offences under different sections of the Danish Criminal Code, as well as to the transport of weapons or explosives and the threat to commit all the previous actions, punishing them as acts of terrorism when committed with the same intent as required by the Framework Decision.

The German Criminal Code contains a specific provision on terrorist organisations, which punishes those who form, support or are members of an organisation whose objectives or activity are directed towards the commission of a series of offences, contained in specific provisions of the Criminal Code and other criminal Acts. According to the draft bill provided by Germany, this provision will be amended to extend the list of corresponding offences and to include an intentional element, in line with the Framework Decision. Despite this future amendment, it remains that, as regards individual offenders, acts committed with a terrorist intent would have to be punished as common offences. Even if committed within a terrorist organisation, those acts would not be strictly speaking independent terrorist offences in themselves. In other words, the new draft provides for the definition of terrorist offences only in relation to forming or participating in an organisation, and does not seem to cover an individual who commits one of the defined offences with the defined intent.

The Spanish Criminal Code distinguishes between those who commit terrorist offences while belonging to, acting at the service of or in collaboration with armed bands or terrorist organisations or groups whose aim is to subvert the constitutional order or seriously alter public peace, and those who commit them without belonging to such groups. In the second case the offenders must themselves act with those aims or with the intent of contributing to them by intimidating a population or the members of a social, political or professional group. On the basis of this distinction, the Criminal Code then refers to the categories of crimes that will be punished as terrorist offences when committed with the specific intent. When the offender belongs to a terrorist group, not only the specific crimes mentioned in Articles 571 to 573 (destroying property, arson, offences against the person, offences related to weapons and explosives, etc), but in general any other criminal offence will be punished as a terrorist offence (Article 574). When the offender does not act within a terrorist group, a closed list of corresponding crimes is contained in Article 577. It can also be pointed out that Organic Law of 22 December 2000 introduced a new offence under Article 578 of the Criminal Code, which punishes advocacy of terrorism, as well as carrying out acts that discredit, scorn or humiliate victims of terrorism or their families.

Article 421-1 of the French Criminal Code lists some categories of common offences that constitute acts of terrorism when committed intentionally “in connection with an individual or collective undertaking the purpose of which is to seriously disturb the public order through intimidation or terror”. “Environmental terrorism”<sup>1</sup> has been introduced as a self-standing terrorist act, with no reference to a pre-existing offence.

In Ireland Section 6 of the Bill will provide for terrorist offences as a separate category of offences by reference to the definition of ‘terrorist activity’. Terrorist activity means an act committed in or outside the State, with an identical intent as provided in the Framework

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<sup>1</sup> Article 421-2 of the French Criminal Code: “The introduction into the atmosphere, on the ground, in the soil or in waters, including territorial waters, of any substance liable to imperil human or animal health or the natural environment is an act of terrorism when it is committed intentionally in connection with an individual or collective undertaking whose aim is to seriously disturb public order through intimidation or terror”.

Decision that would, if committed in the State, constitute an offence specified in Part 1 of Schedule 2 of the Bill which refers to a concrete list of provisions. A person who, in or outside the State, engages, attempts to engage or makes a threat to engage in a terrorist activity is guilty of a terrorist offence.

From the information provided by Italy it derives that there is not a general legal definition of terrorism or terrorist offences. For some offences the terrorist intent is specified. In this sense, Articles 280 and 289-bis of the Criminal Code respectively punish attacks upon a person's life or physical integrity and kidnapping for the purpose of terrorism or for subverting the democratic order. Article 280-bis also punishes those who for terrorist purposes execute an act designed to damage another person's moveable or immovable property by means of explosives, arms or lethal devices, including attacks against constitutional organs of the State and regional assemblies.

As reflected in the annexed table, Italy has also referred to other common offences, included in the Criminal Code and in Law 18-11-95 n.496 on chemical weapons, which correspond to conducts listed in Article 1(1) of the Framework Decision. According to the Italian legal system the aggravating circumstance of acting with a terrorist purpose seems to be applicable, in general, to offenders who commit ordinary crimes.

The Austrian Criminal Code contains a definition of terrorist offences. The intentional element closely follows the wording of the Framework Decision. The objective element is set out with reference to a list of common offences, as defined in the relevant sections of the Austrian Penal Code. It is expressly provided that an act shall not be considered as a terrorist offence if it is geared to establishing or restoring democracy and the rule of law or exercising or upholding human rights<sup>1</sup>.

The Portuguese law defines terrorist organisations as those that pursue certain aims, which closely follow the intentional element in the Framework Decision, by committing crimes that fall under a list of general categories. Acts of terrorism committed by individuals are then defined and punished, by reference to those committed by terrorist groups. In both cases, the law makes a general distinction between "internal" and "international" terrorism and terrorist groups, depending on whether the terrorist intent is directed towards national population, institutions and public authorities or towards the population, institutions or public authorities of other States or international organisations.

Under the heading "Terrorist Offences" the Finnish Criminal Code punishes a list of "Offences made with terrorist intent" by reference to certain categories of crimes and, occasionally to specific provisions or to offences against specific Acts. Preparatory acts related to weapons or firearms or to agreeing on or planning to commit such offences are also

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<sup>1</sup> This concern, not solved by the Recitals, was covered by the Council's Statement 108/02 that reads: "The Council states that the Framework Decision on the fight against terrorism covers acts which are considered by all Member States of the European Union as serious infringements of their criminal laws committed by individuals whose objectives constitute a threat to their democratic societies respecting the rule of law and the civilisation upon which these societies are founded. It has to be understood in this sense and cannot be construed so as to argue that the conduct of those who have acted in the interest of preserving or restoring these democratic values, as was notably the case in some Member States during the Second World War, could now be considered as "terrorist" acts. Nor can it be construed so as to incriminate on terrorist grounds persons exercising their fundamental right to manifest their opinions, even if in the course of the exercise of such right they commit offences." (Doc.11532/02 Public 6, 22/8/2002)

punishable as “preparation of an offence to be committed with terrorist intent”. Terrorist intent is separately defined in a way that closely follows the Framework Decision.

Swedish legislation sets up a comprehensive list of specific corresponding offences under the Criminal Code and other criminal Acts, which shall constitute terrorist offences when committed with the required intent.

In the United Kingdom, terrorism is defined as the use or threat of action which involves serious violence against a person or serious damage to property, endangers a person’s life, creates a serious risk to the health or safety of the public or a section of the public or is designed to seriously interfere with or seriously disrupt an electronic system, where the use or threat is designed to influence the government or to intimidate the public or a section of the public and is made for the purpose of advancing a political, religious or ideological cause. Where the action involves firearms or explosives, it suffices if it is made for this last purpose only. References to “action”, “persons”, “property”, “the public” or “the government” apply world-wide and not just in the United Kingdom. In addition, the Terrorism Act 2000 and the Anti-terrorism Crime and Security Act 2001 provide for a limited number of specific terrorist offences (inter alia, weapons training, terrorist funding or use of noxious substances).

The rest of the criminal conducts covered by the Framework Decision would have to be prosecuted pursuant to ordinary criminal law, either as common law offences (murder, manslaughter, culpable homicide, rape, assault causing injury, kidnapping, abduction, false imprisonment, malicious mischief and wilful fire-raising), or as offences under certain statutory instruments, which have been pointed out to the Commission and are reflected in the annexed table. Should these criminal offences fall within the general definition of terrorism, the specific provisions regarding this form of crime would apply.

### *1.1.2. Assessment*

In a first overview it can be said that eight Member States (Belgium, Denmark, Spain, France, Austria, Portugal, Finland and Sweden) comply with Article 1 in the sense that they have specifically incriminated terrorist offences as a separate category of crimes while Ireland is in the process of amending their legislation to this end. Italy and the United Kingdom follow a different system, as they only provide for a limited number of specific terrorist offences. The rest are common offences qualified by the terrorist intent as an aggravating circumstance (in Italy) or covered by the general definition of terrorism (United Kingdom). This does not automatically imply that the results sought by the Framework Decision cannot be achieved, but may disrupt the systematic and political aim of this instrument and the clarity of implementation, and can hinder the full implementation of relating provisions (especially those on penalties and jurisdiction). For example, although, from a practical point of view the approach of the United Kingdom might not lead to great divergences, the lack of a clear distinction between terrorist and common corresponding offences could hinder the harmonization of sanctions in the terms of Article 5(2) of the Framework Decision. Germany does not comply with Article 1 of the Framework Decision, as the intentional and the objective elements integrate the legal definition of offences related to terrorist groups, but would not cover offences committed by individuals who are not linked or cannot be proven to be linked to a terrorist organisation.

It follows from the comparison of national legislations that there are differences as to the extent and method of implementation. Therefore some attention must also be given to whether

the full scope of Article 1 has been covered, considering both its intentional and objective elements.

Firstly, as regards the intentional element most countries have followed the wording of the Framework Decision, either literally (Belgium, Denmark, Ireland) or very closely (Austria, Portugal, Finland, Sweden). Others (Spain, France, and Italy) use different formulas which include indeterminate concepts that initially seem wide enough to cover the required intent. The Irish bill provides that, if having regard to all the relevant circumstances the court is satisfied that it is reasonable to assume that the act was committed with a terrorist intent, the accused person shall be presumed, unless the court is satisfied to the contrary, to have committed the act with that intention. The United Kingdom's definition appears to be, on the one hand, more restrictive as it does not refer to international organisations as the "target" of pressure or to the fundamental structures of a country while at the same time it additionally requires the purpose of advancing a political, religious or ideological cause. On the other hand, it might go beyond the intentional element of the Framework Decision as this last purpose is enough to qualify actions which involve the use of firearms or explosives as terrorism even if they are not designed to influence the government or to intimidate the public (would this cover, for example, an attack involving firearms against an individual for xenophobic reasons?). Therefore the intentional element only coincides partially with that of Framework Decision which would imply incomplete transposal in those cases where the scope has been restricted.

With reference to those Member States which use indeterminate concepts (such as altering the constitutional order or public peace,) and also taking into account the extensive rules on jurisdiction that would for example have to cover nationals who commit terrorist crimes abroad against foreign targets, the question of whether national legislation should refer expressly to the international dimension of terrorism could arise. In other words, to what extent would terrorist offences designed to alter another country's public peace or constitutional order be covered by these formulas? Italy and United Kingdom have introduced specific provisions to clarify that the terrorist purpose is also present in this case. A similar question arises in relation to international organisations, where not explicitly mentioned (for example, in the provisions pointed out by Spain, France or the United Kingdom). Would the terms intimidating the public or disturbing public order sufficiently cover (and be enough to qualify as a terrorist offence) the kidnapping of a member of an international organisation aimed at destabilising it or compelling it to perform or abstain from performing an act? The principles of legal certainty and strict interpretation of criminal provisions, together with the fact that, in principle, national legislation only covers national public interests would require the international dimension of terrorism to be clearly covered by national legislation. The Commission has no evidence to conclude that this aspect is sufficiently covered in those Member States that do not refer to it specifically.

It can also be pointed out that the Framework Decision does not define international organisations. Portugal has introduced a qualification (international "public" organisations) and Finnish law defines them as intergovernmental organisations or organisations which, on the basis of their significance and internationally recognized position, are comparable to an intergovernmental organisation. This concept might therefore have a different scope in different Member States (for example, covering or excluding private international organisations, such as NGO's).

Secondly, amongst those Member States that have specifically incriminated terrorist offences different systems have been used to implement the objective element. Terrorist offences have



been defined either by reference to a closed list of specific provisions under criminal legislation, containing the corresponding national offences, or by reference to general categories of crimes without mentioning specific provisions (for example “murder” “sabotage” “crimes against physical integrity”) or by describing conducts which, sometimes, might not have an equivalent in national legislation (especially as regards the threat to commit offences that have been described as terrorist). Some follow mixed systems that use several of these drafting techniques. In these cases, the assessment of implementation implies verifying whether the acts referred to in Article 1 letters (a) to (i) are comprised in the specified national corresponding provisions or in the provided categories of crimes or description of conducts. When it comes to Member States which lack a specific definition of terrorist offences it is the incrimination of these acts as common offences in national criminal legislation as a whole that would have to be verified. In both cases, no matter how these intentional acts might have been defined as offences under national law, they must be covered by the specific terrorist intent, to which reference has already been made, in order to qualify them as terrorist offences.

In both cases, the assessment implies a complex comparison that depends more than ever on the quality and completeness of the information provided to the Commission, as only a limited number of Member States identified the national corresponding provisions when not explicitly mentioned. The difficulty greatly increases when it comes to the second group of Member States. When it comes to conducts or typical elements that are not explicitly included in national provisions (for example “causing floods”- Art 1(1)(g)- or seizure of “other means of public or goods transport”- Art 1(1)(e)) or that can only be assumed to be included under a different wording or crime, the Commission cannot exclude that some conducts or elements referred to in the Framework Decision might not be covered. This is also the case when the information provided by Member States has not been exhaustive.

It can be said in general that the required conducts have been largely covered by national legislations but, in some limited cases, it appears that certain conducts might not be covered by national provisions. For example, the Commission has some doubts as to whether all the conducts related to weapons (specially transport, research and development) are incriminated in Spain, France, Austria, Italy or Portugal, or if threats to commit terrorist offences are fully covered in France, Portugal (unless it is considered to be included under “crimes against personal freedom” of which the Commission was not informed), or the United Kingdom. However, it derives from the drafting of Article 1(1) that letters a) to i) do not impose on Member States an autonomous obligation to incriminate such conducts. Therefore, although transposal has certainly lead to a general approximation of the definition of terrorist offences throughout the European Union, by setting up a hard core of common terrorist offences, the legal technique used in Article 1 might lead to a partial transposal of the list of conducts contained in letters a) to i). Practical application will highlight the consequences this might have on other instruments or measures which focus on or are related with terrorist offences. However it seems it could lead to the impunity of certain acts, as the legal loopholes would sometimes derive precisely from the lack of a corresponding “common” offence in national legislation. Taking into account the rules on jurisdiction there could also be a situation where a Member State can prosecute an act committed in the territory of another Member State where it is not considered to be an offence.

Finally, it can also be pointed out that, as happened with the intentional element, in some cases the objective element has been extended<sup>1</sup>. Of course, nothing prevents Member States from going beyond the minimum standards set up by this instrument, as long as the requirements regarding fundamental rights are respected. When these additional offences are punished with more than 3 years' imprisonment the added value of the abolition of the dual criminality principle in mutual recognition instruments would be clearly reflected, as they would in principle lead to the execution of the request even if the concept of terrorism in the executing State was more restricted than in the issuing State.

## **1.2. Article 2: Offences related to a terrorist group**

After giving a definition of terrorist groups that takes into account the Joint Action of 21 December 1998<sup>2</sup>, this provision aims at ensuring that directing a terrorist group and participating in its activities are by themselves considered as independent criminal facts and dealt with as terrorist offences<sup>3</sup>.

### *1.2.1. National systems*

In relation to paragraph (1), some Member States do not define terrorist groups (Germany, France, Italy) or explicitly include them under the wider categories of illegal or proscribed organisations (Spain, United Kingdom). Others have adopted the definition of the Framework Decision (Belgium, Ireland, and Finland) or closely follow it (Austria, Portugal).

As regards the implementation of paragraph (2), the Belgium Criminal Code reproduces the wording of Article 2(a) and (b), although for the latter it somehow varies the intention by requiring the knowledge of the fact that such participation will contribute to the commission of a felony or an offence of the terrorist group. It also punishes anybody who, in cases not covered by the previous article, supplies material resources, including financial aid, with a view to commit a terrorist offence. It appears that these provisions could be interpreted in the sense that the offender's intent must cover a concrete activity or crime, which would restrict the intentional element as provided by the Framework Decision.

Under the heading "Formation of terrorist organisations" the German Criminal Code punishes whoever forms an organisation the objectives or activity of which are directed towards the

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<sup>1</sup> For example, when committed with terrorist intent, money-laundering in France, rape and certain sexual offences in Ireland or false report of danger in Finland, would constitute terrorist offences and, in addition to the general definition of terrorism, the United Kingdom punishes weapons training or possession of objects for terrorist purposes as specific terrorist offences.

<sup>2</sup> Joint Action of 21 December 1998 on making it a criminal offence to participate in a criminal organisation in the Member States of the EU (OJ L 351, 29.12.1998,p.1).

<sup>3</sup> Article 2 Offences relating to a terrorist group

1. For the purposes of this Framework Decision, "terrorist group" shall mean: a structured group of more than two persons, established over a period of time and acting in concert to commit terrorist offences. "Structured group" shall mean a group that is not randomly formed for the immediate commission of an offence and that does not need to have formally defined roles for its members, continuity of its membership or a developed structure.

2. Each Member State shall take the necessary measures to ensure that the following intentional acts are punishable:

(a) directing a terrorist group;

(b) participating in the activities of a terrorist group, including by supplying information or material resources, or by funding its activities in any way, with knowledge of the fact that such participation will contribute to the criminal activities of the terrorist group.

commission of a series of crimes (by reference to a list of specific provisions in the Criminal Code and other criminal legislation) or participates in such an organisation as a member. The new Bill will extend the list of crimes and introduce an intentional element in similar terms to those of the Framework Decision. However, the latter is not required in respect of certain crimes (such as murder or kidnapping) so it appears that organisations whose aims or activities are directed towards the commission of those offences will be considered terrorist organisations regardless of the aim they want to achieve with such crimes. Specific penalties are also provided for those direct such organisations and those who support them or recruit for them. What should be understood as “support” is not defined.

Offences relating to a terrorist group have not been criminalised separately in Danish legislation. As derives from the information provided to the Commission, a special provision on directing terrorist groups is not considered necessary, as “it will be possible to punish *the leadership* of a terrorist group in accordance with the general terrorism clause for acts of terrorism which the group commits- possibly supplemented by a reference to section 23 of the Criminal Code<sup>1</sup>, if the leader has not personally taken part in the execution of these actions”. The Framework Decision has been interpreted in the sense that participation in a terrorist group’s activities will have to be criminalised where this participation contributes to the criminal activities of the group. Danish authorities believe that “this must be understood as a requirement for (intentional) participation in particular terrorist activities and it is therefore no longer necessary to specifically criminalise participation in a group” which commits or intends to commit acts of terrorism covered by Section 114. Nonetheless, Sections 114a<sup>2</sup> and 114b<sup>3</sup> of the Danish Criminal Code would partially cover some of the acts included in Article 2(b).

The Spanish Criminal Code incriminates “illegal associations” which include, amongst others, terrorist groups. Promoting and directing terrorist organizations or their groups and belonging to a terrorist organization are punished in article 516. Moreover, it is a terrorist offence to commit a crime against property in order to obtain funds for a terrorist group or to further its purposes (Article 575), as well as to perform, request or facilitate any act of collaboration with the activities or purposes of a terrorist group (Article 576)<sup>4</sup>.

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<sup>1</sup> Section 23(1) The maximum penalty for an offence covers anyone who, through incitement, advice or deed, has participated in the offence. The penalty may be reduced for a person who only wanted to provide relatively unimportant assistance or support an existing intent and when the offence is not accomplished or the intended participation failed.

<sup>2</sup> Section 114a “A person who:  
1) directly or indirectly gives financial support to,  
2) directly or indirectly provides or collects funds for or  
3) directly or indirectly makes available money, other assets or financial or other similar services to a person, group or co-operative that commits or intends to commit acts of terrorism covered by Section 114 shall be punished with imprisonment for up to 10 years.

<sup>3</sup> Section 114b “A person who otherwise through incitement, advice or deed helps to promote the general activity or the common purpose for a group or co-operative which carries out one or more actions covered by Section 114 or Section 114a(1) or (2) when the activity or purpose involves one or more acts of this nature being committed shall be punished with imprisonment for up to 6 years.

<sup>4</sup> “Acts of collaboration” are very broadly defined. They cover supply of information on or surveillance of persons, goods or facilities; building, conditioning, transferring or using lodging or storage facilities; concealment of persons linked to terrorist groups; organization of or attendance to training sessions and, in general, any other equivalent form of cooperation, assistance or complicity, economic or otherwise, with the activities of terrorist organizations.

Under French legislation it is a terrorist act to participate in any group or association established with a view to the preparation, marked by one or more material actions, of terrorist offences. As explained by the French authorities, this Article does not make a distinction between the modalities or degrees of participation, and would therefore cover both direction and participation. When participation consists in funding the group it is autonomously incriminated in Article 421-2-2<sup>1</sup>.

In the draft bill provided by Ireland, terrorist groups are designated in section 5 as unlawful organisations for the purposes of the Offences against the State Acts, 1939 to 1998, and section 3 of the Criminal Law Act 1976, so that provisions for the offences of membership and directing an unlawful organisation will apply. Section 51 introduces a new offence of providing assistance to an unlawful organisation in the Act of 1939 that would also be applicable in this context.

Article 270-bis of the Italian Criminal Code punishes anyone who promotes, creates, organises, directs or finances organisations whose purpose is to carry out acts of violence for the purposes of terrorism or for subverting the democratic order, as well as anyone who participates in such organisations. It is explicitly provided that the terrorist aim is also present when the acts of violence are directed against a foreign state or an international organisation or institution. Articles 270-ter and 270-quarter criminalize other forms of assistance, namely giving shelter, food, hospitality or means of transport or communication, to participants in terrorist groups, provided they can not be punished as participation in the offence.

Section 278b of the Austrian Criminal Code under the heading “Terrorist groups” punishes leading a terrorist group and taking part in a terrorist group as a member. According to Section 278, which refers to criminal groups in general, a person shall be considered as taking part in a criminal group, where he commits a criminal offence in the framework of its criminal set-up or takes part in its activities by supplying information or assets or in some other way in the knowledge that, by so doing, he is furthering the group or its offences.

In Portugal it is an offence to promote, set up, join or support a terrorist group, in particular by supplying information or material resources or by funding its activities in any way. In addition, not only is directing a terrorist group punished, but also preparatory acts to set up a terrorist group constitute an offence.

Finland punishes directing a terrorist group, the activity of which has involved committing a terrorist offence or a punishable attempt at such an offence or one of the preparatory acts punished as “preparation of an offence to be committed with terrorist intent”. It is expressly provided that a person sentenced for directing a terrorist group shall also be sentenced for the concrete offence he/she has committed or that has been committed in the activity of a terrorist group under his/her direction. Under the heading “promotion of the activity of a terrorist group”, different forms of participation are incriminated<sup>2</sup>. It can be pointed out that it is

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<sup>1</sup> According to this Article, it also constitutes an act of terrorism 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 they be used or knowing 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”.

<sup>2</sup> Section 4 Promotion of the activity of a terrorist group:  
A person who

required that a terrorist offence or a punishable attempt or a criminalised preparatory act is carried out in the activity of the terrorist group. Finally, providing or collecting funds in order to finance or aware they are used to finance a series of offences, including offences made with terrorist intent, is punishable under a self-standing offence of “Financing of terrorism”.

Sweden has not separately incriminated offences relating to terrorist groups as it considered that the acts in Article 2 could be punished under the general provisions on attempt, preparation, conspiracy and complicity to commit criminal offences provided for in Chapter 23 of the Criminal Code.

In the United Kingdom, Part II of the Terrorism Act provides a power for the Secretary of State to proscribe an organisation (domestic or international) if he believes that it is concerned in terrorism<sup>1</sup>. Section 56 of the Act makes it an offence to direct, at any level, the activities of an organisation concerned in the commission of acts of terrorism. Participation in the activities of a terrorist group is not an offence as such but specific offences have been introduced that allegedly cover this concept. On the one hand, there are associated offences to Part II of the Act, (Sections 11 to 13), which include belonging or professing to belong to and inviting support for a proscribed organisation. It is also an offence to dress or wear, carry or display an article in such a way or in such circumstances as to arouse a reasonable suspicion of being a member or supporter of a proscribed organisation. Therefore, unlike the “directing” offence of Section 56, the scope of these “membership” and “supporting” offences is more reduced, as they specifically refer to proscribed organisations. On the other hand, there are autonomous offences, not linked to the previous proscription, in Part III, as regards fund-raising and other kind of financial support for terrorism and in Part VI, as regards possession of an article<sup>2</sup> and collecting information for terrorism purposes.

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- 1) establishes or organises a terrorist group or recruits or attempts to recruit persons for a terrorist group,
  - 2) supplies or seeks to supply a terrorist group with explosives, weapons, ammunition or material or equipment intended for the preparation of these or with other dangerous objects or material,
  - 3) implements, seeks to implement or provides training for a terrorist group for criminal activity,
  - 4) 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,
  - 5) obtains or seeks to obtain information which, if transmitted to a terrorist group, would be likely to cause serious harm to the state or an international organization, or transmits, gives or discloses such information to a terrorist group,
  - 6) manages important financial matters for a terrorist group or gives financial or legal advice that is very important from the point of view of such a group, or
  - 7) commits an offence referred to in Chapter 32, section 1(2)(1) or 1(2)(2), in order to promote, or aware that his her activity promotes the criminal activity of a terrorist group referred to in sections 1 or 2, shall be sentenced, if the offence referred to in section 1 or a punishable attempt at such an offence or the offence referred to in section 2 is carried out in the activity of the terrorist group, and unless the act is punishable under section 1 or 2 or unless an equally or more severe punishment is decreed elsewhere in law for it, to imprisonment for at least four months and at most eight years for promotion of the activity of a terrorist group.

<sup>1</sup> For this purposes, “an organisation is concerned in terrorism if it commits or participates in acts of terrorism, prepares for terrorism, promotes or encourages terrorism or is otherwise concerned in terrorism.

<sup>2</sup> Section 57(1) A person commits an offence if he possesses an article in circumstances which give rise to a reasonable suspicion that this possession is for a purpose connected with the commission, preparation or instigation of an act of terrorism.

### 1.2.2. *Assessment*

Ten Member States (Belgium, Germany, Spain, France, Ireland, Italy, Austria, Portugal, Finland and the United Kingdom) comply with this Article in the sense they have legislation that separately incriminates terrorist acts committed in relation to terrorist groups. In Denmark and Sweden, terrorist groups as such, and directing or participating in their activities are not specifically incriminated. However Denmark would comply with this provision to the extent some acts of participation have been incriminated separately.

From the Commission's point of view the rationale behind this provision is to provide for offences related to terrorist groups as independent criminal facts. Although this is not explicitly mentioned in the Framework Decision<sup>1</sup>, it still derives from the logic of the instrument; as such offences are specifically referred to in relation to inciting, aiding and abetting, have been assigned specific minimum-maximum penalties, may lead to the liability of legal persons or must be covered by rules on jurisdiction. Moreover the drafting of Article 2(b) uses an extremely wide and open formula designed to embrace not only membership in a terrorist organisation but any other acts of assistance likely to contribute to the criminal activities of the group, even if undertaken by those who do not belong to or can not be proven to be members of the organisation. In addition this participation, as described in the Framework Decision, is not necessarily linked to the commission of specific terrorist offences, not even as concerns the intentional element. In this sense, the aim of Article 2(b) is to ensure that those who through their actions, contribute to the development of a terrorist group may be prosecuted, even if such actions have no direct link with the commission of specific offences. To prevent an excessive incrimination, it is required that the offender acts with the knowledge that by his actions he will contribute, in general, to the criminal activities of the group. Should the intention to contribute to a specific offence be required, there would be no added value in relation to the general rules on criminal participation.

Obstacles to full implementation could therefore appear, on the one hand, if the scope of this provision was restricted under national legislation or linked to the commission of specific terrorist offences. For example in those Member States (such as Italy or the United Kingdom) that punish belonging to a terrorist group and additionally contain only specific or a closed list of acts of assistance, it cannot be ruled out in theory that "atypical" ways of participating in the activities of a terrorist group could remain unpunished. This may be solved in practice by considering that such acts reveal membership in the group, but is in any case not solved legally as in other Member States (for example Austria that defines in a very broad sense what taking part in a group as a member means). Similar punitive loopholes can derive from linking these offences to the intention of committing specific terrorist offences or to the condition a terrorist offence has been attempted or committed within the terrorist group, as may respectively be the case in Belgium and Finland. Would, for example providing relevant information to a terrorist group not directed towards the commission of a specific offence or before having planned to commit an offence remain unpunished?

On the other hand, in two Member States not all the acts described in Article 2(2) have been incriminated separately. Could it be argued that this system still complies with the Framework Decision, as those who carry out the conducts specified in Article 2(2) may still be punished as principal or secondary parties to the relevant terrorist offence?

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<sup>1</sup> As it was in the Commission's original proposal (cfr. p.7-8 and Article 3 COM(2001)521Final).

Firstly, it seems that the lack of specific incrimination of these conducts might inevitably lead to an incomplete implementation of related provisions, mainly those on inciting, aiding or abetting. For example, if directing or participating in a terrorist group is already considered as participating in a particular offence how would Article 4(1) be implemented? Would it be an offence to participate in a participant's offence, to incite an inciter or to aid or abett an offence of aiding or abetting? Or, if the participant was punished for attempting a terrorist offence, could there be participation in the attempt? As regards penalties, although it would still be possible to formally comply with Article 5(3) provided terrorist offences themselves were sufficiently punished, why would the Framework Decision have established two different rules for individual and group-related terrorist offences, if not for the purpose of applying them to autonomous categories of terrorist crimes? This would also apply to rules on jurisdiction.

In addition, as said before, it remains that linking these conducts to concrete terrorist offences may create punitive loopholes that would not be covered by the application of general provisions on participation or lead to impunity should the act of participation itself but not participating in a concrete offence be proven. For instance, unless specifically covered by incitement or conspiracy, would it be possible to punish the leader of a terrorist group that had not yet committed any terrorist offences or the "new" leader of a terrorist group if no specific acts had yet been committed under his direction? How would providing funds to a terrorist group be punished in cases where it is not an independent offence and the group has not yet committed a terrorist offence? Or if it had, would it imply being a participant in all the offences attributable to the group? The Commission believes that this system does not fully comply with the requirements of the Framework Decision as not only the rationale but also the logic of this instrument might be disrupted and this might lead to cases of impunity.

### **1.3. Article 3: Offences linked to terrorist activities**

Article 3 obliges Member States to take the necessary measures to ensure that terrorist-linked offences include aggravated theft, extortion and drawing up false administrative documents with a view to committing certain terrorist offences<sup>1</sup>. For the purpose of assessing implementation, some preliminary considerations must be made as to the content of this obligation and to what the implementation of this provision would require in practice.

Included in the original Commission's proposal as terrorist offences, it was pointed out during the negotiations that, on their own, these acts could not be directly committed with the defined terrorist intent and that therefore they should be considered as a different type of crimes, carried out with a view to committing terrorist acts, but not terrorist acts themselves. The Framework Decision thus merely requires that they are included as "terrorist-linked" offences. There is not an explicit obligation to incriminate these offences separately as long as the results sought by introducing this category of offences are sufficiently covered. As regards

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<sup>1</sup> Article 3 Offences linked to terrorist activities  
Each Member State shall take the necessary measures to ensure that terrorist-linked offences include the following acts:  
(a) aggravated theft with a view to committing one of the acts listed in Article 1(1);  
(b) extortion with a view to the perpetration of one of the acts listed in Article 1(1);  
(c) drawing up false administrative documents with a view to committing one of the acts listed in Article 1(1)(a) to (h) and Article 2(2)(b).

implementation, this would imply establishing a link between these offences and terrorism, at least pursuant the application of related provisions<sup>1</sup>.

As regards national systems, some Member States have gone beyond the requirements of the Framework Decision, and have considered all or some of these offences as terrorist offences themselves. In this sense, in Spain the offences described in Article 3(a) and 3(b) shall be in any case considered as terrorist offences when committed with the required intent. Conducts described in Article 3(c) are covered by the general clause in Article 574 and will therefore constitute terrorist offences when committed by a person belonging to a terrorist group. Similarly in France the list of terrorist acts contained in Article 421-1 of the Criminal Code explicitly includes theft, extortion and forgery offences of Articles 441-2 to 441-5<sup>2</sup>. Portuguese legislation expressly criminalises these acts when committed by individuals<sup>3</sup>. Finally “aggravated theft” is included amongst terrorist offences in Finland.

The Irish draft bill provides the clearest example of implementation, by comprising these offences under a specific definition of “Terrorist-linked activity” that covers aggravated burglary and robbery, blackmail, extortion, and certain forgery offences when committed with a view to engaging in a terrorist activity. Then terrorist-activity and terrorist-linked activities receive identical treatment as regards the application of other provisions, for example on penalties or jurisdiction.

Some Member States where these acts have not been specifically criminalised as terrorist offences or terrorist linked offences, still partially comply with the Framework Decision in the sense that their legislation on terrorism expressly refers to the offences in Article 3 or implicitly links them to terrorist offences, at least pursuant the application of other provisions in the Framework Decision.

For example, in Italy the aggravating circumstance of acting with a terrorist purpose would also be applicable to the ordinary crimes of theft, extortion and forgery included in the Italian Criminal Code. In Austria such offences have been considered as “acts committed in connection with terrorist offences” although just for the purpose of applying the relevant rules on jurisdiction. Finnish legislation states that the provisions on corporate criminal liability apply also to robbery, extortion, and forgery committed in order to commit terrorist offences. In Sweden to commit or attempt to commit these offences with intent to support terrorist

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<sup>1</sup> Namely, Articles 4 (inciting, aiding or abetting and attempting to commit these offences must be made punishable), 5(1) (which implies they should be punished with at least one year of deprivation of liberty), Article 7 (the commission of these offences could imply liability of legal persons) and, finally, Member States should be able to establish jurisdiction over these offences in accordance with the rules set out in Article 9. As long as these consequences were respected the terms of the Framework Decision would be met.

<sup>2</sup> Although the French version of Article 3 uses the term “chantage”, the Commission believes that France complies with the FD by including extortion amongst terrorist offences even if “chantage” is a common offence. The French Criminal Code respectively defines these offences as the act of obtaining a signature, a commitment or renunciation, the revelation of a secret or the handing over of funds, securities or any asset “under the menace of revealing or attributing facts of a nature that can affect honour or consideration” (chantage) or “by violence, by threat of violence or constraint” (extortion). The latter rather seems to be the relevant terrorist-linked conduct. This also happens in the Spanish version. Although extortion has been translated as “chantaje” the Spanish legislation would in fact cover both.

<sup>3</sup> With a view to commit acts in 1(1)(a)to(h) although not 2(2)(b) in relation to 3(c).



offences shall be regarded as an aggravating circumstance. At least some of the results sought by the introduction of these offences would be achieved.

The rest of Member States which provided information (Belgium, Germany, Denmark and the United Kingdom) do not have specific provisions applicable to terrorist-linked offences, even if these acts constitute ordinary crimes under their national legislation. Nonetheless, Denmark argued that such actions, when committed with the aim of carrying out an act of terrorism, could be punished as participation in the terrorist act itself. And the United Kingdom explained that offences under Article 3 of the Framework Decision would be covered through existing legislation on what has been considered above as acts of collaboration<sup>1</sup>. Would either of these solutions be enough to comply with the Framework Decision?

It is true that to a certain extent one could understand that Article 3 has anticipated the punishment of certain acts that could be considered preparatory acts for the commission of terrorist offences. But it is not less true that by doing this the Framework Decision has also separated these acts from the specific terrorist offences themselves, which may be committed by different people, in different times or might even not take place (take for instance the theft of explosives to eventually commit a terrorist act). It derives for example from Article 4 that terrorist-linked offences are considered to have their own “*iter criminis*” or admit their own participants. This means on the one hand, that these offences could only be punished as participation in a terrorist offence if the latter had reached a punishable state of execution. Otherwise Article 4 and a fortiori, the other applicable provisions, wouldn’t be covered as, how could someone participate in or attempt to commit a non-existing offence? Even if the terrorist offence itself had reached the stage of punishable attempt it is difficult to imagine how the terms of Article 3 in relation to Article 4 would be met. Can participating in an attempt or attempting to participate in an attempt be envisaged? On the other hand, in cases where it would be possible to link acts in Article 3 to participating in a terrorist offence, it is true that this would also imply achieving the results sought by other provisions applicable to such acts.

As regards considering the conducts in Article 3 as covered by acts of collaboration previous comments regarding the implementation of Article 2(2)(b) would have to be taken into account, amongst them if such qualification would cover all the listed terrorist-linked offences. Other problems might derive from systematic differences, for example Article 4 requires that the attempt to commit an offence referred to in Article 3 is made punishable, but there is no similar requirement for offences under Article 2, where “acts of collaboration” would be included. So this solution would in principle lead to an incomplete implementation of Article 4(2). However, in cases where these problems did not arise, and provided other provisions were correctly transposed, the treatment of terrorist-linked offences as acts of collaboration would have similar consequences (for example as regards the application of rules on jurisdiction).

In conclusion four Member States comply with Article 3, either because they will incriminate these acts separately as “terrorist-linked” offences (Ireland) or because, going beyond the requirements of the Framework Decision, they have considered them as “terrorist offences” themselves (Spain, France, Portugal and Finland, although the latter only as regards aggravated theft). The rest of Member States that provided information to the Commission will be able to comply partially with this Article, either because some of its implications are

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<sup>1</sup> Namely, possession of an article for terrorist purposes (cfr. footnote 25) and terrorist fund-raising.

specifically covered by their legislation or because in certain cases it will be possible to achieve similar results by treating these offences as acts of collaboration with a terrorist group or as participation in specific terrorist offences.

#### **1.4. Article 4: Inciting, aiding or abetting and attempting**

Following a systematic approach, after defining and providing for the incrimination of terrorist offences, offences relating to a terrorist group and offences linked to terrorist activities, the Framework Decision requires Member States to ensure that inciting, aiding or abetting and attempting to commit some of these offences is also punishable<sup>1</sup>.

In the information provided to the Commission most Member States (Belgium, Germany, Denmark, Spain, France, Ireland, Italy, Austria and the United Kingdom) have referred to the general rules on complicity and inchoate offences under their criminal systems. These general rules would also be applicable to terrorist offences. Some Member States also have specific provisions in relation to terrorism or have only referred to these (Portugal and Finland).

In this sense, inciting aiding and abetting some acts of collaboration is specifically mentioned in Section 114b<sup>2</sup> of the Danish Criminal Code. Provocation, conspiracy and procurement of terrorist acts are explicitly made punishable by Articles 578 and 519 of the Spanish Criminal Code. In Ireland, besides the Criminal Law Act 1997, that generally provides that any person who aids, abets, counsels or procures the commission of an indictable offence is liable to be indicted, tried and punished as a principal offender, Section 3 of the Criminal Law Act, 1976 makes it an offence for any person to recruit, incite or invite another person to join an unlawful organisation or to take part in, support or assist in its activities. Attempts to engage in a terrorist activity or a terrorist linked activity are also specifically covered by Section 6 of the provided draft bill. In addition to the general rules, Article 302 of the Italian Criminal Code punishes incitement to commit one of the intentional offences envisaged under Chapters 1 and 2, Title 1, Book II<sup>3</sup>, amongst them certain terrorist offences. Portuguese provisions on promoting terrorist groups and practising preparatory acts to set up a terrorist group would partially cover the scope of Article 4(1) in relation to Article 2 of the Framework Decision. Finnish provisions on terrorism expressly mention that attempting to commit terrorist offences and to finance terrorism is punishable. According to Swedish legislation, attempts, preparations or conspiracy to commit terrorist offences or failure to disclose such offences shall be punishable in accordance with Chapter 23 of the Criminal Code. The United Kingdom explained that by taking jurisdiction for the substantive offence aiding, abetting, conspiring, counselling and procuring would be subsequently covered. Additionally, Sections 59 to 61 of the Terrorism Act make it an offence to incite another person to commit an act of

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<sup>1</sup> Article 4 Inciting, aiding or abetting, and attempting

1. Each Member State shall take the necessary measures to ensure that inciting or aiding or abetting an offence referred to in Article 1(1), Articles 2 or 3 is made punishable.

2. Each Member State shall take the necessary measures to ensure that attempting to commit an offence referred to in Article 1(1) and Article 3, with the exception of possession as provided for in Article 1(1)(f) and the offence referred to in Article 1(1)(i), is made punishable.

<sup>2</sup> Cfr. footnote 20.

<sup>3</sup> This specific rule only applies in relation to offences against the internal and international person of the State, including, amongst others, offences related to terrorist groups, attacks or kidnapping for terrorist purposes, and does not totally cover the scope of Article 4(1). Otherwise Article 115 which includes incitement would be generally applicable, the main difference being that according to this general rule incitement is only punishable if the offence is then committed, whereas this is not a requisite to apply incitement in cases under article 302.

terrorism, wholly or partially outside the United Kingdom, where the act, if committed in the United Kingdom would constitute a number of offences such as murder or wounding with intent.<sup>1</sup>

In conclusion, even though only some Member States have specific provisions on the matter, it appears that by applying national provisions on complicity and inchoate offences to terrorist and terrorist-linked offences it would be possible to meet the terms of Article 4. As such provisions naturally exist in all Member States, the full implementation of this provision mainly depends on a correct implementation of the preceding articles, as has been largely examined. This being said, some particular problems can be pointed out.

Firstly, the meaning of “incitement”, for which there is not a legal definition in the Framework Decision, nor a convergent concept in the national systems. In some systems it appears as a way of participating in an existing offence, either as a principal or as an accomplice, whereas in others it implies encouraging another person to commit an offence but requires that it is not actually committed, or it might also exist in a way closer to general or public incitement to commit crimes or even apology. Sometimes the same Member State uses this term in different provisions and with different meanings or consequences<sup>2</sup>. Different systems and meanings might lead to problems with terminology, and create great difficulties when looking for an equivalent term with identical meaning in all legislations or when comparing them, as the Commission works mainly with translated versions of national provisions. In this sense there might be divergences between the meaning of the terms used in the different official versions of the Framework Decision<sup>3</sup>. In other cases the term used does not seem to have a literal equivalent in national provisions<sup>4</sup>.

Finally, as regards attempt, it is worth mentioning that some legal systems (such as Belgium or France) make a distinction between “crimes” and “délits” that implies the application of different rules. Basically, whereas the attempt to commit a “crime” is always punishable, the attempt to commit a “délit” is only punishable in the cases provided for by a specific provision. In this sense, France explained that the large majority of conducts covered by Article 1(1) of the Framework Decision are “crimes” or will become “crimes” due to the aggravation of penalties that applies to terrorist offences and that attempt was explicitly

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<sup>1</sup> As no similar rule has been pointed out that would cover incitement to commit a terrorist offence inside the United Kingdom, would this mean that a more severe treatment is provided when incitement has an external dimension, rather than an “internal” one? In any case, some specific provisions partially seem to cover this conduct, for example, inviting support for a proscribed organisation, inviting another to provide money to be used for the purposes of terrorism or possessing an article for a purpose connected with the instigation of terrorism.

<sup>2</sup> For example, in Italy Article 115 provides for a general rule on incitement (“istigazione”) which requires the main offence to be committed. Article 302, applicable to certain terrorist offences sets a specific rule by punishing incitement to commit certain offences even when the concerned offence is not committed. Finally, Article 414 generally punishes the mere fact of publicly inciting to commit an offence.

<sup>3</sup> For example, in Spanish legislation those who directly induce a person to commit an offence are considered principal offenders (“inducement”). In addition to this general rule, Spain punishes “provocation” to commit terrorist offences, which is a public form of direct incitement which requires that the offence concerned is not committed or it becomes inducement. The Spanish version of Article 3 uses the term “inducción” (“inducement”) which might not correspond to the English meaning of “incitement”.

<sup>4</sup> The French version of the Framework Decision uses the term “incitation”, whereas the provisions pointed out by Belgium and France, regarding respectively perpetrators and accomplices, refer to provoking an offence.

provided for in relation to certain categories of offences, such as damage or attacks against information systems. However, in these systems it can not be totally excluded that there might remain some terrorist “délits” in relation to which attempt would not be punishable.

## 1.5. Article 5: Penalties

This Article is one of the key provisions of the Framework Decision<sup>1</sup>. Paragraph 1 mainly implies that terrorist offences should in all cases be sanctioned with imprisonment of at least 1 year. Although only two Member States (Denmark, and the United Kingdom) referred to this provision and asserted that extradition for terrorist offences was possible, to the extent offences under Articles 1 to 4 have been specifically incriminated, this minimum appears to have been largely met in national provisions. In this same line, the appreciation as to whether or not the criminal penalties which can be imposed in Member States are sufficiently effective and dissuasive can be answered in the affirmative, since as explained below the general rule is that Member States have provided for severe maximum penalties for terrorist offences. In some cases, however, pecuniary sanctions have been provided as alternative penalties. There could be some doubts as to whether, if applied, these would be sufficiently dissuasive but on the other hand this might be justified by the fact that penalties should also be proportionate.

Paragraphs 2 and 3, which are the core of the provision, aim at harmonising penalties in this field. In the Commission’s original proposal, common penalties ranging from 2 to 20 years of deprivation of liberty were set up for terrorist offences. However, no agreement was reached on the level of penalties applicable to the offences in Article 1 and harmonisation of penalties, to the extent sought by the Commission, was only achieved as regards offences relating to terrorist groups in the terms of Article 5(3) to which this report will therefore refer first.

### 1.5.1. Article 5(3)

This article provides for common minimum-maximum penalties for offences relating to a terrorist group. Once again, the full implementation of this provision is linked to the implementation of Article 2. Otherwise, if offences under Article 2 were to be punished as acts of participation in a terrorist offence, and unless a single minimum-maximum offence was generally provided for all terrorist offences, whether or not the terms of 5(3) were met, would depend on the specific penalty provided for the specific offence concerned. Or, in other words, different penalties would correspond to the same act (for example providing information to a terrorist group) depending on the offence that was actually committed and it cannot be ruled out that some might not reach the required minimum-maximum. Additionally,

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<sup>1</sup> Article 5 Penalties

1. Each Member State shall take the necessary measures to ensure that the offences referred to in Articles 1 to 4 are punishable by effective, proportionate and dissuasive criminal penalties, which may entail extradition.

2. Each Member State shall take the necessary measures to ensure that the terrorist offences referred to in Article 1(1) and offences referred to in Article 4, inasmuch as they relate to terrorist offences, are punishable by custodial sentences heavier than those imposable under national law for such offences in the absence of the special intent required pursuant to Article 1(1), save where the sentences imposable are already the maximum possible sentences under national law.

3. Each Member State shall take the necessary measures to ensure that offences listed in Article 2 are punishable by custodial sentences, with a maximum sentence of not less than fifteen years for the offence referred to in Article 2(2)(a), and for the offences listed in Article 2(2)(b) a maximum sentence of not less than eight years. In so far as the offence referred to in Article 2(2)(a) refers only to the act in Article 1(1)(i), the maximum sentence shall not be less than eight years.

some Member States have covered the scope of Article 2(b) through different provisions that refer to different ways of participating in the activities of a terrorist group, (for example membership, acts of collaboration, recruiting or providing funds), and that might provide for different penalties. As Article 2(b) makes no distinctions and Article 5(3) refers to no other exception than Article 2(2)(a) in relation to Article 1(1)(i), the Commission considers that the 8 year minimum-maximum is applicable to all the conducts comprised in the scope of Article 2(b).

As regards national systems, the Belgium Criminal Code punishes directing a terrorist group with imprisonment from 15 to 20 years and a fine. The two forms of participating in the activities of a terrorist group defined thereby provide a penalty of 5 to 10 year's imprisonment and a fine. This complies with the Framework Decision.

Denmark does not comply with Article 5(3) to the extent that offences listed in Article 2 have not been criminalised separately. Only funding terrorist groups, one of the ways of participating in the activities of a terrorist group included in Article 2(2) of the Framework Decision, is specifically punished in Section 114a with imprisonment for up to 10 years. Other forms of assistance covered by Section 114b are just punished with imprisonment for up to 6 years, therefore below the minimum-maximum. However to the extent it were possible to punish acts of direction or collaboration with terrorist groups as participation in a specific terrorist offence the result sought by Article 5(3) would be met, as such offences are punished with life imprisonment and the maximum penalties covers participants according to general rules on participation.

The new Bill provided by Germany sets up a penalty of 1 to 10 years' imprisonment for those who form terrorist organisations or participate in them as members. Leading these groups will be punished with imprisonment of no less than 3 years and with imprisonment between 1 and 10 years when the aims or activities of the group are designed towards threatening to commit certain terrorist crimes. Supporters will be punished with imprisonment between 6 months and 10 years, while recruiting members or supporters for a terrorist organisation is only punished with imprisonment between 6 months and 5 years. However, those who support terrorist organisations that only threaten to commit terrorist acts are punished with imprisonment of up to 5 years and a fine. The minimum maximum set up for directing a terrorist group will therefore be met by these provisions together with Section 38(2) of the Criminal Code, according to which the maximum fixed term for imprisonment is 15 years. But as regards participating in a terrorist group the requested minimum-maximum is not always respected, as the new Bill will introduce two new categories of participation whose penalties are below the minimum-maximum of 8 years that the Framework Decision sets for offences under Article 2(2)(b) without further distinctions.

In Spain, directing a terrorist group is punished with imprisonment from 8 to 14 years, one year less than what the Framework Decision requires. As regards participating in the activities of terrorist groups, belonging to a group is punished with imprisonment from 6 to 12 years and acts of collaboration with imprisonment of 5 to 10 years, both over the minimum-maximum.

In France, participation in a terrorist group is punished with 10 years' imprisonment, and so is the specific offence of financing a terrorist group. As directing a terrorist group is not specifically incriminated, the penalty set up for participants would also apply, not meeting the terms of the Framework Decision. Even if the person directing the terrorist group was punished as an accomplice with the same penalty as the perpetrator, as provided by the French

law, whether the minimum-maximum was met would depend on the offence committed. France is conscious of this circumstance and envisages, at a short term, to specifically incriminate this conduct and align it with the penalty required by the Framework Decision.

In Ireland, once the new legislation enters into force membership of and assistance to an unlawful organisation, as well as the specific offence of financing of terrorism, will be punished on conviction on indictment with a fine or imprisonment for a term not exceeding 20 years or both. Section 6 of the Offences against the State (Amendment) Act, 1998 provides for the offence of directing, at any level of an organisation's structure, the activities of an unlawful organisation, with a maximum penalty on conviction of imprisonment for life.

Article 270-bis of the Italian Criminal Code punishes directing and funding terrorist organisations with imprisonment of between 7 and 15 years, and participating in such organisations with imprisonment of between 5 and 10 years. This complies with the Framework Decision. Other acts of assistance are only punished with imprisonment up to 4 years although the penalty is increased if assistance is provided on a continuous basis.

Austria punishes leading a terrorist group with imprisonment from 5 to 15 years. Participating in a terrorist group is punished with imprisonment of between 1 and 10 years. It is expressly provided that any person who leads a terrorist group that merely threatens to commit terrorist offences shall be liable to a term of imprisonment of between 1 and 10 years. This complies with the Framework Decision.

In Portugal the direction of a group and the participation in its activities are respectively punished with imprisonment of 15 to 20 years and 8 to 15 years. Additionally, preparatory acts for setting up a terrorist group are punished with deprivation of liberty from 1 to 8 years. This complies with the Framework Decision.

In Finland directing a terrorist group is punished with imprisonment of at least 2 and at most 12 years. A person who directs a terrorist group in the activity of which only threats have been committed shall be sentenced to imprisonment for at least 4 months and at most 6 years. Both penalties are below the standards set by the Framework Decision. Promoting the activities of a terrorist group is sanctioned with at least 4 months and at most 8 years of imprisonment. This same penalty is set up for the offence of financing terrorism.

As happens in Denmark, Sweden does not comply with this paragraph in the sense that offences relating to a terrorist group have not been specifically incriminated. However, as the general penalty set up for terrorist offences is imprisonment for a fixed period of at least 4 years and at most 10 years, or life it seems that the required minimum-maximum penalties would be met, if these conducts were to be punished as participating in a terrorist offence, as the penalty set for these would also cover attempts and participation.

In the United Kingdom a person guilty of directing a terrorist group is liable on conviction to imprisonment for life. All the offences that would cover different forms of participation in a terrorist group (including membership of a proscribed organisation, possession for terrorist purposes, collection of information and terrorist fund-raising) are punishable with maximum sentences of 10 and 14 years and a fine is also established as an alternative penalty. This complies with the Framework Decision.

In conclusion, as regards directing terrorist groups seven Member States (Belgium, Germany, Ireland, Italy, Austria, Portugal and the United Kingdom) comply or will comply with the

Framework Decision. Denmark, Sweden and France would only comply partially with this provision as directing a terrorist group is not specifically incriminated. However, when punishable, the penalties provided for this conduct would meet the terms of the Framework Decision in Denmark and Sweden, and, in some cases, also in France. Spain only complies with this provision as regards directing a terrorist group that merely threatens to commit terrorist acts. When it comes to participating in the activities of a terrorist group eight Member States (Belgium, Spain, France, Ireland, Austria, Portugal, Finland and the United Kingdom) fully comply with this provision, which can be considered as partially transposed in Germany, Denmark, Italy and Sweden.

#### *1.5.2. Transposition into national criminal law of the obligation referred to in Article 5(2)*

Pursuant to Article 11(3) of the Framework Decision, particular reference shall be made to the transposition of Article 5(2)<sup>1</sup>.

Once again a correct implementation of Articles 1(1) and 4 is necessary to fully comply with this provision. We must recall in this sense that Article 1(1) has been implemented in different ways: by referring to concrete provisions in criminal legislations or to general categories of crimes, by describing conducts with no clear equivalent in national legislation or even by introducing self-standing offences. Only when Member States have forwarded and in some cases identified all the relevant corresponding offences has it been possible to assess implementation.

Moreover the drafting of Article 5(2) implies as a previous condition that corresponding offences actually exist in national legislations. In this sense the formula used in Article 5(2), as opposed to attributing a concrete level of sanctions for the offences in Article 1(1), might not always be comprehensive enough, as it would not be applicable to terrorist acts for which, in national legislations, there is not an equivalent offence without terrorist intent. In other words, when Member States meet the terms of Article 1(1) by incriminating certain conducts as self-standing terrorist acts punished with specific penalties, there would not be real terms of comparison or scope for the application of the aggravating rule. A different problem can arise in those Member States that have only specifically incriminated as terrorist offences some of the conducts under Article 1(1), whereas the rest are still treated as “common” offences under national legislation. In this case, unless a general aggravating rule is provided, the terms of Article 5(2) cannot be met.

Finally, as the offences referred to in Article 4 are linked (as inchoate offences or participation) to those in Article 1(1), heavier penalties for the latter would redound on heavier penalties for these. Thus the assessment on whether Member States comply or not with this paragraph in relation to offences in Article 1(1) is also applicable to offences referred to in Article 4.

As regards information on national systems received by the Commission, Belgium establishes a scale of penalties by which penalties impossible to the corresponding offences are replaced

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<sup>1</sup> The Commission also referred to this provision in its Declaration 111/02, according to which: "The Commission regrets that the Council has not reached agreement on the level of penalties applicable to the offences referred to in Article 1. It will examine attentively transposition into Member States' criminal law of the obligation contained in Article 5 (2) and will take all the initiatives it considers necessary to guarantee greater harmonisation of sentences in this context." (Doc.11532/02 Public 6, 22/8/2002)

by heavier penalties<sup>1</sup>, as required by the Framework Decision. It must also be noted that this general replacement does not cover certain conducts that have been considered as specific terrorist acts and for which specific custodial sentences have been provided<sup>2</sup>.

Actions covered by section 114 of the Danish Criminal Code are punished with life imprisonment, which is already the highest penalty imposable under national legislation. These same actions, when not committed with the specific terrorist intent, are punished in the Danish Criminal Code with a maximum penalty that varies between 2 years' imprisonment and life imprisonment. Denmark thus complies in this point with the Framework Decision.

In Germany, terrorist offences have not been criminalised as such, as conducts listed in Article 1(1) are only taken into account in relation to terrorist organisations. The German authorities asserted that individual perpetrators of acts of terrorism are liable to prosecution under Section 46 of the Criminal Code, which applies the principles of strict liability, punishing these acts more severely than others and regardless of intent. However this provision only contains a general rule on sentencing that does not lead to compliance with Article 5(2)<sup>3</sup>.

In Spain terrorist offences and, accordingly, participation and attempt, are in principle punished with more serious penalties than those imposable to the corresponding offences committed without a terrorist intent. In most cases this result is achieved by providing for specific penalties that imply heavier custodial sentences (for example, offences covered by Articles 572, 573 or 575 of the Spanish Criminal Code). However, when it comes to the general aggravating clause in Article 574 and to terrorist offences committed by those who do not belong to a terrorist group (Article 577), the law provides in general for an aggravated penalty within the maximum sentence that would correspond to the ordinary offence. In cases covered by Article 571, the aggravation is provided by increasing the minimum, but not the maximum range of penalty. Therefore in these cases the terms of Article 5(2) would not be met.

In France when an offence constitutes a terrorist act, the penalty imposed to the corresponding offence is raised one grade in the scale of penalties. This derives from Article 421-3 of the French Criminal Code that sets out the substituting penalties<sup>4</sup>. It can be pointed out that the self-standing offence of “environmental terrorism” is punished with 20 years' imprisonment or life imprisonment if it causes the death of one or more people.

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<sup>1</sup> In the lower end of the scale, when the applicable penalty is a fine it will be replaced by imprisonment from 1 to 3 years, and in the higher end, if the penalty is deprivation of liberty from 20 to 30 years it will be increased to life imprisonment.

<sup>2</sup> For example the threat to commit terrorist offences is specifically punished with imprisonment from 5 to 10 years.

<sup>3</sup> Section 46 “Principles for determining punishment” contains only general rules namely that the guilt of the perpetrator is the foundation for determining punishment, that the court shall counterbalance circumstances which speak for and against the perpetrator (inter alia his motives or aims, the manner of execution or his conduct after the act) and that circumstances which are already statutory elements of the offence may not be considered.

<sup>4</sup> As a result, the maximum penalty is life imprisonment (when the offence was punished with 30 years' criminal imprisonment), and the lowest twice the length of the sentence (when the offence was punished 3 years' imprisonment at most).



In Ireland, Section 7 of the Bill provides for enhanced penalties by reference to those applicable to the corresponding offence in the absence of a terrorist intent<sup>1</sup>. However, the penalty imposed will remain the same not only when the sentence is imprisonment for life, as implicitly allowed by the Framework Decision, but also when, in the case of the corresponding offence, the sentence is fixed by law. Therefore in this case the terms of Article 5(2) would not be met.

In Italy, Decree Law 15-12-1979 n.625, introduced a general aggravating circumstance for offences committed for the purpose of terrorism or for subverting the democratic order and punished with penalties other than life imprisonment. When an offence is committed with these purposes the penalty is raised by half, which would comply with the Framework Decision. However, this rule does not apply in cases when such circumstance is already an element of the offence. In this sense, the Commission can not assess whether Italy also complies with Article 5(2) in relation to those offences which already contain a terrorist intent (for example, in Articles 280, 280-bis or 289-bis), as no indication has been given as to which would be the corresponding offences and their penalties or if they are to be considered self-standing crimes.

Following Section 278c(2) of the Austrian Criminal Code terrorist offences are punished in accordance to the law applicable to the offence concerned, whereby the maximum sentence imposed in each case shall be increased by one half, up to a maximum of twenty years. This rule would meet the terms of Article 5(2).

In Portugal, Articles 4(1) and 5(1) of the Law 52/2003 of the Framework Decision punish terrorist offences with imprisonment from 2 to 10 years or with the penalty corresponding to the committed offence, increased as to a third of its minimum and maximum limit, should it be equal to or heavier than the first. This rule allows Portugal to comply with Article 5(2).

In Finland specific penalties are set up for the different groups of terrorist offences contained in each number of Chapter 34a, Section 1, which are heavier than those set up in the Criminal Code for the corresponding offences when committed without a terrorist intent.

In Sweden the fact that terrorist offences might be sanctioned with life imprisonment, which is presumably already the maximum possible sentence under national law, would comply with the Framework Decision in this point. However it can be pointed out that, after setting the general penalty that goes from 4 to 10 years or life, the Swedish Law then provides “If the offence is less serious, punishment shall be imprisonment for a period of at least 2 and at most 6 years”. The Commission has some doubts as to how this provision will be applied or interpreted, as it seems it could give rise to some contradictions that might in practice lead to an incomplete implementation of Article 5(2)<sup>2</sup>.

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<sup>1</sup> Accordingly, a person guilty of a terrorist offence is liable to imprisonment for a term not exceeding 20 or 15 years, if the corresponding offence is one for which a person of full capacity and not previously convicted may be sentenced, respectively, to a term of 10 or 7 years, and to imprisonment for a term not exceeding 10 years in any other case.

<sup>2</sup> For example, one of the acts that shall constitute terrorist offences when committed when the required intent is “gross assault under Chapter 3, paragraph 6 of the Criminal Code”. This provision, which already takes into account severe attacks against a person and is therefore aggravated as regards “assault”, establishes a penalty of 1 to 10 years’ imprisonment. Would this rule allow to punish “gross assault” committed with terrorist intent with a reduced penalty of at most 6 years, should the terrorist offence be considered “less serious”?

In the information provided to the Commission by the United Kingdom it was explained that “although the maximum sentence for offences is prescribed by statute the actual sentence imposed generally depends on the discretion of the trial judge. The sentence for murder is an exception as a life sentence is mandatory. The UK courts do, however, regularly impose strong penalties for terrorist-related criminal offences”. Further information about the maximum sentences was not provided and, apart from the incrimination of a limited number of specific terrorist crimes, a substantial distinction between terrorist and corresponding or common offences has not been generally made. It therefore seems that whether or not offences falling within the definition of terrorism in the United Kingdom are punished more heavily than those not covered by the definition remains a matter of judicial discretion. This would not meet the terms of the Framework Decision except for those offences for which a life sentence is mandatory or is set as the maximum sentence.

From the information provided to the Commission it derives that eight Member States (Belgium, Denmark, France, Austria, Portugal, Finland, Sweden as well as Italy, to the extent of the information it provided to the Commission) comply with this provision. In others (Germany, Spain, Ireland and the United Kingdom) it cannot be concluded that enhanced penalties have been provided for all the offences in Articles 1(1) and 3.

In this sense, as regards the standards of implementation, the Commission believes that the purpose of this provision is that the level of punishability applicable to terrorist offences is heavier than the one provided for equivalent offences committed without a terrorist intent and that it obliges Member States to adapt their legislation in this sense. This means, firstly, that providing for an aggravated penalty that remains within the same maximum penalty applicable to the corresponding offence would not be enough to comply with this requirement. In this case the custodial sentences applicable to terrorist and corresponding offences would in fact be the same. Secondly this means that enhanced penalties must be provided by law and not through the possible application of law. That Courts may normally impose heavy penalties for terrorist offences or that they may take into account the offender’s motives to impose stronger penalties is irrelevant from the point of view of implementation when heavier custodial penalties have not been legally provided.

## **1.6. Article 6: Particular circumstances**

Following Council Resolution of 20 December 1996 on individuals who cooperate with the judicial process in the fight against international organised crime<sup>1</sup>, this Article allows Member States to take into account certain mitigating circumstances that may reduce the penalty imposed to terrorists<sup>2</sup>. Six Member States specifically envisage these particular circumstances (Germany, Spain, France, Italy, Austria, and Portugal). It can be noted that specific provisions

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<sup>1</sup> OJ C 10,11.01.1997,p.1.

<sup>2</sup> Article 6 Particular circumstances

Each Member State may take the necessary measures to ensure that the penalties referred to in Article 5 may be reduced if the offender:

(a) renounces terrorist activity, and

(b) provides the administrative or judicial authorities with information which they would not otherwise have been able to obtain, helping them to:

(i) prevent or mitigate the effects of the offence;

(ii) identify or bring to justice the other offenders;

(iii) find evidence; or

(iv) prevent further offences referred to in Articles 1 to 4.

sometimes introduce further requirements and others set fewer requisites in order to reduce the penalty<sup>1</sup>.

In this sense, the German Criminal Code allows the Court to mitigate the punishment if the perpetrator voluntarily tries to prevent the continued existence of the organisation or the commission of a crime consistent with its goals or if he voluntarily discloses his knowledge to a government agency in time to prevent crimes the planning of which he is aware.

The Spanish Criminal Code allows for a mitigation of the sentence if the offender voluntarily abandons his illicit activities, presents himself to the authorities admitting the acts in which he has participated and actively cooperates to prevent the offence from taking place or to effectively provide evidence to identify or bring to justice other offenders or to prevent the activity or development of terrorist groups to which he has belonged or with which he has collaborated.

According to the French Criminal Code, the penalty imposed to the offender is reduced by half if, having informed the administrative or judicial authorities, he has made it possible to stop the criminal behaviour or to prevent the offence from causing death or permanent injuries and, the case being, to identify other offenders.

In Italy, Law 29-5-1982 n.304 provides for the reduction of the sentence that would apply to offences committed for the purposes of terrorism or subversion of the democratic order, in cases of dissociation from the criminal activity and collaboration with the authorities.

The possibility of reducing the penalties for terrorist offences is envisaged in Section 41a of the Austrian Criminal Code when the offender reveals facts to a criminal prosecution authority, the knowledge of which significantly helps to remove or to considerably diminish the threat arising from the terrorist group, to clarify the criminal offence above the offender's own involvement therein or to investigate a person who played a leading part or was in charge of such a group.

Portuguese legislation has introduced the possibility of reducing the penalty, should the offender voluntarily abandon his activity, considerably mitigate the danger caused or concretely contribute to the gathering of decisive evidence to identify or bring to justice other offenders. In case of individuals, preventing the result is also a case of possible reduction of the penalty.

The remaining Member States have not provided any particular provision implementing this optional Article although some pointed out that such circumstances were factors that a judge might take into account in reaching a decision on the appropriate level of penalty to be imposed.

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<sup>1</sup> For example by not requiring that the offender renounces terrorist activity, although this can be considered as implicitly included in cooperation itself.

## 1.7. Articles 7 and 8: Liability of, and penalties for, legal persons

Article 7, following a standard formula that can be found in other instruments<sup>1</sup>, obliges Member States to ensure that legal persons can be held liable for offences referred to in Articles 1 to 4 committed for their benefit by any person with certain leading positions, within the legal person<sup>2</sup>. It is not required that such liability be exclusively criminal. Paragraph 2 extends liability to cases where the lack of supervision or control by a person in a position to exercise them has rendered the commission of the offence possible. It can be noted that not all the versions of the Framework Decision use the terms “for the benefit” of the legal person (as happens with the English or the Italian version), but different expressions nearer to “on the account” or “on behalf of” the legal person (for example the French, Spanish or Portuguese versions). The latter can lead to some doubts as to how to interpret this paragraph, as it is difficult to imagine mere negligence or lack of control, unless it is deliberate, leading to the commission of an offence on behalf or on the account of a legal person<sup>3</sup>.

In any case, as regards the information on national systems provided to the Commission, the Belgian Criminal Code recognizes the criminal liability of legal persons for offences linked to the realization of their object or the defence of their interests or committed on their behalf. When the responsibility of a legal person derives exclusively from the conduct of an identified natural person only the (legal or natural) person who committed the most serious fault may be convicted. When the natural person intentionally commits the offence then both of them may be convicted. These provisions seem to meet the required terms, except Article 7(2) on which the Commission has not received specific information.

Section 306 of the Danish Criminal Code generally provides for the possible criminal liability of legal persons for breaches of the Criminal Code. This rule would also cover liability for attempt, but at the same time it only covers offences carried out with intent. Liability for negligence in relation to terrorist offences has not been explicitly provided. Chapter 5 of the Danish Criminal Code contains supplementary provisions in Section 25 (penalties) and Section 27<sup>4</sup>.

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<sup>1</sup> See for example Article 8 of the Council Framework Decision of 29 May 2000 on increasing protection by criminal penalties and other sanctions against counterfeiting in connection with the introduction of the euro (OJ L 140, 14.6.2000, pg 1-3).

<sup>2</sup> Article 7 Liability of legal persons

1. Each Member State shall take the necessary measures to ensure that legal persons can be held liable for any of the offences referred to in Articles 1 to 4 committed for their benefit by any person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on one of the following:

(a) a power of representation of the legal person;  
(b) an authority to take decisions on behalf of the legal person;  
(c) an authority to exercise control within the legal person.

2. Apart from the cases provided for in paragraph 1, each Member State shall take the necessary measures to ensure that legal persons can be held liable where the lack of supervision or control by a person referred to in paragraph 1 has made possible the commission of any of the offences referred to in Articles 1 to 4 for the benefit of that legal person by a person under its authority.

3. Liability of legal persons under paragraphs 1 and 2 shall not exclude criminal proceedings against natural persons who are perpetrators, instigators or accessories in any of the offences referred to in Articles 1 to 4.

<sup>3</sup> In this sense, see below Portuguese legislation that speaks of “wilful” violation of the obligation to control or supervise.

<sup>4</sup> Section 27 “Criminal liability for a legal person assumes that an offence has been committed on its premises which can be attributed to one or more persons linked to the legal person or to the legal person

German legislation provides for the possibility of imposing regulatory fines on legal persons for intentional or negligent criminal offences committed by their organs or representatives for the benefit or in breach of the duties incumbent on the legal person. When lack of supervisory measures makes the commission of an offence possible the owner of an operation or undertaking shall be deemed to have committed a regulatory offence.

France specifically provides that legal persons can be held criminally liable for the terrorist acts defined in the French Criminal Code committed on their account by their organs or representatives, without excluding liability of natural persons. Lack of supervision does not explicitly figure as a source of liability.

In Ireland, Section 47 of the new Bill deals with liability for offences committed by bodies corporate, with the consent or connivance of, or attributable to any neglect on the part of a person who, when the offence was committed was a director, manager, secretary or other officer of that body or purported to act in such capacity.

Italy provides for administrative liability of legal persons in case of crimes committed for their benefit or interest by those who have a power of representation, administration or management or exercise control within the legal person or by persons subject to their management or supervision if the lack of supervision or control made the commission of the offence possible.

According to the Portuguese law, legal persons are liable for terrorist offences committed on their name and collective interest by their organs or representatives, or by a person under their authority if the commission of the offence was rendered possible due to a wilful violation of their obligations of surveillance or control. This responsibility shall not exclude individual responsibility.

In Finland, the provisions on criminal liability of legal persons in Chapter 9 of the Criminal Code apply to terrorist and terrorist linked offences. These provisions allow a legal entity in whose operations an offence has been committed to be sentenced, on the request of the Public Prosecutor, to a corporate fine, even if the offender cannot be identified or otherwise is not punished. An offence is deemed to have been committed in the operation of a corporation if the offender has acted on the behalf or for the benefit of the corporation and belongs to its management or is in a service or employment relationship with it or has acted on assignment by a representative of the corporation. It is a prerequisite for liability of the legal person that a person who is part of its statutory organ or other management or who exercises actual decision-making authority therein has been an accomplice in an offence or allowed the commission of the offence or if the care and diligence necessary for the prevention of the offence has not been observed in the operations of the corporation.

The Swedish Criminal Code makes it possible to impose a corporate fine on the entrepreneur for a crime committed in the exercise of business activities, if the crime has entailed gross disregard for the special obligations associated with the business activities or is otherwise of a serious kind, and the entrepreneur has not done what could reasonably be required of him for the prevention of the crime. However it is doubtful whether these provisions are enough to

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itself.” It seems the terms “on its premises” are interpreted in the sense that the offence has been committed within the legal person or its activity.

meet the terms of the Framework Decision as they seem to refer to the liability of the entrepreneur, not of the legal person as such.

The United Kingdom only referred to corporate liability in respect of certain offences dealing with the manufacture, possession, acquisition, transport, supply or use of weapons, explosives or of nuclear, biological or chemical weapons.

In conclusion, eight Member States (Belgium, Denmark, Germany, France, Ireland, Italy, Portugal and Finland) have or will implement legislation ensuring that legal persons can be held liable for the offences referred to in Article 1 to 4 of the Framework Decision. From these, however, only Ireland, Italy, Portugal and Finland have provided enough information to consider that paragraph 2 is also covered. Spain and Austria have not transposed this provision although the latter claimed to be addressing this issue by means of new legislation that has not been provided. Sweden and the United Kingdom did not provide enough information to consider this Article implemented.

Penalties for legal persons are provided for in Article 8, the minimum obligation being to impose criminal or non-criminal fines<sup>1</sup>. Belgium, Denmark, Germany, France, Italy, Portugal and Finland fulfil this requirement. Most of them also apply all or some of the other optional penalties indicated in this provision or additional penalties, such as special confiscation, exclusion from public tenders or publication of the conviction. Although legal persons are not criminally liable in Spain, the Spanish authorities have pointed out that terrorist groups are considered as “illicit associations” which obliges judges to declare their dissolution and allow them to apply other “accessory consequences” including closure of establishments, disqualification from the practice of activities related to the commission of the offence or judicial supervision. Ireland, Austria, Sweden and the United Kingdom did not provide sufficient information on this provision.

## **1.8. Article 9: Jurisdiction and prosecution**

Article 9 sets up the cases in which Member States are obliged to take jurisdiction over the offences referred to in Articles 1 to 4 of the Framework Decision<sup>2</sup>. Keeping in mind what has

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<sup>1</sup> Article 8 Penalties for legal persons

Each Member State shall take the necessary measures to ensure that a legal person held liable pursuant to Article 7 is punishable by effective, proportionate and dissuasive penalties, which shall include criminal or non-criminal fines and may include other penalties, such as:

- (a) exclusion from entitlement to public benefits or aid;
- (b) temporary or permanent disqualification from the practice of commercial activities;
- (c) placing under judicial supervision;
- (d) a judicial winding-up order;
- (e) temporary or permanent closure of establishments which have been used for committing the offence.

<sup>2</sup> Article 9 Jurisdiction and prosecution

1. Each Member State shall take the necessary measures to establish its jurisdiction over the offences referred to in Articles 1 to 4 where:

- (a) the offence is committed in whole or in part in its territory. Each Member State may extend its jurisdiction if the offence is committed in the territory of a Member State;
- (b) the offence is committed on board a vessel flying its flag or an aircraft registered there;
- (c) the offender is one of its nationals or residents;
- (d) the offence is committed for the benefit of a legal person established in its territory;
- (e) the offence is committed against the institutions or people of the Member State in question or against an institution of the European Union or a body set up in accordance with the Treaty establishing the European Community or the Treaty on European Union and based in that Member State.

been said about the implementation of these provisions, the starting point is the territoriality principle in Article 9(1)(a), according to which each Member State must establish its jurisdiction over terrorist offences committed in whole or in part in its territory. Articles 9(1)(b) and 9(4) can be considered as an extension of this principle. Even if not all Member States have provided the Commission with the relevant legal provisions, presumably they all comply with these provisions, as territoriality is the primary basis for criminal jurisdiction.

Additionally, Member States must take extra-territorial jurisdiction over offences referred to in Articles 1 to 4, where the offender is one of its nationals or residents, or the offence is committed for the benefit of a legal person established in its territory, or against its institutions or people, an institution of the European Union or a body set up in accordance with the Treaty establishing the European Community or the Treaty on European Union and based in that Member State<sup>1</sup>. Article 9(3) sets up the necessary jurisdiction for the application of the principle “aut dedere aut iudicare”, which obliges Member States to be able to prosecute terrorist offences in cases where they refuse to extradite the suspect or the convicted person. Even if, in general, this obligation is linked to the refusal to extradite nationals, Article 9(3) refers to no additional condition, which is linked to the existence of Article 9(1)(c). One might therefore think that the rule in Article 9(3) will also apply to other cases (for example, if a Member State refuses to extradite the suspect to a third country that provides for the death penalty).

As regards the information received by the Commission, Belgium has introduced amendments of the Preliminary Title of the Code of Criminal Procedure which, following the wording of the Framework Decision, comply with Article 9 (c) and (e). Article 12bis already attributes competence for offences committed abroad and covered by an International Convention which obliges Belgium to prosecute them.

Danish penal authority covers actions carried out outside the Danish State by a Danish national or resident, under the conditions, basically double criminality, set up in Section 7 of the Criminal Code. This provision also applies to nationals and residents of other Scandinavian countries if they currently reside in Denmark. Section 8 extends jurisdiction to certain actions carried out abroad irrespective of where the offender originates. This applies,

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2. When an offence falls within the jurisdiction of more than one Member State and when any of the States concerned can validly prosecute on the basis of the same facts, the Member States concerned shall cooperate in order to decide which of them will prosecute the offenders with the aim, if possible, of centralising proceedings in a single Member State. To this end, the Member States may have recourse to any body or mechanism established within the European Union in order to facilitate cooperation between their judicial authorities and the coordination of their action. Sequential account shall be taken of the following factors:

- the Member State shall be that in the territory of which the acts were committed,
- the Member State shall be that of which the perpetrator is a national or resident,
- the Member State shall be the Member State of origin of the victims,
- the Member State shall be that in the territory of which the perpetrator was found.

3. Each Member State shall take the necessary measures also to establish its jurisdiction over the offences referred to in Articles 1 to 4 in cases where it refuses to hand over or extradite a person suspected or convicted of such an offence to another Member State or to a third country.

4. Each Member State shall ensure that its jurisdiction covers cases in which any of the offences referred to in Articles 2 and 4 has been committed in whole or in part within its territory, wherever the terrorist group is based or pursues its criminal activities.

5. This Article shall not exclude the exercise of jurisdiction in criminal matters as laid down by a Member State in accordance with its national legislation.

<sup>1</sup> Cfr. respectively Article 9(1)(c)(d) and (e) of the Framework Decision.

amongst others, in cases where the action violates the Danish State's sovereignty, security, constitution or public authorities or a Danish citizen or resident, and when "the act is covered by an International agreement under which Denmark is obliged to prosecute". It also applies to cases where extradition is refused provided the act is punishable in the other country and could be punished with more than 1 years' imprisonment under Danish law.

According to the general rules in the Criminal Code, German criminal law shall apply to acts committed abroad against a German or if the offender was or became German after the act or, if being a foreigner and found in Germany, although the Extradition Act would permit extradition for the offence, he is not extradited because a request for extradition is not made, is rejected or the extradition is not practicable. In all these cases require that the act is punishable at the place of its commission or that such place is subject to no criminal law enforcement. According to Section 129b of the Criminal Code, German provisions on terrorist organisations also apply to those formed abroad. When the offence relates to an organisation formed outside the European Union, this shall only apply if the offence is committed by virtue of an activity exercised within the territorial scope of this law or if the perpetrator or the victim is a German national or is in Germany, provided the Ministry of Justice authorises prosecution.

Article 23(4) of the Organic Law of the judiciary branch rules that Spanish jurisdiction will cover acts committed abroad by Spanish or foreign nationals when, under the Spanish criminal law, they would constitute terrorist offences. This is a broad provision, which keeps in line with the principle of universal justice.

As regards offences committed outside France, the French criminal law will apply when committed by a French national subject to double criminality if the offence is not a "crime" but a "délit". Irrespective of where the offender originates, French criminal law will also be applicable if the victim has French nationality or if the offence is committed against French diplomatic or consular agents or premises. France has also pointed out that Articles 689 to 689-9 of the Code of Criminal Procedure allow to prosecute perpetrators and accomplices of offences committed abroad when an International Convention gives jurisdiction to the French Courts. These provisions cover various acts as defined by relevant International Conventions against terrorism.

Provision is made in Section 6 of the Irish Bill to take extra-territorial jurisdiction in identical terms as those required by Article 9 of the Framework Decision. Section 45 allows for the exercise of extra-territorial jurisdiction when a request for extradition has been refused.

Regardless of the nationality of the offender, Article 7 of the Criminal Code extends Italian jurisdiction to acts committed abroad that constitute crimes against the personality of the Italian State, which cover some of the conducts required by the Framework Decision, as well as for crimes for which special legislation or international conventions establish the applicability of Italian law. Pursuant to Article 9, an Italian citizen may also be punished for offences committed abroad, provided he is on Italian territory, and so may, according to Article 10, a foreigner who, outside Italy, commits a crime against the Italian State or an Italian national, providing he is staying on Italian territory. Additional requisites about penalties and request for prosecution are set out in these articles. In both cases, it is explicitly provided that if the offence is committed against the European Communities or a foreign State or citizen, the offender will be punished by request of the Italian Minister of Justice if extradition has not been granted by Italy or has not been accepted by the State where the offence was committed or where the offender belongs. Finally Article 4 of Legislative Decree



8-6-2001 n.231 provides that legal persons whose principal establishment is set in Italian territory shall be liable, in cases and with the conditions provided in Articles 7, 9 and 10 of the Criminal Code, for offences committed abroad, if the State where the offence took place does not take action against them.

Austrian criminal law is applicable to terrorist and terrorist-linked offences committed abroad, in terms that closely follow the wording of the Framework Decision. It is expressly provided that Austrian criminal law will also apply in this case when the offender was a foreigner at the time of the offence is staying in Austria and cannot be extradited.

Portuguese criminal law shall apply to acts committed abroad that constitute terrorist and terrorist-linked offences with a national dimension, that is, those aimed against Portugal's integrity, institutions, public authorities or population. Jurisdiction is also extended to acts committed outside Portugal that constitute "international" terrorist crimes, that is, against other States or international public organisations, their authorities or certain populations, when the offender is found in Portugal and cannot be extradited or surrendered.

Regardless of the law of the place of commission, it is explicitly provided that Finnish law shall apply to an offence referred to in Chapter 34a (terrorist offences) committed outside Finland. This broad provision also seems to align with the principle of universal jurisdiction.

The Swedish Criminal Code already provided for extraterritorial jurisdiction when the offender was a Swedish national or resident, or had become one after committing the offence, or when the offender was foreign and found in Sweden, provided the crime under Swedish law could result in imprisonment for more than 6 months. Additionally the amended Section 3 of Chapter 2 generally establishes Swedish jurisdiction over terrorist offences even in cases other than the aforementioned.

The United Kingdom asserted that legislation already takes extra-territorial jurisdiction over a number of different offences, such as murder and manslaughter, and that when extra-territorial jurisdiction is taken for a substantive offence it covers inchoate and secondary offences too. The Suppression of Terrorism Act 1978 is said to enable the United Kingdom to exercise jurisdiction over serious offences (including murder, acts of violence, kidnapping, etc), carried out in countries designated under the Act, irrespective of the offender's nationality. Designated countries are the countries of the Council of Europe plus the United States and India. Irrespective of the nationality of the offender, the Terrorist Act 2000 takes jurisdiction over offences related to terrorist bombing and terrorist financing in Sections 62 and 63. Sections 43, 47 and 50 of the Anti-terrorism Crime and Security Act 2001 apply to certain offences related to biological and nuclear weapons committed abroad and to assisting or inducing weapons-related acts overseas, but only if they are done by a United Kingdom person. The United Kingdom has previously taken extraterritorial- jurisdiction in respect of nationals in the Chemical Weapons Act 1996 and the Nuclear Materials (Offences) Act 1983. Not all the mentioned legal texts were provided. Additionally, in order to comply with Article 9(1)(c) and (e) the Crime (International Co-operation) Act has been enacted to take jurisdiction over certain offences committed as acts of terrorism or for the purposes or terrorism by or against British subjects overseas. As there is no comprehensive definition of terrorist acts, reference is made to a list of specific offences<sup>1</sup>. As regards Article 9(3), the

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<sup>1</sup> In this sense jurisdiction is extended to offences under section 54 and 56 to 61 of the Terrorist Act 2000, as well as to those listed in Section 63B, when committed by a United Kingdom national or

United Kingdom ascertained that if extradition was refused domestic law would apply, though no specific provision was pointed out in this sense.

From the information received it derives that twelve Member States (Belgium, Denmark, Germany, Spain, France, Ireland, Italy, Austria, Portugal, Finland, Sweden and the United Kingdom) have rules which to different extents cover the principle of active personality in 9(1)(c), although some do not generally cover residents (Germany France, Italy and the United Kingdom) or refer to additional requisites such as double criminality not included in this subparagraph (Denmark). The same can be said in relation to the principle of passive personality in 9(1)(e), although in some cases the scope of the provision is reduced by referring only to protected persons or premises or by requiring the offender to be in the territory of the Member State and only five Member States explicitly cover offences against European Union institutions or bodies. Article 9(1)(d) has only been expressly transposed by Ireland and Austria although it seems that Italy, Portugal and Finland would also be in line with this provision. As regards Article 9(3) Germany, Ireland, Italy, Austria and Portugal explicitly provide for the possibility of prosecuting an offender who has committed a terrorist crime abroad and cannot be extradited. This possibility also seems to be covered by the Spanish, Finnish and Swedish rules. Other Member States (Belgium, Denmark or France) have pointed out provisions which extend jurisdiction to offences committed abroad when covered by an International agreement or Convention under which they are obliged to prosecute. Unless the Framework Decision itself was considered as an international agreement, these rules might only partially cover the scope of this provision. The United Kingdom ascertained it would meet the terms of the Framework Decision in this matter but did not refer to specific provisions. The remaining Member States did not provide information on this point.

Finally, the introduction of extended jurisdictional rules also obliged to introduce criteria to solve positive conflicts of jurisdiction that might appear between Member States. Article 9(2) establishes a list of factors that must be sequentially taken into account to this end. However only Ireland has partially transposed this provision in Section 6(7) of the provided Bill by referring to co-operation with the appropriate authorities and recourse to any body or mechanism established within the “European Communities” with a view to centralising prosecution, should the offence also fall within the jurisdiction of another Member State. Only if the rules contained in this paragraph are effectively transposed as national rules on jurisdiction will it be possible to solve the problem of positive conflicts, especially as regards those Member States that do not apply the principle of opportunity to the prosecution of criminal offences.

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resident. The list mainly contains offences against life, freedom, physical integrity, acts of forgery and criminal damage, malicious mischief and wilful fire-raising. A similar list in Section 63C that excludes the three last categories of crimes is applicable to offences committed against United Kingdom nationals, residents or protected persons. The latter include diplomatic staff and those who carry out any functions for the purposes of the European Agency for the Evaluation of Medicinal Products or for a European body that principally based in the United Kingdom, provided that body is specified in an order made by the Secretary of State. Finally Section 63D covers certain terrorist attacks and threats abroad in connection with diplomatic premises and vehicles ordinarily used by protected persons. The Act also provides extra-territorial jurisdiction for the offence under Section 113 of the Anti-terrorism Crime and Security Act 2001.

## 1.9. Article 10: Protection of, and assistance to, victims

In the European Union's approach against terrorism particular importance has been attached to the protection of and assistance to victims.

Taking into account the fact that victims of certain kind of offences (for example threats or extortion) are specially vulnerable, Article 10(1) obliges Member States to ensure that investigation and prosecution of offences covered by the Framework Decision, at least if committed on the territory of the Member State, are not dependant on a report or accusation made by the victim. One could think that, terrorist offences being particularly serious, they would be always treated as public offences for the purposes of investigation and prosecution. This might explain why most Member States did not provide specific or sufficient information on this provision. Only Austria provided complete information from which it derives that it meets the terms of the Framework Decision.

As the implementation of the Council Framework Decision on the standing of victims in criminal proceedings<sup>1</sup> is the subject of an independent report, the Commission will just recall that it has not been entirely put in place in all Member States and focus on additional measures to assist victims' families to which Article 10(2) refers. Only eight Member States have provided specific information on this matter.

In this sense, the Belgium Code of Criminal Procedure contains a declaratory provision according to which the victims of an offence and their families must be treated consciously and correctly. In particular, they should receive necessary information and, the case being, put in contact with the specialized services and the judicial assistants.

Germany has referred to the Criminal Injuries Compensation Act of 1985, which contemplates granting assistance to the survivors of a victim, as well as to a specific compensation fund for victims of terrorism. Victims also receive advice and support from private organisations.

In addition to measures to aid and assist victims of violent crimes set in the Law 35/1995 of 11 December, Spain has enacted a specific Law 32/1999 of 8 October of "Solidarity with the victims of terrorism" which provides for public compensation to the victims of terrorism or their families in case of death. Compensation awarded is specifically exempted from taxation. Additionally, the competent authorities are required to take measures to ensure that education in all kind of public centres is exempted from charges for victims of terrorism, their spouses and children.

In France, the Law of 9 September 1986 created a contingency fund for victims of terrorism that was initially supported by a contribution deducted from insurance policies of goods. After the Law of 15 November 2001, Article 422-7 of the Criminal Code now provides that the product of financial sanctions imposed on persons convicted of terrorism is allocated to this contingency fund.

According to the information provided by Ireland, this issue is currently addressed by a range of legal and administrative measures including, inter alia, Government funding for Victim Support (an organisation which provides practical support to victims), a criminal injuries

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<sup>1</sup> OJ L 82, 22.3.2001, p. 1.

compensation tribunal, a non-statutory witness protection programme, statutory provision for victim impact statements and for victims of certain types of crimes to be given an opportunity to give evidence to the court on the effect of the offence on him/her, and statutory provision for the payment of compensation by the perpetrator to the victim.

Italy has forwarded Law 20-10-90 n.302 which sets up specific measures in favour of victims of terrorism and organised crime. In case of death of the victim, special public compensation is provided to their family or dependants, who can also choose to be compensated by means of a monthly life allowance.

In Austria, assistance to victims of crime is regulated under Section 373a of the Code of Criminal Procedure, which extends the possibility of granting an advance on the sum of compensation not only to the victim but also to the victim's successors. The Victims of Crime Act of 9 July 1972 also extends assistance to the victim's surviving dependants.

Finally, the United Kingdom has referred to the Great Britain Injuries Compensation Scheme, which provides payment from public funds to blameless victims of crimes of violence and to a similar Scheme applicable in Northern Ireland. Although the relevant texts were not provided the United Kingdom indicated that, in fatal cases, additional payments can be made to those who were dependent on the victim's income and for the cost of replacing a parent's services.

#### **1.10. Article 12: Territorial application**

This provision stipulates that the Framework Decision shall apply to Gibraltar. The United Kingdom has not provided specific information on transposition in Gibraltar.

## 2. TABLE OF NATIONAL MEASURES TAKEN TO COMPLY WITH THE FRAMEWORK DECISION

Member State	Article 1 (Terrorist offences and fundamental rights and principles)	Article 2 (Offences relating to a terrorist group)	Article 3 (Offences linked to terrorist activities)	Article 4 (Inciting, aiding or abetting, and attempting)
<b>Belgium</b>	Art 137 in relation to 141bis and 141ter Criminal Code	Arts 139,140,141 Criminal Code	Arts 461 <i>et seq</i> , 470 <i>et seq</i> , 193 Criminal Code.	Arts 66-69 and 51-53 Criminal Code
<b>Denmark</b>	Section 114 Criminal Code	Sections 114, 114a, 114b and 23 Criminal Code	Sections 114 and 23 Criminal Code	Sections 21, 23, 114b Criminal Code
<b>Germany</b>	Section 129a Criminal Code (as will be amended by draft Bill)	Section 129a Criminal Code (as will be amended by draft Bill)	Arts 242bis, 244a, 253, 254, 267, 271, 273, 275, 276, 276a, and 281 Criminal Code	Arts.26,25.2,23.1 Criminal Code
<b>Greece</b>	Transposing provision not forwarded	Transposing provision not forwarded	Transposing provision not forwarded	Transposing provision not forwarded
<b>Spain</b>	Arts 571-580 Criminal Code	Arts 515,516,575,576 Criminal Code	Arts 575, 572.1.3, 574 in relation to 390-394 Criminal Code	Arts 579,519,27-29,15,16 Criminal Code
<b>France</b>	Art 421-1 Criminal Code	Arts 421-2-1, 421-2-2 Criminal Code	Arts 421-1,441-2 to 441-5 Criminal Code (312-10 "chantage")	Arts 121-4,121-6,121-7, 322-4,322-11,323-7 Criminal Code
<b>Ireland</b>	Sections 4,6,13 draft Bill	Sections 4,5,51 draft Bill	Section 4 draft Bill	Section 6 draft Bill
<b>Italy</b>	Arts 280, 280bis, 289bis Criminal Code/ Arts 285,420,432,433,428,439 Criminal Code; Art 10 L.n°496	Arts 270bis, ter and quater Criminal Code	Art 1 D.L.625 1979 in relation to Arts 624,629 and 479 of the Criminal Code	Arts 56, 110, 302 Criminal Code

<b>Member State</b>	<b>Article 1 (Terrorist offences and fundamental rights and principles)</b>	<b>Article 2 (Offences relating to a terrorist group)</b>	<b>Article 3 (Offences linked to terrorist activities)</b>	<b>Article 4 (Inciting, aiding or abetting, and attempting)</b>
	1995 on Chemical Weapons			
<b>Luxembourg</b>	No information provided	No information provided	No information provided	No information provided
<b>Netherlands</b>	No information provided	No information provided	No information provided	No information provided
<b>Austria</b>	Sections 278c(1) and 278d Criminal Code	Sections 278b, 278(3) Criminal Code	Sections 128 to 131, 144, 145, 223, 224 in relation to Section 64(1)(9) Criminal Code	Sections 12 and 15 in relation to Section 578b and 278c Criminal Code
<b>Portugal</b>	Arts 1-3 Law n° 52/2003	Arts 2 and 3 Law 52/2003	Art 4(2) Law 52/2003	Art 2(2)(3)(4) Law 52/2003
<b>Finland</b>	Chapter 34a Sections 1, 2 and 6 of the Criminal Code	Chapter 34a Sections 3, 4, 5 and 6 of the Criminal Code	Chapter 34a Sections 1(3) and 8 of the Criminal Code	Chapter 34a Sections 1 and 5 in fine; Chapter 5 Sections 1, 5 and 6 of the Criminal Code
<b>Sweden</b>	Section 2 and 3 Act (2003:148)	Section 4 Act (2003:148) in relation to Chapter 23 sections 1, 2, 4 and 6 Criminal Code	Section 5 Act (2003:148)	Section 4 Act (2003:148)
<b>United Kingdom</b>	Sections 1, 15 to 18, 54, 56, 59 Terrorism Act 2000/Section 113 Anti-terrorism, Crime and Security Act 2001/Sections 4, 16, 18, 20 to 204, 28 to 30, 64 Offences against the Person Act 1861/Sections 1 and 2 Criminal Damage Act 1971/Forgery and Counterfeiting Act 1981/Nuclear Material (Offences) Act	Part II (Sections 3-13) and 56-58 Terrorism Act 2000	Sections 57, 15-18 Terrorism Act 2000	Sections 59-61 Terrorism Act 2000

<b>Member State</b>	<b>Article 1 (Terrorist offences and fundamental rights and principles)</b>	<b>Article 2 (Offences relating to a terrorist group)</b>	<b>Article 3 (Offences linked to terrorist activities)</b>	<b>Article 4 (Inciting, aiding or abetting, and attempting)</b>
	1983/Biological Weapons Act 1974/Chemical Weapons Act 1996			

<b>Member State</b>	<b>Article 5 (Penalties)</b>	<b>Article 6 (Particular circumstances)</b>	<b>Articles 7 and 8 (Liability of /penalties for legal persons)</b>	<b>Article 9 (Jurisdiction and prosecution)</b>
<b>Belgium</b>	Arts 140 and 141 Criminal Code <i>Specific reference to 5(2)</i>  Arts 138 Criminal Code	No specific provision: General rules Arts 79-85 Criminal Code	Arts 5,7bis and 41bis Criminal Code	Arts 3 and 5 Criminal Code; Arts 12bis, 6(1)ter and 10ter Preliminary Title Code of Criminal Procedure
<b>Denmark</b>	Sections 2 and 2a of the Danish Extradition Act  Section 114 Criminal Code <i>Specific reference to 5(2)</i>  Section 114 in relation to 237, 245, 246 , 261 , 184 , 193 , 291 , 183a , 180 , 183, 187 Criminal Code and Section 10 of the Weapons Act	No specific provision: General rules Sections 80 and 84 Criminal Code	Sections 25, 27 and 306 Criminal Code	Sections 6,7 and 8 Criminal Code
<b>Germany</b>	Section 129a Criminal Code(as will be amended by draft Bill) in relation to Art 38.2 Criminal	Section 129a (7) (as will be amended by draft Bill) in relation to Section 129(6)	Sections 30 and 130 Act on Regulatory Offences (as of	Sections 3,4,7,9 and 129b Criminal Code

<b>Member State</b>	<b>Article 5 (Penalties)</b>	<b>Article 6 (Particular circumstances)</b>	<b>Articles 7 and 8 (Liability of /penalties for legal persons)</b>	<b>Article 9 (Jurisdiction and prosecution)</b>
	Code <i>Specific reference to 5(2)</i> Section 46 Criminal Code	Criminal Code	October 2003)	
<b>Greece</b>	Transposing provision not forwarded	Transposing provision not forwarded	Transposing provision not forwarded	Transposing provision not forwarded
<b>Spain</b>	Arts 516 and 576 Criminal Code <i>Specific reference to 5(2)</i> Arts 571-575 and 577 Criminal Code	Art.579(3) Criminal Code	Arts 515,520,129 Criminal Code	Art 23.1 and 4.b) Organic Law of the Judiciary
<b>France</b>	Arts 421-2-1,421-5 Criminal Code <i>Specific reference to 5(2)</i> Art 421-3 Criminal Code	Arts 422-1, 422-2 Criminal Code	Arts 422-5,121-2,131-39 Criminal Code	Arts 113-2 to 7,113-10 Criminal Code; Arts 689 to 689-9 Code of Criminal Procedure
<b>Ireland</b>	Sections 50,51,13 draft Bill/Section 6 Offences against the State(Amendment) Act 1998 <i>Specific reference to 5(2)</i> Section 7 draft Bill	No specific provision: judicial discretion	Section 47 draft Bill	Sections 6 and 45 draft Bill



<b>Member State</b>	<b>Article 5 (Penalties)</b>	<b>Article 6 (Particular circumstances)</b>	<b>Articles 7 and 8 (Liability of /penalties for legal persons)</b>	<b>Article 9 (Jurisdiction and prosecution)</b>
<b>Italy</b>	Art 270bis, 270ter and 270quater Criminal Code  <i>Specific reference to 5(2)</i>  Decree Law 15-12-1979 n.625	Law 29-5-1982 n.304	Legislative Decree 8-6-01 n.231	Arts 4,6,7,9,10 Criminal Code; Art 4 Legislative Decree 8-6-2001 n.231
<b>Luxembourg</b>	No information provided	No information provided	No information provided	No information provided
<b>Netherlands</b>	No information provided	No information provided	No information provided	No information provided
<b>Austria</b>	Section 278b Criminal Code  <i>Specific reference to 5(2)</i>  Section 278c(2), 12 and 15(1) Criminal Code	Section 41a Criminal Code	No legal text provided	Sections 64(1)(9), 65(1)(1)and (2), 67 Criminal Code
<b>Portugal</b>	Art 2(2)-2(4) Law 52/2003  <i>Specific reference to 5(2)</i>  Arts 4(1)(2) and 5 Law 52/2003	Arts 2(5), 3(2), 4(3) Law 52/2003	Art 6(3-9) Law 52/2003	Art 8 Law 52/2003
<b>Finland</b>	Chapter 34a Sections 3,4, and 5 Criminal Code  <i>Specific reference to 5(2)</i>  Section 34a Criminal Code in relation to 25:7, 34:10, 21:13,	No specific provision: General rules Chapter 6 Section 6(3) Criminal Code	Chapter 34a Section 8 in relation to Chapter 9 of the Criminal Code	Chapter 1 Sections 2,3,5 to 8 of the Criminal Code

Member State	Article 5 (Penalties)	Article 6 (Particular circumstances)	Articles 7 and 8 (Liability of /penalties for legal persons)	Article 9 (Jurisdiction and prosecution)
	44:11,28:2,28:9b,34:1,32:2,34:4, 35:2, Weapons and Ammunitions Act Section 102, 11:7a ,11:7b, 48:1, 21:6,25:3, 25:4,34:3,34:5,34:6,34:11,31:3, 21:1 and 21:2 Criminal Code			
<b>Sweden</b>	Sections 2 and 3 Act (2003:148)	No specific provision	Chapter 36, sections 7-10 Criminal Code	Chapter 2, sections 1-3 in the Penal Code (as amended by SFS 2003:149).
<b>United Kingdom</b>	Section 56; Sections 11,12,15-18,22,57 and 58 Terrorism Act 2000  <i>Specific reference to 5(2)</i>  No specific provision: judicial discretion	No specific provision: judicial discretion	Section 3 Biological Weapons Act 1974 Section 31(3) Chemical Weapons Act 1996. Nuclear Materials (Offences) Act 1983. Custom and Excise Management Act 1979, Section 68(3)	Supreme Court Act 1981; Section 92 of the Civil Aviation Act; Suppression of Terrorism Act 1978; Chemical Weapons Act 1996; Nuclear Materials (Offences) Act 1983; Sections 62,63 Terrorist Act 2000; Sections 43,47,50 Anti-terrorism Crime and Security Act 2001; Sections 52 and 53 Crime (International Co-operation) Act 2003 inserting Sections 63A to 68E in the Terrorist Act 2000 and Sections 113A and B in the Anti-terrorism Crime and Security Act 2001

<b>Member State</b>	<b>Article 10 (Protection of, and assistance to, victims)</b>	<b>Article 12 (Territorial application)</b>
<b>Belgium</b>	(1) No information provided  (2) Art 3bis Code of Criminal Procedure	Not relevant
<b>Denmark</b>	(1) Section 114 Criminal Code and 742 Danish Administration of Justice Act  (2) No information provided	Not relevant
<b>Germany</b>	(1) No information provided  (2) Criminal Injuries Compensation Act, compensation fund for victims of terrorism, support from private organisations.	Not relevant
<b>Greece</b>	Transposing provision not forwarded	Not relevant
<b>Spain</b>	(1) No information provided  (2) Law 32/1999 of 8 October of "Solidarity with the victims of terrorism"	Not relevant
<b>France</b>	(1) No legal basis provided	Not relevant

	(2) Article 422-7 of the Criminal Code	
<b>Ireland</b>	(1) No legal basis provided (2) Range of legal and administrative measures	Not relevant
<b>Italy</b>	(1) No information provided (2) Law 20-10-90 n.302	Not relevant
<b>Luxembourg</b>	No information provided	Not relevant
<b>Netherlands</b>	No information provided	Not relevant
<b>Austria</b>	(1) Sections 2 and 34 Code of Criminal Procedure (2) Section 373a Code of Criminal Procedure; Victims of Crime Act of 9 July 1972	Not relevant
<b>Portugal</b>	(1) Arts 113-117 Criminal Code (2) No additional measures taken	Not relevant
<b>Finland</b>	(1) No legal basis provided (2) No information provided	Not relevant
<b>Sweden</b>	(1) Chapter 23, section 1 Code	Not relevant

	of Judicial Procedure. (2) Reference to COM report	
<b>United Kingdom</b>	(1) No information provided (2) Great Britain Injuries Compensation Scheme	No specific information provided