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Annex to the

REPORT FROM THE COMMISSION

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

(COM(681) final)

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1. ARTICLE 1 – TERRORIST OFFENCES AND FUNDAMENTAL RIGHTS AND PRINCIPLES

1.1. National systems

Like most old Member States evaluated in 2004, Greece, Luxembourg and the Netherlands did not have specific legislation on terrorism prior to the Framework Decision¹. Similarly, new Member States did not have separate terrorist offences before joining the European Union. In the vast majority of them, terrorist actions were punished only as ordinary offences. As the first evaluation report points out, the main purpose of Article 1 is to harmonise the definition of terrorist offences in all Member States by introducing a specific and common definition of certain acts as terrorist offences.² Most terrorist acts are, it explains, basically serious ordinary offences which become terrorist offences due to the motivation of the offender. The Framework Decision's concept of terrorism is thus a combination of two elements: an objective element, as it refers to a list of instances of serious criminal conduct, as defined by reference to national law, and a subjective element, as these acts are to be deemed to be terrorist offences when committed with a specific intent³. Several of the Member States evaluated for the first time adopted transposing provisions in which the definition of terrorist intent follows very closely that contained in the Framework Decision. With regard to the objective element, specific transposing provisions were not generally adopted. Member States

1 Full title: "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" (SEC(2004) 688 final).

2 Article 1 - Terrorist offences and fundamental rights and principles

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).

2. The Framework Decision shall not have the effect of altering the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty on European Union.

3 See first evaluation report p. 4.

often referred to existing offences under national law which only in some cases were listed and defined as terrorist offences.

Cyprus has sent the text of "The 2006 Terrorism and Related Matters Bill"⁴, wherein terrorist offences are broadly defined. Indeed, all offences included in Part II of the bill are defined as terrorist offences. However, only Sections 6 to 8 and 15 of the said Part deal with terrorist offences as defined by Article 1 of the Framework Decision. Section 6 constitutes the main provision, covering most offences listed in the European instrument. It links the intentional element as defined under the Framework Decision to several offences under the Cypriot Criminal Code, the national Firearms and Non-Firearms Act and various national laws ratifying international conventions, such as the 1972 Convention for the Suppression of Unlawful Seizure of Aircraft.

The **Czech Republic** amended its Criminal Code so that the definition of terrorist attack contains both a subjective and an objective element. The latter consists of an exhaustive list which very accurately corresponds to the punishable set out in Article 1(1). As for the terrorist intention, the wording seems to lay down a national scope, as it focuses on terrorist attacks against the Czech Republic. However, the last paragraph of the Section extends to foreign States the protection provided for under the provision and, therefore, conveniently introduces an international dimension.

Article 237 of the **Estonian** Criminal Code has been amended⁵ to include a list of relevant behaviour and a subjective element which follows very closely the terrorist intention defined in the Framework Decision. Unfortunately, most of the enumerated types of behaviour are too generally described (i.e. "offences threatening international or personal security, endangering life, health or the environment or of a generally dangerous nature"). A higher degree of precision would be desirable from the point of view of legal certainty.

The new Article 187A introduced in the **Greek** Criminal Code refers to "acts of terrorism". Its paragraph 1 includes both a subjective element which follows very closely the wording of the Framework Decision and an extended list of actions including, at least, most forms of behaviour covered by the Framework Decision. The list refers to existing offences under the Greek Criminal Code and other legal instruments (such as the legislative decree 781/1974 on "Protection from ionising radiations" or the Code of Aviation ratified by law 1815/1988), pointing out the relevant Articles. Paragraph 3 of Article 187A incriminates separately the behaviour of those who seriously threaten to commit the offences listed in paragraph 1 of the same provision.

The **Hungarian** Criminal Code introduces the notion of terrorist offences in Article 261, which includes both the terrorist intent (paragraph 1) and a list of acts (paragraphs 2, 7 and 9) that are qualified as terrorist offences. Paragraph 1 reproduces the definition of the subjective element of the Framework Decision, linking it to the listed behaviour of paragraph 9 (a), which contains a list of the forms of behaviour included in the Framework Decision as well as others that are not foreseen in this instrument (i.e. deliberate endangering of persons at work, violence against officials or robbery). Each of the acts enumerated in paragraph 9 (a) includes a reference to the article of the Criminal Code where the behaviour is incriminated as

4 The bill has already been submitted by the Ministerial Council to the House of Representatives for approval.

5 The amendments entered into force on 15 March 2007.

an ordinary offence. Paragraph 2 links terrorist intent to the seizure of significant material assets making their release dependant on a demand to the State or an international organisation. It introduces in this manner an additional form of behaviour as a terrorist offence which is not foreseen in the Framework Decision. Paragraph 7 makes threatening to commit the offences in paragraphs 1 and 2 punishable.

The **Latvian** definition of terrorist offences is divided into two: offences committed with the purpose of "harming the Republic of Latvia or its inhabitants" and offences committed with the purpose of "inducing the State, its institutions or international organisations to take any action or to refrain there from". It seems, therefore, that in both cases terrorist offences are limited to a national scope by the intentional element. Concerning the objective element, the first definition consists of a rather detailed list of actions although it does not include all the forms of conduct covered by the Framework Decision while the second definition is of a much more general nature.

Besides these concepts of terrorism, Latvia refers to Sections 153 –kidnapping-, 154 -seizure of hostages-, 233 - unauthorised manufacture, repair, acquisition, storage, carrying transportation, transfer, sale or breach of sale conditions of firearms, munitions, weapons and explosive- and 268 – seizure of air and water transport vehicle. None of these offences are designated as terrorist offences and only Section 154 includes a subjective element which covers the terrorist intent as laid down by Article 1(1).

Under the **Lithuanian** system, terrorist offences are expressly dealt with by Article 250 of the Criminal Code, where unfortunately the subjective element is missing⁶. The provision consists of a list that does not cover all the offences listed in the Framework Decision. Nevertheless, Lithuania refers to several other provisions of the Criminal Code that, without being defined as terrorist offences nor referring to terrorism, make punishable most types of conduct listed under the Framework Decision (i.e. hijacking; seizure of hostages; illegitimate disposal of firearms, ammunition, explosives or explosive materials). Apart from some exceptions, as in the case of seizure of hostages, they do not include a terrorist intent either. Thus, the Lithuanian system lacks a full catalogue of terrorist offences qualified as such as well as the subjective element.

Luxembourg adapted its criminal law to the Framework Decision through its Law of 12 August 2003 "Terrorism and Terrorist Financing". In particular, a new Article 135-1 was introduced in its Criminal Code in order to define what a "terrorist act" is. In fact, it literally reproduces the aim of a terrorist offence as set out in Article 1 of the Framework Decision and links it with any offence which is punishable by a maximum custodial sentence of at least three years under Luxembourgish law. The definition of the objective element limits itself to establishing this penalty requirement and no catalogue of terrorist offences seems to exist. In addition, the abovementioned law introduced a few specific provisions criminalising (i.e. making punishable) some of the forms of conduct covered by Article 1(1) (f) but did not include any link to the intentional element.

Malta has opted for a nearly literal transposition. Therefore, the provision introduced into its Criminal Code includes both the subjective and objective element, covering all types of conduct listed in the European instrument.

6 The terrorist intent is only included under paragraph 6, dealing with the formation, participation and funding of a terrorist group.

In order to implement the Framework Decision, **the Netherlands** adopted the "Terrorist Crimes Act"⁷ on 24 June 2004. In particular, two provisions, Articles 83 and 83a, were inserted to comply with Article 1 of the Framework Decision. Article 83 sets out a limitative catalogue of terrorist offences covering all cases listed in Article 1(1) (a) to (h) of the said provision. Article 83a defines "terrorist intention", following very closely the wording of Article 1(1) of the Framework Decision.

Article 83 defines a terrorist crime by referring to three different categories, corresponding to three different paragraphs. The subdivision would allow the Framework Decision to fit into the existing Criminal Code. The first paragraph refers to the most serious crimes including a number of crimes for which a life sentence or custodial sentences of 20 years can be imposed (i.e. murder), crimes against the security of the State and crimes endangering the population. Otherwise, it must be noted that in this first paragraph there is an express requirement of terrorist intent. Paragraph 2 includes ordinary crimes in which the terrorist intent serves as a legal ground for increasing the penalty. Paragraph 3 covers crimes in which the terrorist intent is part of the definition of the crime itself.

Within this last category some nuances regarding the intentional element have been introduced in the listed relevant provisions: besides the terrorist intention of Article 83a, a number of these provisions refer to the intention of preparing for or facilitating a terrorist crime that will only be committed later. Moreover, in the case of Article 285 (threatening to commit a terrorist crime) no intentional element is required.

Poland has introduced Article 115(20) in its Criminal Code making terrorist offences punishable by a maximum custodial sentence of at least five years. This provision reproduces, almost word by word, the terrorist intent under Article 1(1). Nevertheless, it does not include the conduct that may constitute a terrorist offence or, in other words, the objective element. Instead, Poland refers to several provisions from different sections of its Criminal Code including offences against peace, humanity and war crimes; offences against defence capability; offences against life and health; offences against public safety; offences against safety in traffic; offences against liberty; offences against inviolability of the person; offences against public order; offences against protection of information, and offences against property. Unfortunately, there is neither a provision linking the behaviour described in these offences to the terrorist intent of Article 115(20) nor any defining them as terrorist offences.

Slovak legislation distinguishes between "terror" and "terrorism" offences. Section 93 deals with murder and hostage - taking with the intention of destroying the constitutional order of Slovakia, under the heading "terror". Thus, the scope of this provision is rather limited, both regarding the conduct described and subjective element. In particular, the latter seems to limit the provision to terrorist offences against Slovakia. Section 94 presents a considerably wider scope under the heading "terrorism". It retains the terrorist intent as defined in the Framework Decision. The objective element has been broadly defined so that "particularly serious offences (...), threatening life, people's health, their personal liberty or property" are included.

Slovenia provides for two definitions: one of national terrorism and one of international terrorism. In addition, it refers to a few provisions of its Criminal Code that punish some of the types of conduct listed under Article 1(1) without defining them as terrorist offences.

7 Law of 24 June 2004 amending and supplementing the Penal Code and certain other laws in connection with terrorist crimes.

This double definition of terrorism brings the Slovenian system close to the Slovak one, with both notions containing a subjective and an objective element. In this case, both national and international terrorism are broadly described in general concepts. The abovementioned additional provisions detail some of the types of behaviour listed under Article 1(1). Nevertheless, they do not cover all the cases and some of them require the purpose of attacking the constitutional order of Slovenia, thus adopting a national approach that does not correspond to the Framework Decision. Furthermore, no provision links the behaviour described in these offences to the definitions of national and international terrorism or designates them as terrorist offences.

1.2. Assessment

In a first overview, it can be said that the legislation of the Czech Republic, Estonia, Greece, Hungary, Latvia, Malta, the Netherlands and Slovakia complies with Article 1 in the sense that these States have criminalised terrorist offences as a separate category of crimes. Cyprus is in the process of amending its legislation to that end. The defining techniques used in Lithuania, Luxembourg, Poland and Slovenia raise some concerns. For example, Luxembourg's definition of a terrorist offence includes all ordinary offences, as constituting a minimum penalty, when they are linked to a terrorist intent. The other three Member States identify "ordinary offences" under their criminal law as provisions transposing the Framework Decision in order to complement their partial or imprecise definitions of terrorism. In particular, Slovenia defines terrorist offences too generally, Lithuania lacks a full definition and Poland only defines terrorist intent. Furthermore, these three countries lack a provision either linking these ordinary offences to the definitions of terrorism or qualifying them as terrorist offences in case of terrorist intent. As stated in the first evaluation report with respect to Italy and the United Kingdom, although the Lithuanian, Luxembourg, Polish and Slovenian laws do not automatically mean that the results sought by the Framework Decision cannot be achieved, this form of implementation may disrupt the systematic and political aim of the Framework Decision and clarity of implementation, and can hinder the full implementation of related provisions (especially those on penalties and jurisdiction)⁸.

It must be noted that Slovenia and Slovakia include two different definitions of terrorism: the first one with a national dimension and the second one with an international dimension. A system keeping two parallel notions of terrorism is alien to the Framework Decision and, once again, it may hinder its systematic and political aim as well as clear transposition.

The following paragraphs provide a more in-depth analysis of the different implementation techniques Member States have used, including an examination of whether they fully cover both the intentional and objective elements of Article 1.

Firstly, as regards the intentional element, most countries have followed the wording of the Framework Decision either literally (Hungary, Luxembourg, Malta and Slovakia in its "international definition") or very closely (the Czech Republic, Estonia, Greece, the Netherlands, and Poland). The wording in the Cypriot bill defining terrorist intent is also extremely close to that of the European instrument. It should be noted that, in the case of the Netherlands, some of the types of conduct including the objective element are linked either to the terrorist intent or to the intention to prepare for or facilitate a terrorist crime. This

8 See first evaluation report, p. 7.

distinction is based on the idea that certain types of conduct listed in the Framework Decision, such as the possession of firearms would not be normally associated with terrorist intent but with the intention to prepare or facilitate a terrorist offence. In this regard, it must be pointed out that all types of behaviour listed under Article 1(1), including those related to weapons and explosives included under (f), constitute an independent terrorist offence when linked to the terrorist intention as described in the same provision. Thus, they do not need to be linked to another terrorist offence, not even as concerns the intentional element. In this sense, the aim of Article 1(1)(f) is to ensure that those who manufacture, possess, acquire, transport, supply, or use weapons, explosives or nuclear, biological or chemical weapons, as well as those who research and develop biological and chemical weapons with a terrorist intent as defined in the Framework Decision may be prosecuted, even if such actions are not directly linked to the commission of other specific offences.

The Latvian concept of terrorist offences, divided into two, includes two corresponding terrorist intentions. "harming the Republic of Latvia or its inhabitants" and "inducing the State, its institutions or international organisations to take some action or to refrain there from". This subjective element is quite problematic. Firstly, both descriptions of terrorist intention exclude the international dimension of terrorism provided for in the Framework Decision. Secondly, the wording "harming the Republic of Latvia or its inhabitants" appears to be non-specific, thus raising some concerns regarding legal certainty. And lastly, the two quoted purposes are linked to different types of conduct while, according to the Framework Decision, any of the purposes included in the terrorist intention qualify any of the types of conduct involving the objective element as a terrorist offence.

The Lithuanian definition of terrorism under Article 250 lacks a subjective element. Among other Articles mentioned as transposing provisions, only hostage - taking includes the subjective element and only partially. The lack of a terrorist intention constitutes an important problem in transposition of Article 1.

The Slovenian definitions of national and international terrorism do include a subjective element. Nevertheless, both definitions seem incomplete. Concerning "international terrorism" in particular, there are only two purposes: "inflicting damage on a foreign country or an international organisation" and "compelling a legal person, international organisation or a state to perform or to omit a certain act". In addition, these subjective elements are linked to separate conduct, which does not respect the definition system under Article 1(1).

Secondly, among those Member States that have specifically criminalised terrorist offences, different systems have been used to implement the objective element. Terrorist offences have been defined using various techniques. One of these consists of creating an exhaustive list covering specific types of conduct which may not have an equivalent in national legislation. Another possibility is to introduce references to corresponding provisions under criminal legislation. This latter technique consists of including all criminal offences punished by a certain minimum penalty. Some Member States applied several of these drafting techniques, resulting in mixed concepts of terrorism. Assessment of implementation entails verifying whether the acts referred to in Article 1 (a) to (i) contained in the described list of types of conduct or the specified national corresponding provisions. As the first evaluation report sets out, when it comes to Member States which lack a specific or complete definition of terrorist offences, it is the criminalisation of these acts as ordinary offences under national law that would have to be verified. And, it continues, no matter how these intentional acts might have

been defined as offences under national law, they must be covered by the specific terrorist intent in order to count as terrorist offences⁹.

The Czech Republic and Malta have fully retained the types of conduct listed in letters (a) to (i) following very closely the wording of the Framework Decision. Indeed, they have opted to describe all the criminalised conduct within a single provision that defines terrorism. It is therefore simple to assess their full implementation.

In the remainder of cases, assessment entails a complex comparison greatly affected by the quality and completeness of the information provided to the Commission. As was the case for the first evaluation report, unfortunately, not all Member States submitted exhaustive information, identifying all corresponding criminal provisions and providing the text of all identified provisions. As the first report sets out, the difficulty increases when it comes to the Member States which do not have a specific or complete definition of terrorist offences. Therefore, when some conduct or typical elements are not explicitly included in national provisions or it can only be assumed that such behaviour is included under a different wording or crime, the Commission cannot rule out that some conduct or elements referred to in the Framework Decision might not be covered¹⁰.

For example, the Commission has doubts regarding the criminalisation of conduct such as "causing floods" or seizure of "other means of public or goods transport" under Latvian, Lithuanian, Luxembourg and Slovenian law. Similarly, the Commission is not certain that some types of conduct related to explosives (and specially research and development) are covered under Estonian, Greek, Hungarian, Latvian, Luxembourg, Polish and Slovenian law. In Estonia, it remains unclear whether "threatening personal security" includes kidnapping or hostage taking, and whether the other types of behaviour listed in the Framework Decision but not specifically mentioned in Estonian legislation could be covered by "offences of a generally dangerous nature". In Greece, it is doubtful that "damage dangerous to the public" includes interfering with or disrupting the supply of water, power or any other fundamental natural resource. In Hungary, it is uncertain whether "causing public danger" or "causing damage" covers the release of dangerous substances, or causing fires, floods or explosions. Nevertheless, it can be said that the relevant types of conduct have been largely covered by national legislation and transposition has certainly led to a general approximation of the definition of terrorist offences in the Member States evaluated for the first time.

Special reference must be made to the scope of the objective element in the case of Hungary, Luxembourg and Cyprus. Under the Hungarian Criminal Code, deliberately endangering of persons at work, violence against officials or robbery are qualified as terrorist offences, when linked to a terrorist intent as well as the seizure of significant material assets making their release dependant on a demand to the State or an international organisation. Under the Cypriot bill, the objective element includes the reference to criminal offences under national acts ratifying international conventions, such as the 1972 Convention for the Suppression of Unlawful Seizure of Aircraft, to the Firearms and Non-Firearms Act and to an annex containing a long list of offences under the Criminal Code. The extended list goes well beyond the enumeration of the Framework Decision, including i.e. publishing false news, usurpation of the right to wear a uniform or failing to prevent a crime. Under Luxembourg

9 See first evaluation report p. 9.

10 See first evaluation report p. 9.

law, all criminal offences punished by a custodial sentence of more than three years are included. Although the behaviour falling within the definition of the objective element may appear to be too far removed from the essential concept set out in the Framework Decision, nothing prevents Member States from going beyond the minimum standards set up by this instrument, provided that the requirements regarding fundamental rights are respected. Moreover, as pointed out in the first report, when these additional offences are punished by custodial sentences of more than three years, as is the case for Luxembourg, 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 were more restricted than in the issuing State¹¹.

1.3. Obligation to respect fundamental rights and fundamental legal principles under Article 1(2)

The second paragraph of Article 1 concerns the respect of fundamental rights and fundamental legal principles as enshrined in Article 6 TEU. The Framework Decision does not have the effect of altering this obligation, and thus also the Member States are bound by their international and Union obligations for respect of fundamental rights when taking implementing measures. In particular, the preamble of the Framework Decision refers to the right to strike, freedom of assembly, of association or of expression, including the right of everyone to form and to join trade unions with others for the protection of his or her interests and the related right to demonstrate.

In that context, the Commission recalls that antiterrorist measures such as implementing legislation must be applied with full respect for fundamental rights and the principle of the rule of law. The firmer the guarantees that the EU and the Member States shall respect fundamental rights when implementing Union law, the better the Union's chances of making effective advances in the fight against terrorism. The Commission will continue to pay particular attention to this aspect.

2. ARTICLE 2 – OFFENCES RELATING TO A TERRORIST GROUP

As pointed out in the first evaluation report, this provision aims to ensure that directing a terrorist group and participating in its activities are themselves considered to be independent criminal facts and dealt with as terrorist offences¹². It also provides for some examples of participation that must be interpreted as a minimum standard¹³.

11 See the first evaluation report (Commission Staff working paper) p. 10.

12 See first evaluation report p. 10.

13 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

2.1. National systems

Cyprus will extensively implement Article 2 of the Framework Decision through Part II of the 2006 Terrorism and Related Matters Bill, in particular through its Sections 9 to 14, 16 and 17. These provisions are supplemented through the definition of a terrorist organisation and listed persons, groups or entities according to the Council Common Position 2001/931/CFSP and to the Regulation EC No. 2580/2001, under Part I of the same bill.

It must be noted that the definition of a terrorist organisation, very close to that of terrorist group under the Framework Decision, sets out the additional requirement of classification as such via a Ministerial Decree.

Section 9, which makes active involvement in a terrorist organisation or a listed group or entity punishable, makes a distinction between active involvement and active involvement with full knowledge of the unlawful objectives or activities of the terrorist group. The latter behaviour is punished by a more serious penalty. Article 17 criminalises leading or organising a terrorist group and holding an office or position in the group or carrying out relevant tasks.

Section 11 punishes support for a terrorist organisation and defines "support" very broadly - including not only providing certain services but also offering to provide them, as well as entering or residing in any State upon the request of a terrorist group. Sections 12 and 16 deal with specific types of support: offering to supply explosives or other lethal devices and terrorist financing, which are clearly contained in the examples provided for in the Framework Decision. Somewhat different is the case of Sections 13 and 14, which criminalise behaviour that we could describe as showing affinity or offering passive support for terrorism. They make punishable the wearing of external signs of membership or support and not reporting to the police relevant information for the pursuit of terrorists or in order to prevent a terrorist offence from being committed.

Section 95 was introduced into the **Czech** Criminal Code by Act No 537/2004¹⁴. It makes punishable the provision of financial, material or any other support for the commission of terrorist offences. This provision also refers to the commission of any terrorist offences by a member of an organised group as an aggravated offence. Membership would thus constitute an aggravating circumstance.

In addition, membership in a terrorist group would be punishable as participation in a criminal organisation, which is covered by Section 163a of the Criminal Code. It seems that when a criminal group does not have the structure required to qualify as a criminal organisation under the latter provision, Section 88(2) of the same instrument allows an individual to be charged simultaneously with a specific criminal offence and the offence of acting for the benefit of a criminal organisation provided certain requirements are met. Unfortunately, the relevant provisions were not submitted to the Commission.

In **Estonia**, the Criminal Code was modified in order to transpose Article 2 of the Framework Decision. Under the new Article 237¹, belonging to a terrorist association, including creating, running or recruiting for such an association, is considered a criminal offence, although the

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.

14 Act No. 537/2004 amending the Criminal Code and the Firearms Act with effect from 22.10.2004.

provision does not include a definition of membership. In addition, Article 237² criminalises the preparation of, and the call to perpetrate, terrorist offences, whereas Article 237³ concerns funding and supporting terrorist offences.

In **Greece**, the new Article 187A (4) to (6) introduced in the Criminal Code deals respectively with membership or creation of a terrorist group, leadership of a terrorist group, and provision of information, material means or funding to support a terrorist group. Paragraph (4) provides for a definition of terrorist group very close to that of the Framework Decision. The Greek implementation differs from the Framework Decision in two aspects: first of all, it specifically incriminates the creation of a terrorist group as a form of behaviour different from leadership. Secondly, it separates membership and material or economical support. This amounts to a clear and extensive transposition.

In **Hungary**, Article 261(9) (b) introduces a definition of "terrorist group" very close to that of the Framework Decision. Article 261 (5) of the same provision incriminates participation in the activities of a terrorist group widely: it introduces a detailed enumeration of acts related to the commission of offences described in paragraphs 1 and 2 within a terrorist group (calling for the commission, volunteering to commit, agreeing to commit, facilitating the commission, providing or assembling materials, undertaking the commission) and adds a general clause referring to supporting the activity of the group in any other way. This paragraph does not refer however, to the leadership of a terrorist group. It should be noted that offences related to a terrorist group are dealt with as "terrorist offences" under Article 261 of the Hungarian Criminal Code that, in this sense, goes beyond the requirements of the Framework Decision.

Latvia has transposed this provision through Section 88(2) and (3) of its Criminal Code, which criminalises the commission of terrorist offences through a group of persons who have previously concerted, as well as the leadership of a terrorist group. It must be noted that this provision does not criminalise participation in a terrorist group as such but the commission of terrorist offences through a group, thus linking the participation to the commission of specific offences. The inclusion of "supportive" behaviour which Article 2(2)(b) expressly mentions, such as supplying information or material resources, remains unclear - especially when such support is offered to the group or its activities generally, and not linked to a specific planned offence.

Otherwise, Section 21 of the Criminal Code, dealing with organised criminal groups in general, makes the formation and leadership of the group punishable as well as participation in the preparation of a serious crime irrespective of the role of the person in the jointly committed offence. The definition of organised group requires the purpose of "jointly committing criminal offences" and that "the responsibilities of participants have been allocated by prior agreement". This last requirement might be interpreted as opposed to the wording of the Framework Decision "that does not need to have formally defined roles for its members". Furthermore, the criminalisation of participation seems to be limited to the preparation of criminal offences so that it is not clear that the "supportive behaviour" of Article 2(2)(b) is covered by this provision either.

Terrorism financing is dealt with in a separate provision, i.e. Section 88¹ which covers direct and indirect procurement or provision of funding of any kind or other assets.

Lithuania introduced Article 250 (6) into its Criminal Code in order to transpose Article 2. It criminalises the establishment of and participation in a terrorist group aimed at committing

the terrorist offences referred to in the same provision when committed with the terrorist purposes explicitly mentioned. It further specifies that this participation may consist of financing the group, providing material or other assistance.

In addition, Articles 25 and 249, generally applicable provisions which deal with complicity and criminal alliances respectively, have also to be considered. In fact, the former defines different forms of complicity (groups of accomplices, organised groups and criminal alliances) while the latter focuses on criminal alliances, criminalising participation as well as its supervision or organisation. According to Article 25 (4), terrorist groups must be deemed to be criminal alliances.

It must be noted that Article 250 (6) does not separately mention the person directing the group, which is the case under Article 2 (2) (a) of the Framework Decision. Nevertheless, Article 249 makes the organisation or the supervision of a criminal alliance explicitly punishable.

Articles 25 and 249 are important not only because of this. Article 25 (4) provides for a definition of criminal alliance¹⁵ which is close to that of a terrorist group under the Framework Decision and allows Article 249 to address some hypothesis that are not covered by Article 250 (6). Indeed, the deficient technique used for to transpose of Article 1 of the Framework Decision affects transposition of Article 2: the incompleteness of the concept of terrorist offences under Article 250 results in an incomplete concept of what is a terrorist group. A terrorist group under this provision therefore only covers the terrorist offences mentioned in the same article. Terrorist groups aiming to commit offences not covered under Article 250 should then be covered by Article 249.

In **Luxembourg**, Articles 135-3, 135-4 and 135-5 were introduced by the Law of 12 August 2002 in order to transpose this provision. In particular, Article 135-3 adopted a definition of terrorist group which follows very closely the wording of the Framework Decision. Articles 135-4 and 135-5 transpose Article 2(2)(b) of the Framework Decision. Indeed, Article 135-4(1) punishes those that consciously and willingly participate actively in a terrorist group. Article 135-5 makes terrorist financing punishable. There is no explicit mention of "supplying information" or "material resources" although participation is described very broadly under 135-4 (1). Besides, two other forms of behaviour related to a terrorist group have been separately criminalised under Article 135-4(2) and (3) respectively: participating in the preparation or commission of an illicit activity by a terrorist group, and participation in the decision making of a terrorist group - in both cases knowing that it contributes to the purposes of such a group. Article 135-4(4) complies with Article 2(2)(a) since it specifically criminalises direction of a terrorist group.

Article 328B of the **Maltese** Criminal Code constitutes a specific transposing provision dealing with terrorist groups. Its wording is close to that of Article 2 and literally reproduces its definition of a terrorist group. Nevertheless, the Maltese provision retains various ways of participating in a terrorist group without making it punishable to participate in a terrorist group in general.

15 "A criminal alliance shall be considered to be present, when three or more persons connected by constant mutual relations and distribution of roles or tasks unite for the commission of a common criminal activity –one or several serious or very serious offences."

The Netherlands transposes Article 2 through a specific provision: 140a of its Criminal Code, which constitutes the "terrorist variant" of Article 140, dealing with criminal organisations in general. Article 140a criminalises participation in an organisation which has the intention of committing terrorist crimes under paragraph 1 and expressly imposes a heavier penalty for founders, leaders and directors of such organisations (under paragraph 2). This provision does not mention any of the examples of participation given by the Framework Decision nor does it give any detailed information on the content of participation. Nevertheless, the Netherlands points to the fact that Article 140a must be interpreted together with Article 140, from which it derives, and refers to the Supreme Court's statements interpreting Article 140 as applicable to Article 140a. This last provision clarifies that participation includes granting financial and other material support.

Poland introduced references to terrorism in Article 258 of its Criminal Code, a generally applicable provision dealing with organised groups or bands of criminals. Both participation in – Article 258(2) - and direction of – Article 258(4) - a terrorist group are covered. However, the provision does not contain a definition of terrorist group, however, nor for examples of participation in such a group.

Slovakia opted for introducing specific transposing provisions: Sections 89 (28) and 185a (2) of its Criminal Code. The first provision literally reproduces the definition of a terrorist group laid down in the Article 2(1) of the Framework Decision. The latter provision implements Article 2 (2) by making punishable the participation in as well as the setting - up and plotting of a terrorist group. Unlike the European instrument, it does not include examples of participation.

In addition, Slovakia provides for the definitions of organised group and criminal gang under Sections 89 (26) and (27) of the Criminal Code. The former could be understood as a broad category comprised of terrorist groups and criminal gangs, which constitute more detailed concepts.

Slovenia does not have a specific definition of a terrorist group but this notion is subsumed in the wider concept of "criminal association", under Article 126 of its Criminal Code. Although this concept does not include the requirements of "structure", and of "established over a period of time" under Article 2(1) of the Framework Decision, the term "association" seems to imply that a certain structure and durability must be present. More problematic is the condition of "[coming] together in order to commit criminal offences for which a prison sentence of over three years may be imposed". The analysis of the penalties attached to the provisions transposing Article 1 of the Framework Decision shows that both Slovenian provisions defining terrorism allow for custodial sentences of more than three years. However, this is not the case for Article 309 of its Criminal Code, which is mentioned by Slovenia as one of the ordinary offences transposing Article 1(1). Indeed, the Slovenian provision does not allow for a sentence of imprisonment of more than one or three years, depending on the circumstances of the case.

Concerning implementation of Article 2(2) of the Framework Decision, Article 297 of the Slovenian Criminal Code criminalises participation in the activities of a criminal association, irrespective of actual commission of the criminal offences. It does not detail which kind of

behaviour is covered. Nonetheless, Article 388a¹⁶ deals specifically with the funding of certain criminal offences which it enumerates, including both Slovenian articles defining terrorism, as well as some of the ordinary provisions transposing Article 1(1) of the Framework Decision. In addition, Article 297 introduces a general formula so that it applies to any violent act linked to a terrorist intention – for some points this is limited to a national scope. Therefore, it partially covers the rest of the provisions implementing Article 1(1) which are not included in the enumeration mentioned above.

2.2. Assessment

Estonia, Greece, Luxembourg, Malta, the Netherlands, Poland and Slovakia comply with Article 2 via specific provisions that separately criminalise acts committed in relation with terrorist groups. The Cypriot bill will also introduce concrete provisions to that end.

Hungary constitutes an especial case because it specifically criminalises participation in a terrorist group using a very wide formula but does not refer to the direction. Although it could be argued that directing a terrorist group is covered by the broad definition of participation (i.e. "in any other way supports the activity of a terrorist group"), Article 2(2) of the Framework Decision requires making the leadership of a terrorist group explicitly punishable: it clearly separates the two modalities with the open intention of qualifying direction as a more serious offence than participation.

Lithuania uses a mixed formula where general provisions on criminal alliances, explicitly applicable to terrorist groups, complement the limited scope of the provision that specifically transposes Article 2 – it thus fails to cover the direction of a terrorist group. In the Czech Republic, terrorist groups as such, and directing or participating in their activities are not specifically criminalised but support for commission of terrorist offences is. Latvia constitutes a special case as it criminalises the leadership of a terrorist group but participation in a terrorist group seems to be punishable only when linked to the commission of specific terrorist offences. However, both countries rely upon general provisions making participation in a criminal organisation or in organised groups punishable. Similarly, Slovenian law does not contain any specific provisions dealing with terrorist groups and this notion should be subsumed under the wider concept of "criminal association" or "criminal organisation".

In this sense, it is important to remember that the rationale behind Article 2 is to make provision for offences related to terrorist groups as independent criminal facts and, in particular, the aim of Article 2(2)(b) is to ensure that those who through their actions

16 "Article 388a Financing terrorist activities

(1)Whoever provides or collects money or property in order to partly or wholly finance the commission of the criminal offences under Articles 144, 330, 331, 352, 353, 354, 355, 360, 388, 389 or 390 of this Code or any other violent act whose objective is to destroy the constitutional order of the Republic of Slovenia, cause serious disruption to public life or the economy, cause death or serious physical injury to persons not actively involved in an armed conflict, to intimidate people or force the State or an international organisation to carry or not to carry out an act shall be given a prison sentence of between one and ten years.

(2)Whoever commits an offence from the preceding paragraph shall be subject to the same penalty even if the money or property provided or collected was not used for the commission of criminal offences specified in the preceding paragraph.

(3)If an offence from the preceding paragraphs was committed within a criminal association, the perpetrator shall be given a prison sentence of at least three years.

(4) Money and property referred to in the preceding paragraphs shall be confiscated."

contribute to the development of a terrorist group may be prosecuted, even if such actions have no direct link with the commission of specific offences¹⁷.

The fact that some Member States do not have either a specific concept of what is a terrorist group or separate criminalisation of participation and direction of a terrorist group, but instead rely on general rules on participation and direction of criminal associations or groups, constitutes a problem - in particular where there is no explicit link between such ordinary offences and the notion of terrorist groups or terrorism. This does not automatically mean that the results aimed for by Article 2 of the Framework Decision cannot be achieved, but this lacuna may disrupt the systematic and political aim of this instrument and the clarity of implementation. It can also hinder the full implementation of related provisions (especially those on penalties and jurisdiction). Otherwise, in order to achieve the desired result, the ordinary offences referred to before should cover the scope of Article 2, and in particular comply with the definition of a terrorist group. In order to assess whether they do so, the accuracy and completeness of the information provided by Member States on these general provisions appears to be indispensable. The Commission cannot conclude that a general concept of criminal association or criminal group covers the concept of "terrorist group" unless the relevant national provisions are provided. As an example, the Commission has doubts whether the Czech legislation's use of the term "criminal associations" is a valid substitute for the existence of a specific criminalisation of participating in or directing a terrorist group.

Moreover, obstacles to full implementation identified in the first evaluation report result from the restriction of the scope of Article 2 under national legislation or its link to the commission of specific terrorist offences¹⁸. Restriction of the scope may derive from both a limited definition of terrorist group and a restriction in the criminalisation of participation or direction.

Concerning the definition of terrorist group, the Cypriot bill as well as the Latvian and Slovenian legislation need to be commented on. Cyprus restricts the scope of Article 2 by adding to a nearly literal reproduction of the concept of terrorist group under the Framework Decision the requirement that a group must be classified as a terrorist group via a Ministerial Decree. Such an additional requirement is not provided for in the Framework Decision. It sets out a system, which, on the one hand, has the merit of increasing legal certainty. On the other hand, it might prove to be too rigid to combat small and dynamic terrorist cells which are unknown until they perform a terrorist attack, possibly leading to the impunity of some acts of participation and even direction of a terrorist group. The Latvian and Slovenian concepts of respectively organised groups and criminal associations do not completely cover the notion of "terrorist groups". With regard to the Slovenian notion of "criminal associations" in particular, it is interesting to note that it is to a large extent the deficient technique used to define terrorist offences which embodies this incorrect transposition. If the offences related to weapons and explosives had been included in the concept of terrorist offences, the limit of a custodial sentence of more than three years would have been respected and the notion of "terrorist group" would be fully covered by that of "criminal association".

17 See the first evaluation report (Staff Commission working paper) p. 14.

18 See first evaluation report, p. 14.

With respect to restrictions in the criminalisation of participation in or direction of, a terrorist group, it is necessary to comment on Maltese and Estonian law. As explained above, the legislation of these Member States does not refer to participation in general but enumerates several ways of participating in the activities of a terrorist group. Whilst it is true that the enumeration of types of behaviour by the Maltese provision seems broad enough, it cannot be ruled out that "atypical" ways of participation might not be covered. Similarly, Article 237-1 of the Estonian Criminal Code criminalises belonging to a terrorist group and additionally enumerates certain forms of behaviour related to a terrorist group. As regards the criminalisation of membership, the first evaluation report states that the drafting of Article 2(b) uses an extremely wide and open formula designed to cover not only membership in a terrorist organisation but also any other acts of assistance likely to contribute to the criminal activities of the group, even if such acts are undertaken by those who do not belong to or cannot be proven to be members of the organisation¹⁹. Therefore, it cannot be excluded that ways of participating in the activities of a terrorist group which do not constitute membership of such an organisation or correspond to creating or running a terrorist group or recruiting its members are possibly not covered.

Finally, concerning the obstacles resulting from linking the relevant provisions to the commission of specific terrorist offences, the Czech Republic, Latvia and Estonia should be singled out. Section 95 of the Czech Criminal Code does not criminalise support for a terrorist group in itself but as support for the commission of specific terrorist offences. Similarly, it is doubtful that under Latvian legislation participating in an organised group or criminal association covers the supportive forms of conduct which should be criminalised under Article 2(2)(b). The wording of the relevant Latvian provisions, Articles 88(2) and 21, does not criminalise participation in the activities of a terrorist group as such but when such activities are linked to the perpetration or preparation of a specific offence. The financing of terrorism is nevertheless covered in a separate provision. As regards Estonia, in addition to the criminalisation of belonging to a terrorist group, preparation of and incitement to commit terrorist offences are made punishable under Article 237², as well as funding and supporting the commission of such offences under Article 237³. These separate provisions, however, are not explicitly connected to terrorist groups but linked to the commission of specific offences and this is the reason why they cannot offer a remedy to the deficiency identified above with respect to Article 237¹. As explained in the first evaluation report, the Commission believes that this system does not fully comply with the Framework Decision as not only the rationale but also the logic of the instrument might be disrupted thereby leading to cases of impunity²⁰.

3. ARTICLE 3 – OFFENCES LINKED TO TERRORIST ACTIVITIES

Article 3 obliges the Member States to take the necessary measures to ensure that offences linked to terrorism include aggravated theft, extortion and drawing up false administrative documents with a view to committing certain terrorist offences²¹. For the purpose of assessing

19 See first evaluation report, p. 14.

20 See first evaluation report, p.15.

21 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);

implementation of this Article, the first report provides some preliminary considerations regarding the content of the obligation and what implementation of this provision requires in practice. In particular, it states that the acts referred to above should be carried out with a view to committing terrorist acts - but they do not have to be considered to be terrorist acts themselves. There is therefore no explicit obligation to criminalise these offences separately. As regards implementation this implies that a link between these offences and terrorism needs to be established²².

Greece and **Malta** have explicitly transposed Article 3 by introducing specific provisions. In particular, Article 178A (7) of the Greek Criminal Code explicitly refers to the existent offences of aggravated theft, robbery, counterfeiting concerning public documents and blackmail committed in order to prepare the terrorist offences defined in Article 1 of the Framework Decision. Article 328C of the Maltese Criminal Code links the intention of committing any of the offences set out in Articles 1 and 2 of the Framework Decision with the general provisions of the Criminal Code for aggravated theft, extortion and forgery.

The Netherlands has perfectly transposed Article 3 by adding some paragraphs to existing provisions of its Criminal Code dealing with aggravated theft, blackmail and forgery so that the said offences committed with the intention of preparing for or facilitating a terrorist offence are expressly covered.

The **Cypriot** bill goes beyond the obligation imposed by Article 3 by designating the relevant acts as terrorist offences. Indeed, these acts are explicitly criminalised under Part II of the bill, where the terrorist offences are included. In particular, Section 6 includes crimes against property, theft and extortion in particular, when linked to a terrorist intent. Section 11 refers to providing falsified official documents as a form of support for a terrorist group.

Hungary qualifies robbery as a terrorist offence when it is linked to a terrorist intent under Article 261 (9) (a) of its Criminal Code. Concerning this offence, Hungarian legislation goes therefore beyond the requirement of the Framework Decision. However, there is no mention of extortion or drawing up false administrative documents.

Luxembourg has not adopted a specific provision to transpose Article 3 although the relevant conduct might be covered by the definition of terrorist acts of Article 135-1 if they are punishable by a minimum sentence of at least three years of prison. If this is the case, Luxembourg would in fact go beyond the obligation of Article 3 by defining the relevant acts as terrorist offences. Unfortunately the Commission did not receive the relevant information on the treatment of aggravated theft, extortion and forgery under Luxembourgish legislation.

Slovakia has not adopted legislation to transpose of this provision. It refers to existing provisions of its Criminal Code - Sections 247, 235 and 176- dealing with aggravated theft, extortion and drawing up false administrative documents. None of the three Sections refers to terrorism although they specifically punish those who commit the relevant offences as members of an organised group or when collaborating with it. Accepting the validity of this indirect link to the notion of terrorism implies, as a preliminary requirement, that the concept of terrorist group is subsumed in that of an organised crime group under Slovak law.

(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).

22 See first evaluation report p. 15-16.

Similarly, **Slovenia** has not established any link between the notion of terrorism and ordinary offences criminalising aggravated theft, extortion and drawing up false administrative documents under its Criminal Code. Yet, concerning the hypothesis of aggravated theft in particular, Slovenia points out that, if the theft is committed with the purpose of providing money or property to finance the commission of terrorist offences, the behaviour would be covered by Article 388a of its Criminal Code, which deals with financing of terrorist activities. Therefore, Article 388a would at the same time implement Articles 2 and 3.

Poland and **Lithuania** have not established any link between the notion of terrorism and ordinary offences criminalising aggravated theft, extortion and drawing up false administrative documents under their Criminal Code. However, they make reference to the provisions covering all or some of these offences.

The Czech Republic and Latvia have not even provided for relevant general provisions under their criminal law. The former states that the offences to which Article 3 refers have already been properly incorporated in Czech law. Actually, although most likely these forms of conduct are criminalised as ordinary offences under the legislation of all Member States, the Commission cannot conclude that this article has been implemented unless the relevant national provisions are provided. Moreover, this reasoning also applies to Member States that forwarded general provisions criminalising the conduct in question as ordinary offences but did not link them to the concept of terrorism: the mere existence of such offences under national criminal law does not amount to full compliance with Article 3.

In conclusion, the Commission can only assess the full compliance of Dutch, Greek and Maltese legislation as well as the Cypriot bill that goes beyond the requirements of the Framework Decision, classifying the forms of conduct referred to in Article 3 as terrorist offences. Hungary has also gone beyond the Framework Decision's requirements as regards aggravated theft, since it is qualified as a terrorist offence. However, it has not implemented Article 3 concerning extortion and drawing up false administrative documents. Luxembourg legislation might also have included the relevant behaviour in its broad concept of terrorist offence although the lack of information prevents the Commission from assessing its implementation. As for the rest of the Member States that provided information to the Commission (and Hungary with regard to extortion and drawing up of false administrative documents), quoting the first evaluation report, they will be able to comply partially with Article 3, achieving, in some cases, similar results by treating these offences as acts of collaboration with a terrorist group or as participation in specific terrorist offences²³.

23 See first evaluation report (Commission Staff working document), p. 17.

4. ARTICLE 4 – INCITING, AIDING OR ABETTING, AND ATTEMPTING²⁴

4.1. National Systems

The **Czech Republic's** Criminal Code contains general provisions which make attempting and participating in a criminal offence punishable. Participation covers the organisation of a criminal offence, as well as incitement or aiding and abetting (Section 10). It must be noted that preparation is a separate notion from attempt, punishable under Section 7 of the same instrument. Actually, it is considered as an earlier stage of an attempt and only punishable in the case of particularly serious offences. Complicity appears as a criminal behaviour which involves closer linkage with the acts of the main perpetrators, punished under Section 9.

In addition, the Czech Republic refers to Section 163a of its Criminal Code, dealing with participation in a criminal organisation, including supporting such an organisation, and Section 164, criminalising incitement. Finally, Section 95, specifically dealing with terrorism, explicitly criminalises financial, material and any other support for the commission of terrorist offences.

Cypriot draft legislative bill Section 6(1) designates as terrorist offences those offences included in the list of offences of the Criminal Code annexed to the said bill when they are linked to a terrorist intention. The list contains, among others, "attempted criminal offences", "failing to prevent a crime", "incitement to commit a crime" and "conspiracy to commit a crime". Unfortunately, Cyprus has not forwarded the text of the relevant provisions providing for criminal liability in such cases. In addition, Section 18 of the legislative bill explicitly criminalises incitement or attempt to incite when the offence is partly or entirely committed outside Cyprus laying down penalty of imprisonment for a period of up to seven years.

In addition, it is interesting to note that, under the same Section 6, the possession of documents with seditious content and publication of propaganda material of an unlawful organisation also counts as a terrorist offence.

In **Estonia**, generally applicable provisions of its Criminal Code already provide for criminal liability of instigation and assistance (Article 22) as well as attempt (Article 25). Furthermore, the newly included Articles 237² and 237³ of the Criminal Code criminalise the preparation of, and the call to perpetrate, terrorist offences as well as funding and supporting terrorist offences in any way.

Greece refers to general provisions of its Criminal Code (Articles 42, 46 and 47) as well as to Article 187A. Paragraph 3 of this last provision, deals with the threat to commit terrorist offences and specifies that the attempt of such threat is not punishable. Article 46, dealing with instigation, has been provided, but not the text of Articles 42 and 47.

In **Hungary**, generally applicable provisions make the commission of an offence as well as its attempt punishable. The Hungarian Criminal Code distinguishes between the perpetrator and

24 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.

the accomplices (Article 20) and instigators and accessories (Article 21). In addition to these provisions, concerning terrorist offences, Article 261 (4) makes the preparation of a terrorist offence punishable and (6) explicitly criminalises the behaviour of those who have information on a terrorist offence about to be committed and fail to report it to the authorities.

Luxembourg did not provide information on any general provision dealing with attempt, incitement, aiding or abetting nor any specific regulation of these issues in the terrorism field.

The Netherlands implements Article 4 of the Framework Decision through Articles 45, 46a, 47 and 48 of its Criminal Code, which make inciting, aiding and abetting and attempting the commission of a criminal offence in general punishable. It must be noted that those who incite are punished as perpetrators and those who aid and abet fall under the notion of accessories (to the crime) and are punished as such. The concept of attempt (under Article 45) is different from that of preparation (Article 46), which is not always punishable. Additionally, Article 46a punishes expressly and separately the attempt to induce a person to commit an offence.

Poland refers to general provisions of its Criminal Code on attempt, incitement and aiding and abetting, in particular Articles 13 to 15 and 18. Under Polish criminal law, preparation is a separate concept from attempt.

The **Slovak** system makes a basic distinction between attempting and committing a crime (Section 8), considering incitement, aiding or abetting and plotting or organising as forms of participation in the commission of a crime (Section 10). Furthermore, it expressly refers to public incitement as a crime punishable by deprivation of liberty of up to two years or a pecuniary penalty (Section 164).

Similarly to the Slovak system, the **Latvian** Criminal Code contains general provisions that distinguish between the perpetrator or main author of the crime, joint perpetrators and the joint participants (Section 19). According to Section 20 of the same instrument, instigators, abettors and accessories are considered as joint participants, as well as the additional category of organisers. As regards "attempt", Section 15 of the Criminal Code defines it, together with the preparation of a crime, as an uncompleted criminal offence setting out liability for both in accordance with the liability laid down for the specific offence attempted or prepared.

Lithuania also refers to general provisions on complicity and "attempt" in its Criminal Code. Complicity is defined as an intentional common participation, including as accomplices the executor, the organiser, the abettor and the aide, who are liable according to the rules governing liability for the act committed by the executor (Article 24). It details that the accomplices shall be liable only for the criminal acts committed by the executor which were covered by their intention (Article 26). The liability for attempt is set out under Article 22. It must be noted that, apart from these provisions, there is a particular provision, Article 250, dealing with incitement via public statements or via the media to commit terrorist offences. In this case, liability is explicitly laid down for legal persons.

Through a specific clause, the **Maltese** Criminal Code makes a crime of inciting, aiding or abetting terrorist offences, offences related to terrorist groups and terrorist-linked offences. It is worth noting that these forms of behaviour are punished by the same punishment as determined for the offence incited, aided or abetted. Regarding "attempt", a general provision of the Criminal Code makes it punishable "save as otherwise expressly provided" (Article 41).

Slovenian transposing provisions are contained in Articles 22 to 29 of its Criminal Code. Slovenian law refers to "criminal attempt" as well as "participation in a criminal offence". In particular, Slovenian "participation" covers complicity, solicitation and criminal support, including a broad and detailed definition of the latter.

4.2. Assessment

As stated in the first evaluation report, following a systematic approach, after defining and providing for the criminalisation of terrorist offences, offences related 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 these offences is also punishable²⁵.

Most Member States (Czech Republic, Estonia, Greece, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, the Netherlands and Slovenia) have referred to general rules on participation and inchoate offences under their criminal systems. These general rules would also be applicable to terrorist offences. Some Member States have, additionally, specific provisions in relation to terrorism (the Czech Republic, Estonia, Hungary, Lithuania and Malta) or are modifying their legislation so that the general rules on complicity and inchoate offences will be linked to terrorist intention and qualified as terrorist offences (Cyprus). Greece has referred to a specific implementing rule that excludes making the attempt of threatening to commit a terrorist offence punishable. This exclusion is compatible with Article 4 of the Framework Decision. Luxembourg has referred neither to specific transposing provisions nor to generally applicable ones on participation and inchoate offences, although this report assumes the existence of the latter.

In conclusion, even if only some Member States have specific provisions on the matter, it appears that by applying national provisions on participation and inchoate offences to terrorist offences, offences related to a terrorist group and offences linked to terrorist activities, it is possible to meet the requirements of Article 4. As such provisions naturally exist in all Member States, the full implementation of this provision mainly depends on correct implementation of the preceding articles. This being said, some difficulties concerning the rules on participation and inchoate offences themselves do exist.

The first evaluation report noted the lack of a legal definition of "incitement" in the Framework Decision as well as the lack of a convergent concept of incitement in national legislation²⁶. In this second evaluation, this difficulty can be confirmed and stressed. Indeed, these difficulties do not only concern "incitement" but also "aiding and abetting". Important divergences have been noted under the different legal systems assessed. For example, in some countries complicity seems to require a closer relation to the main criminal acts than participation (Czech Republic) while other systems do not seem to make a difference between complicity and participation (Lithuania). Concerning the categories included in the notion of participation, Latvia, Lithuania and Slovakia refer to an additional category, the organiser, which does not appear under the Framework Decision. In addition, it is only in Malta and Poland that participation does not cover incitement, which appears as a separate notion. In the rest of the new Member States evaluated, inciting a person to commit an offence constitutes a form of participation or complicity. Finally, some of the countries present a category that

25 See the first evaluation report , p. 18.

26 See first evaluation report, p. 19.

could be described as public incitement (Lithuania and Slovakia) and some systems even criminalise the spreading of propaganda (Cyprus). The existence of different legal categories which do not always fully coincide with those of the Framework Decision, together with the use of different terminology, makes it difficult to accurately assess compliance. It should, however, be noted that different terminology might actually derive from translation difficulties. In this sense, it is important to consider that, first of all, there might be divergences between the meanings of the terms used in the different official versions of the Framework Decision and secondly, the Commission works mainly with translated versions of national provisions.

The concept of "attempt", on the contrary, seems to appear in all legal systems. There is nevertheless a difference to be noted. Some Member States also criminalise the preparation of an offence which constitutes an earlier stage than the attempt (the Czech Republic, Estonia, Hungary, Latvia, the Netherlands and Poland). However, these States only make preparation of an offence punishable in limited cases with the exception of Latvia, where it seems to be generally punishable. The Netherlands spells out the criminalisation subjecting it to the existence of two requirements: that the offence prepared is punished by a sentence of eight years' imprisonment or more and that one of the specific forms of preparatory behaviour listed in the relevant provision has been carried out.

Obstacles to full implementation may derive from the limits that some Member States lay down concerning the liability for inciting, abetting or attempting criminal offences. In particular, in Slovenia the criminal liability for attempt is linked to the requirement that the offence attempted or solicited may be punished by a sentence of at least three years' imprisonment (Article 22). This might cause a problem because two transposing provisions of Articles 1 and 3 of the Framework Decision respectively provide for minimum sentences of less than three years in prison (Articles 309 and 211). It must be said that any likely impunity is limited to very specific cases and appears rather as an academic hypothesis than as a real difficulty.

Lastly, it is important to note that Latvia explicitly solves the question of the liability of inciters, abettors or aides when the executor has not even attempted to commit the criminal offence: the participants would be liable for the preparation of the relevant offence. On a separate note, the Dutch legislation and the Cypriot bill criminalise the attempt to incite perpetration of an offence.

5. ARTICLE 5 - PENALTIES

We will separately analyse the compliance of national legislation with each of the paragraphs of this Article, which constitutes a key provision of the Framework Decision²⁷.

27 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 imposed under national law for such offences in the absence of the special intent required pursuant to Article 1(1), save where the sentences imposed

5.1. National Systems

5.1.1. Article 5(1)

As stated in the first evaluation report, paragraph 1 mainly implies that terrorist offences should in all cases be punished by imprisonment of at least one year²⁸. Although only the Cypriot bill refers explicitly to extradition for terrorist offences (in particular, Section 32 provides for the possibility of extradition and surrender), this minimum appears to be largely met in national provisions. Transposition of Estonia, Greece, Hungary, Luxembourg and Malta deserves a special mention since they go beyond the required custodial sentence of one year by introducing a general requirement of a custodial sentence of at least three years (Greece and Luxembourg) five (Estonia and Malta) or even ten (Hungary, except for threatening to commit a terrorist offence, for which a minimum of two years has been foreseen). This has the added value of abolishing the dual criminality principle for extradition, as it would in principle lead to the execution of the request even if the concept of terrorism in the executing State were more restricted than in Luxembourg, Estonia or Malta.

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, most Member States have provided for severe maximum penalties (including life sentence). In some cases, however, pecuniary sanctions, sentencing to community services, or limitation of liberty appear as alternative penalties. As the first evaluation report states, there might 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 proportionate²⁹.

5.1.2. Article 5(2)

The first evaluation report points to two general questions regarding transposition of Article 5(2). First of all, correct implementation of Articles 1(1) and 4 is necessary to fully comply with this provision. Secondly, the drafting of Article 5(2) assumes that the corresponding offences actually exist in national legislation. In this sense, the formula used in Article 5(2) might not always be comprehensive enough, as it would not apply to terrorist acts for which, in national legislation, there is not an equivalent offence without a terrorist intent. Indeed, in such cases, there would be no real terms of comparison³⁰.

Concerning the forms of behaviour referred to in Article 4, generally Member States do not stipulate separate penalties for such offences. Instead, they rely on the sanction attached to the incited, aided, abetted or attempted offences, since more severe penalties for terrorist acts under Article 1(1) automatically leads to more severe penalties for the behaviour contained in Article 4. The assessment of whether Member States comply or not with this paragraph in

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.

28 See first evaluation report, p. 20.

29 See first evaluation report, p. 20.

30 See first evaluation report, p. 23.

relation to the offences included in Article 1(1) is also applicable to the offences referred to in Article 4.

This being said, certain legal systems lay down separate penalties for incitement. For example, under the newly amended Cypriot law, Section 18 makes incitement or attempt of incitement to commit a terrorist offence punishable by a custodial sentence of up to seven years. Cyprus has not identified an equivalent ordinary offence and therefore the respective penalties cannot be compared. However, making the attempt of incitement punishable reveals an especially severe treatment. Another example is Section 164 of Slovakia's Code which stipulates a custodial sentence of up to two years or a pecuniary penalty for public incitement to commit an offence or breach public order. Unlike the Cypriot provision, that Section is generally applicable and, in this sense, incitement to commit a terrorist offence in particular does not result in an aggravated penalty as required under Article 5 (2).

Few Member States have explicitly transposed Article 5(2) through specific provisions aggravating the penalties laid down for ordinary offences when they are designated as terrorist acts.

The Netherlands provides for specific implementation since it links the definition of terrorism to several aggravating provisions in the Criminal Code and in other Acts: thus, the penalty of ordinary offences is increased when they have been committed with a terrorist intent. In addition, Article 10(3) of the Dutch Penal Code explicitly allows for the possibility of imposing the maximum custodial sentence of 20 consecutive years or a life sentence for terrorist crimes. In the case of **Greece**, Article 187A (1) of the Criminal Code explicitly foresees the up-grading of the "imprisonment" to imprisonment of at least three years and of "temporary imprisonment" to imprisonment of at least ten years. In **Poland**, Article 65 of the Criminal Code provides for an aggravated penalty when the offence is committed by "offenders who commit terrorist crimes". Similarly, Section 22 of the **Cypriot** draft bill provides for the possibility of more serious penalties for conduct under Article 1(1) of the same instrument, unless a life sentence is already laid down.

Luxembourg constitutes a special case, where the combination of two provisions, Articles 135-1 and 135-2, has a similar effect to that of an aggravating clause. The first provision defines terrorism by including any offence punishable by a maximum custodial sentence of at least three years when committed with a terrorist intent. The second provides for a custodial sentence of fifteen to twenty years for terrorist acts in general and a life sentence for those involving the death of one or more persons. Therefore, unless the ordinary offence is already punished by a custodial sentence of from fifteen to twenty years, Article 135-2 will function as an aggravating clause. Otherwise, life sentence certainly constitutes "the maximum possible sentences under national law" to which Article 5(2) refers. Therefore, in the cases where it applies, Luxembourgish law undoubtedly complies with this provision.

Similarly to Luxembourg, **Estonia, Hungary and Malta** have introduced rules which allow for the imposition of life sentences. Unlike the Luxembourgish provision, these articles are not limited to certain terrorist offences but in principle could apply to all of them. We can thus conclude that the three Member States fully comply with Article 5(2).

The **Czech Republic, Latvia, Lithuania, Slovakia and Slovenia** have not introduced specific aggravating provisions to implement Article 5(2) nor have they identified equivalent ordinary offences which would allow comparison of sanctions and therefore the assessment of

implementation. This being said, in many cases there might not be an equivalent ordinary offence for the defined terrorist act, which would then constitute a self-standing offence to which Article 5(2) would not be applicable.

It must be noted that, although **Lithuania** does not identify the equivalent offences, it states that the offences contained in Article 249 to 252 are punishable by penalties more severe than the ones for the analogous acts provided for in other chapters. Nevertheless, Articles 249 to 252 only represent part of the provisions transposing Article 1(1). In fact, the rest of the forms of behaviour under Article 1(1) have not been specifically criminalised by Lithuanian law as terrorist acts but are still treated as ordinary offences under national legislation. Latvia and Slovenia are in a similar situation, not having classified as terrorist offences some of the forms of conduct included in Article 1(1). The first evaluation report referred to this problem pointing out that, in this case, unless an aggravating rule is provided, the terms of Article 5(2) cannot be met³¹. Lithuania refers to Article 54(2) of the Criminal Code as including this aggravation rule. The provision indicates that, when imposing a penalty, the court must take into consideration the motives and purposes of the act committed. Terrorist purposes would therefore increase the penalty.

5.1.3. *Article 5(3)*

As a preliminary remark, we must note, as the first evaluation report did, that full implementation of Article 5(3) implies correct implementation of Article 2. This being said, Member States have mainly respected the maximum penalties set out in this provision which, generally speaking, has been explicitly transposed into national legislation.

The different relevant provisions of the **Cypriot** bill, analysed when dealing with Article 2 of the Framework Decision, respect the limits of imprisonment for both membership and direction of a terrorist group.

Luxembourg's legislation is extremely detailed in this subject. Article 135-4 stipulates custodial sentences of from one to eight years for both active membership –Article 135-4(1)- and participation in the preparation or commission of legal activities carried out by the terrorist group –Article 135-4(2)- , from five to ten years for participating in the decision making of a terrorist group –Article 135-4(3) and from ten to fifteen years for directing a terrorist group –Article 135-4(4). The participation in the decision making of a terrorist group therefore respects the limits set out under Article 5(3) considering that this contains the concept of participation. Article 135-5 deals separately with terrorist financing but does not provide for the corresponding penalty. Instead, Article 135-6 refers to Articles 135-1 to 135-4 in this respect.

In **the Netherlands**, Article 140a of the Criminal Code goes further than the thresholds set out in Article 5(3) - with maximum sentences of fifteen and twenty years for membership and direction of a terrorist group respectively.

It must be noted that the three Member States mentioned above introduce the possibility of a pecuniary sanction as an alternative to a custodial sentence. Nevertheless, such a possibility is not provided for in Article 5(3). The preceding comments on alternative sanctions to custodial sentences in order to implement Article 5(1) apply here.

31 See the first evaluation report (Commission Staff working document), p. 23.

Under Section 95 of the **Czech** Criminal Code, participating in a terrorist group or directing it is not criminalised as such. Providing financial, material or any other kind of support for the commission of a terrorist offence is nevertheless punishable by a custodial sentence of from five to fifteen years. Additionally, if the perpetrator of a terrorist offence acts as a member of an organised group the punishment will be more severe.

The **Estonian** provisions implementing Article 2 of the Framework Decision set out a maximum penalty of life imprisonment – for those belonging to a terrorist group, including creating, running and recruiting for such a group - or ten years – for those funding or supporting terrorist offences, including the offence of belonging to a terrorist group, and - therefore comply with the Framework Decision for both directing a terrorist group and participating in its activities.

In **Hungary**, Article 261 (5) foresees custodial sentences of from five to ten years for participation in a terrorist group. The direction of a terrorist group is not separately incriminated and therefore, there is no specific penalty foreseen in this respect.

Sections 88(2) and (3) of the **Latvian** Criminal Code establish custodial sentences from ten to twenty years and from fifteen to twenty years for participation in and direction of a terrorist group respectively. Also, Section 88¹ lays down custodial sentences of from eight to twenty or fifteen to twenty years for terrorism financing.

In the case of **Lithuania**, two different implementing provisions must be considered: Article 250(6) applies to the terrorist offences included in the same provision and Article 249 to the rest of them. Although Article 250(6) does not establish a specific penalty for directing a terrorist group, the thresholds set out by the Framework Decision are perfectly respected as it sets out - for both participation in and direction of a terrorist group - custodial sentences of from ten to twenty years. Article 249 establishes an aggravated penalty for the organiser of a criminal alliance - a custodial sentence of from six to twenty years for participation in and from ten to twenty years for direction of such an alliance.

In **Malta**, Article 328B(3) of the Criminal Code stipulates custodial sentences of up to thirty years for direction of a terrorist group. However, with respect to the conduct referred to in Article 1(1)(i) of the Framework Decision, eight years is the maximum - the same maximum penalty as provided for in the case of participation.

Participation in a terrorist group is punished by imprisonment from six months to eight years under Article 258 of the **Polish** Criminal Code. Nevertheless, for those leading or setting up the terrorist group it only fixes a minimum sentence of three years of imprisonment - it does not include the maximum limit of at least fifteen years set out in the Framework Decision. Similarly, in **Greece**, members and supporters of terrorist group are punished with imprisonment of up to ten years, therefore respecting the limits of Article 5(2) of the Framework Decision. However, Greek legislation does not specify the maximum penalty for the leader of a terrorist group. It only foresees a minimum custodial sentence of ten years, which does not guarantee compliance with the maximum of at least fifteen years foreseen under the Framework Decision.

Slovakia has a custodial sentence of from five to fifteen years for both direction of and participation in a terrorist group under Article 185a(2).

In **Slovenia**, Article 297(2) of the Criminal Code, setting out custodial sentences of from three months to five years for participation in criminal associations and from six months to eight years for their direction, does not meet the thresholds of Article 5(3). The exception here concerns the direction of a terrorist group which only threatens to commit terrorist offences – in this case, the maximum penalty of not less than eight years as specified in Article 5 (3) of the Framework Decision is respected. On terrorism financing, Article 388a sets out custodial sentences of from one to ten years for those financing the commission of terrorist offences - and of at least three years - when those financing the terrorist offences act within a criminal association. Therefore, it seems that funding the activities of a terrorist group, as referred to under Article 2, would be punished by custodial sentences of from three to ten years.

In conclusion, with the exception of the obstacles to correct implementation stemming from incorrect transposition of Article 2 - which in case of the Czech Republic and Hungary are especially serious - there are no particular problems to be noted with implementation of Article 5(3). With regard to participation in a terrorist group, all Member States but Slovenia comply with the provision. Concerning the direction of a terrorist group, most Member States have also correctly implemented the Framework Decision. Only implementation in four Member States raises concerns: Greece, Hungary, Slovenia and Poland. Hungary and Slovenia have not correctly transposed Article 5(3) while Greek and Polish implementation is doubtful, since they have chosen a formula that does not exclude the imposition of a custodial sentence of up to fifteen years but does not guarantee it either.

6. ARTICLE 6: PARTICULAR CIRCUMSTANCES

As stated in the first evaluation report³², this Article follows the Council's resolution of 20 December 1996 on individuals who cooperate with the judicial process in the fight against international organised crime³³, allowing Member States to introduce certain mitigating circumstances to reduce the penalty imposed on terrorists³⁴.

6.1. National Systems

Of all Member States evaluated, only Cyprus, Greece, Hungary and Luxembourg provide for a specific transposing provision in their draft or legislative Bill. Slovakia makes provision for specific mitigating circumstances linked to cooperation by the offender in fighting organised groups, criminal gangs or terrorist groups, and Slovenia provides for specific mitigating circumstances for the members of criminal associations, which, as explained above, partially covers the concept of terrorist groups as laid down in the Framework Decision.

32 See first evaluation report, p. 26.

33 OJ C 10, 11.01.1997, p.1.

34 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.

The **Cypriot** draft legislative bill reproduces in its Section 23(1) almost verbatim the text of Article 6 of the Framework Decision. However, the renouncement of terrorist activity appears not as a cumulative but as an alternative requirement. Besides, it adds to the list of mitigating circumstances the provision of information which helps to "dismantle a terrorist organisation or listed group or entity", which nevertheless can be interpreted as a specification of Article 6 (b)(iv), whereas it does not adopt the mitigating circumstance (b) (iii) of finding evidence. Furthermore, paragraph 2 introduces the possibility of suspending prosecution of a person who assists the police, a possibility that is not mentioned in the Framework Decision.

Article 187B of the **Greek** Criminal Code refers to providing law enforcement authorities with information that allows to prevent the commission of offences under preparation or to dismantle a terrorist group. Such cooperation excludes the punishment when the individual has not yet committed a terrorist offence and constitutes a mitigating circumstance when he has already perpetrated such offence. These circumstances correspond to the mitigating circumstances of Article 6(b) (i) and (ii) of the Framework Decision. The Greek legislation does not refer explicitly to the requirement of renouncing terrorist activity foreseen under Article 6(a) of the Framework Decision. However, it can be understood as implied in the cooperation with law enforcement authorities envisaged in Article 187B referred to above.

The **Hungarian** Criminal Code implements Article 6 of the Framework Decision through Article 261 (3) which allows for the reduction of the penalty if the person desists from the terrorist offence before it gives rise to any serious consequences or reveals his activity to the authorities. The first circumstance can be interpreted as "renouncing to terrorist activity" under Article 6(a) of the Framework Decision. The second one can be interpreted as providing administrative or judicial authorities with information under Article 6(b).

In **Luxembourg**, Article 135-7, of the Criminal Code has introduced the possibility of reducing the penalty for terrorist crimes, should the offender, after the beginning of inquiries, inform the authorities about the names of new suspects. This provision corresponds to Article 6(b)(ii) of the Framework Decision. Article 135-7 allows exemption from punishment if the offender - before any attempt or inquiry has taken place - informs the authorities of the existence of acts intended to prepare terrorist crimes or of the identity of persons having committed these acts. Article 135-8 provides for exemption from punishment for participation in a terrorist group for those who - before any attempt of a terrorist acts or inquiry has taken place - inform the authorities of the existence of this group and the names of their ringleaders or their subordinates.

Slovakia's Criminal Code envisages the possibility of reducing the penalty of the offender in Section 33(j) if he contributes to the detection or conviction of an organised group, criminal gang or terrorist group. Sections 40(3) and 40(4) allow the reduction of a custodial sentence to below the minimum if the offender "contributed significantly to the solving of a criminal offence committed by a criminal gang or terrorist group" or "helped prevent the commission of a criminal offence that another group was preparing or attempting to commit for a terrorist group" or if he has, "to an especially significant extent, contributed to the unravelling of an offence of [...] setting up, plotting and supporting a criminal gang or terrorist group or a particularly serious intentional criminal offence committed by an organised group, criminal gang or terrorist group or to the detection and conviction of the offender of such an offence by providing evidence of the offence in the criminal proceedings". These mitigating circumstances correspond to the ones listed in Article 6(b) (i), (ii) and (iii). Nevertheless, there are two important differences: firstly under Sections 33(j) and 40(3) and (4) of the

Slovak Criminal Code, the said mitigating circumstances are applicable to the offender of any crime and not only to the author of the offences included in Articles 1 to 4 of the Framework Decision. Secondly, they are always linked to collaboration against the activity of a terrorist group and not to the offences listed in Articles 1 to 4 of the Framework Decision irrespective of the number of persons involved in committing them.

Slovenia refers to Articles 297(3) and 42(3) of its Criminal Code as implementing provisions. Article 297 deals with participation in setting up and managing criminal associations; its paragraph 3, together with Article 42(3), allows for mitigation of the penalty if the offender "prevents further commission of the offences or uncovers information which has a bearing on the investigation and production of evidence for criminal offences that have already been committed". This criterion corresponds to Article 6(b)(iii) and (iv) of the Framework Decision. Article 42 (1) and (2) provide for general mitigating circumstances. Paragraph 2, in particular, allows the court to "ascertain that special mitigating circumstances are present".

Five Member States have not provided particular provisions implementing this optional Article 6, but have referred to existing general rules concerning mitigating circumstances, which four of them have forwarded. Some of these circumstances are comparable to those included in the Framework Decision although they rarely respect the cumulative structure of Article 6 including the renunciation of criminal activity referred to in paragraph (a) plus the provision of information to administrative or judicial authorities in paragraph (b).

Article 57 of the **Estonian** Criminal Code for example contains the possibility of reducing the penalty, should the offender "prevent the harmful consequences of the offence, and provide assistance to the victim immediately after the commission of the offence" which is similar to the criterion under Article 6(b)(i). The Estonian provision also provides for "appearance for voluntary confession, sincere remorse, or active assistance in detection of the offence" as a mitigating circumstance. Remorse and confession may be interpreted as equivalent to renouncing terrorist activity as stipulates under Article 6(a) of the Framework Decision. Active assistance in detection of the offence constitutes a wide wording that may cover 6(b)(ii) and (iii). Additionally, Article 205 of the Code of Criminal Procedure allows for "termination of criminal proceedings in connection with assistance received from a person upon ascertaining facts relating to a subject of proof", unless the offence imposes a minimum sentence of six year's imprisonment or lays down life imprisonment as the most severe punishment. The offences within the definition of terrorism of Article 237 of the Criminal Code do not meet such a requirement and, therefore, criminal proceedings against terrorists might be terminated according to the Code of Criminal Procedure under those circumstances.

Section 47(1) of the **Latvian** Criminal Code enumerates ten different mitigating circumstances. Some of them are comparable to those included in the Framework Decision. Thus, No 1 allows for mitigation if "the offender has admitted his guilt, has freely confessed and has regretted his actions" which may be interpreted as equivalent to renouncing terrorist activity under 6(a). No 2 provides for it if the offender "actively furthered the disclosure and investigation of the offence"; this wide wording may cover the circumstances under 6(b) (ii) and (iii). No 3 applies if "the offender has facilitated the disclosure of the crime of another person", is similar to the circumstance under Article 6(b)(ii); however, this mitigating circumstance seems to be extended to the disclosure of any other crime, whereas Article 6(b)(ii) applies only if another offender of the same crime is brought to justice. Finally, No 4 provides for mitigation of the penalty if "the offender has voluntarily allayed the harm caused" and thus corresponds to Article 6 (b) (i).

Article 59 of the **Lithuanian** Criminal Code constitutes a general rule for mitigating circumstances, that names two alternative criteria: the first one, "the perpetrator helped to detect this act or the persons who participated therein", corresponds to Article 6(b)(ii) of the Framework Decision, whereas the second one, "the perpetrator confessed to having committed the act provided for in the criminal law and sincerely regrets it" may be interpreted as equivalent to Article 6(a).

The **Polish** Criminal Code contains several generally applicable provisions providing mitigating circumstances. Article 60(2)3), "the offender has attempted to prevent loss or injury", is similar to Article 6(b)(i), but does not require the actual success of prevention or mitigation of the effects, thus making lower demands. Article 60(3), "the offender discloses information about his accomplices and the main circumstances of the offence to the authorities responsible for pursuing offences" corresponds to Article 6(b) (ii) and (iii). In addition, generally applicable circumstances suspending the execution of the penalty or exonerating from criminal liability are provided for.

The **Czech Republic** refers to generally applicable provisions implementing Article 6 of the Framework Decision – Sections 66, 40(3) and 33(i)-(j) of its Criminal Code- without providing the text of the provisions nor giving further details.

The Netherlands states that no transposition of this provision was considered necessary: since under the Dutch Criminal Code there are no minimum sentences, the legal definition of the possibility of reducing the sentence is not required. According to the comments submitted, the judge, when ruling on a case, must take into account the circumstances of the perpetrator. When determining the severity of a sentence, he might take into account the attitude of the perpetrator, for example his leading assistance to the inquiry.

According to the information submitted by **Malta**, there is no provision transposing Article 6 of the Framework Decision.

6.2. Assessment

As a preliminary remark, it is important to bear in mind that transposition of Article 6 is optional. Therefore, Member States' legislation may perfectly comply with the Framework Decision despite their partial or lack of implementation of Article 6.

Of all the countries evaluated above, only Cyprus, Greece, Hungary and Luxembourg have introduced specific mitigating circumstances for the penalty imposed for terrorist crimes, adopting some of the criteria of Article 6. It should be noted that Cypriot, Greek and Luxembourgish provisions do not follow the Framework Decision in requiring that the offender renounces terrorist activity. However, this might be considered as to be implicitly included in their provisions on collaboration.

Slovakia's provisions containing mitigating circumstances are not exclusively applicable to terrorist offences, but lay down the mitigation of a penalty for the offender of any crime, if he or she cooperates in fighting organised groups, criminal gangs or terrorist groups. Although it does not fully correspond to the scope of Article 6, this rule underpins the fight against organised crime and therefore closely follows the Council Resolution of 20 December 1996. Slovenia provides for specific mitigating circumstances for offences committed within a criminal association in addition to a generally applicable rule. As explained above, the Slovenian concept of criminal association does not fully coincide with the notion of a terrorist

group under the Framework Decision so that the mitigating circumstances would not apply to all terrorist groups. Similarly to Greece, Luxembourg and Cyprus, Slovakia and Slovenia have not explicitly introduced the requirement of renouncement of terrorist or criminal activity and, in this sense, the remark made above can be extended to them.

Estonia, Latvia, Lithuania and Poland have referred to general provisions concerning mitigating circumstances which envisage other circumstances than those mentioned in the Framework Decision. Besides, Latvia – like Slovenia – has a general clause that leaves it up to the judge to ascertain whether especial mitigating circumstances are present.

The Criminal Codes of Greece, Luxembourg, Lithuania and Poland contain provisions that give the possibility of exemption from criminal liability; Cyprus and Estonia have provisions which allow prosecution to be suspended under special circumstances.

The Czech Republic, Malta and the Netherlands have not provided for any transposing provision, either specific or general. Since the adoption of legislation to implement Article 6 is optional, this decision is not to be criticised.

7. ARTICLES 7: LIABILITY OF LEGAL PERSONS

As stated in the first evaluation report,³⁵ Article 7 obliges Member States to provide for criminal liability on the part of legal persons for the offences referred to in Articles 1 to 4 of the Framework Decision committed for their benefit by any person with certain leading positions within the legal person³⁶.

7.1. National Systems

Cyprus will implement Article 7 of the Framework Decision through Section 19 of its bill. According to paragraph 1 of the said Section, legal persons should be held liable for a terrorist offence if "any person responsible for the administration or supervision of the legal person carries out the offence". This formula does not specify that the offence should be committed for the benefit of the legal person although it requires the offender to have a leading position which corresponds at least to one of the three alternative criteria respectively set out in Article 7 (1) (a) to (c).

35 See first evaluation report, p. 28.

36 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 benefits 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 by a person 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.

The Cypriot bill does not transpose Article 7 (2). However, Article 7 (3) is expressly implemented as the liability of legal persons is "without prejudice to the criminal liability of any person committing a terrorist offence".

According to the explanations provided by the **Czech Republic**, legal persons would not be criminally liable, with the consequence that it would not always be possible to prosecute legal persons potentially involved in a terrorist crime. This point is acknowledged by the Czech Republic as a weakness in its implementation.

In **Estonia**, Articles 237 and 237¹ to 237³ of the Criminal Code respectively dealing with terrorist offences, offences related to terrorist groups, preparation and call for preparation of terrorist offences and funding and supporting criminal offences, explicitly provide for the criminal liability of legal persons. The grounds for this liability have to be found in the general rules of the code. Under Article 14, criminal liability of legal persons is generally established "for an act which is committed by a body or senior official thereof in the interest of the legal person". This formula includes the grounds for liability included in Article 7(1). Although, concerning the leading position of the individual acting within the legal person, the provision does not explicitly mention any of the alternative criteria set out in (a) to (c), it may be implied that such body or senior official will necessarily have either a power of representation of the legal person, the authority to take decisions on behalf of the legal person, or the authority to exercise control within the legal person. Unfortunately, Article 14 does not provide for implementation of Article 7(2); yet, it fully complies with Article 7(3) in its paragraph 2, stating that "prosecution of a legal person does not preclude prosecution of the natural person who committed the offence".

Greece introduces the liability of legal persons for terrorist offences through Article 41 of Law 3251/2004. Its paragraph 1 reproduces nearly literally the three main criteria of liability established in Article 7(1) and its paragraph 2 refers specifically to lack of control or supervision as an additional criterion as required by Article 7(2). However, the Greek Law does not explicitly implement Article 7(3).

Hungary refers to Article 2 of the Act on the penal measures applicable to legal persons. This provision foresees the criminal liability of legal persons "where the commission of the criminal act was intended for or resulted in the acquisition of a financial benefit for the legal person" and in addition, either the act was committed by a partner entitled to manage or represent the legal person or it was committed by a partner or employee and could have been prevented by the manager if he had fulfilled his supervisory or inspection duties.

According to Section 70¹ in relation to Section 12 of the **Latvian** Criminal Code, "coercive measures may be imposed on a legal person" if the criminal offence has been carried out in the interest of the legal person by a natural person who acts "as the representative or at the instruction of the legal person concerned, or while in the service of the legal person". In addition, the natural person "shall be criminally liable on that account".

In **Lithuania**, Article 20 of the Criminal Code, which deals with liability of legal persons, follows very closely the wording of Article 7 of the Framework Decision, including all three paragraphs. The main difference is that the Lithuanian provision is not limited to terrorist offences: its scope is extended to criminal acts where the liability of legal persons is explicitly provided for in a special provision. This transposing technique is explained by the lack of a limited list of terrorist offences under Lithuanian criminal law. Examination of the

transposing provisions submitted by Lithuania shows that only a few of them do not include the possible liability of legal persons. The offences excluded are those that, because of their nature, appear impossible to be accomplished by legal persons.

The **Luxembourgish** law transmitted does not provide for transposition of this particular provision.

Malta transposes Article 7 (1) and (2) of the Framework Decision through two different provisions of its Criminal Code. Article 121D, which seems to be general in nature, includes the three criteria of Article 7(1) concerning the leading position of the person acting within the legal person, as well as the requirement that the offence was committed for the benefit of the legal person. Article 328J links the latter to the chapter on terrorist offences and complements the general provision with a specific paragraph transposing Article 7(2). However, it is not explicitly laid down that the liability of legal persons shall not exclude individual responsibility, as under Article 7(3) of the Framework Decision.

The Netherlands has not adopted a specific provision to transpose Article 7 of the Framework Decision but refers to the generally applicable Article 51 of its Criminal Code which says that "offences may be committed by physical and legal persons". However, Article 51 does not contain any requirements or criteria for the legal persons to be held liable. On the one hand, this broad formula might cover the grounds for liability set out in Article 7(1) and (2) of the Framework Decision; on the other hand, it is too vague to be informative about the criteria actually being applied to determine the liability of legal persons. According to the explanations submitted to the Commission, the Netherlands applies "extensive criminal liability to legal persons". In addition, information forwarded on relevant case-law helps to define the scope of the provision on more specific criteria, which, at least partially, respond to those of the European Instrument (the failure of leading individuals within the legal person and the fact that the criminal act yields an advantage for the legal person are relevant). Unambiguous is implementation of Article 7(3) of the Framework Decision, since Article 51 lays down the possible coexistence of legal and natural persons' liability.

Article 16 of the **Polish** "Criminal Liability of Bodies Corporate Act of 28 October 2002" sets out the criminal liability of legal persons for terrorist crimes. Article 3 of this instrument includes rules transposing Article 7(1), including the three alternative criteria of letters (a) to (c), as well as (2). Unfortunately, Poland has not provided for any provision transposing paragraph 3.

Slovakia states that the concept of criminal liability of legal persons for terrorist offences within the meaning of the Framework Decision has not been adopted by the National Parliament – neither as part of the Criminal Code nor as a special law. Other possibilities for holding legal persons liable (under civil law and administrative law) are, according to the Slovak information, not really applicable for the purposes of transposing the Framework Decision into Slovak law.

The **Slovenian** Criminal Code refers to a separate instrument for the regulation of liability of legal persons for criminal offences, the Liability of Legal Persons for Criminal Offences Act. Article 4 of this Act sets out the grounds for criminal liability, Article 5 establishes its limits and Article 25 contains a list of criminal offences for which the legal persons may be held liable. In particular, Article 4 introduces very detailed rules composed of four different hypotheses of which paragraph (2) "if its management or supervisory bodies influenced the

perpetrator or enabled him to commit the criminal offence", seems to be the only one corresponding to Article 7(1). This hypothesis is comparable to the criteria of letters (a) and (c) of Article 7 (1), whereas paragraph (4) "if its management or supervisory bodies have omitted obligatory supervision of the legality of the actions of employees subordinate to them", implements Article 7 (2). Article 5(2) of the Slovenian act perfectly transposes Article 7(3). Unfortunately, Article 25 of the Slovenian instrument only refers to a few of the Slovenian provisions transposing Articles 1 to 4 of the Framework Decision. This Article should be amended so that legal persons may be held liable for all terrorist offences defined in Articles 1 to 4 of the Framework Decision.

7.2. Assessment

The Czech Republic and Slovakia have not implemented Article 7 of the Framework Decision while Luxembourg has not provided for any transposing provision.

Latvia makes the criminal liability of legal persons dependant on the criminal liability of a natural person. This additional requirement is not foreseen under the Framework. Therefore, Latvian legislation fails to correctly implement Article 7.

Article 7(1) of the Framework Decision has been implemented by the rest of the Member States – either by providing specific provisions relating to terrorist offences or through generally applicable norms. Very often they have gone beyond the minimum level required by the Framework Decision by either setting more than one criterion or retaining wider criteria.

Only Cyprus, Estonia, Greece and Malta have specifically provided for the liability of legal persons regarding terrorist offences. Cyprus's provision is even wider than the Framework Decision, as it does not specify that the offence should be committed for the benefit of a legal person. In Malta and Estonia, the specific provisions link terrorist offences with general provisions that include the criteria mentioned in the Framework Decision. In addition, Polish legislation states explicitly that the general provisions on criminal liability of legal persons, which include the criteria of Article 7(1) (a)-(c) of the Framework Decision, are to be applied to terrorist crimes.

Estonia, Hungary, Lithuania, Malta, the Netherlands and Slovenia have all referred to generally applicable rules concerning criminal liability of legal persons which include the criteria set out under Article 7(1). The case of the Netherlands stands out, which referred to its case-law as including the criteria of 7(1). The Estonian and Lithuanian Criminal Codes include at least one of the criteria identified in Article 7 (1) in their general rules. Under the detailed Slovenian system, the commission of the offence for the benefit of the legal person does not constitute an absolute condition, since other alternative requirements can apply. However, any possible wider scope would be balanced by a detailed description of each criterion. Furthermore, criminal liability of legal persons is limited to few of the offences covered by Articles 1 to 4 of the Framework Decision.

Lack of supervision or control as a source of liability, as demanded by **Article 7(2)**, has not explicitly been provided for by Cyprus, Estonia or the Netherlands, but in some cases may be interpreted as being covered by more general formulations. Greece, Hungary, Lithuania, Malta, Poland and Slovenia have implemented Article 7(2).

Cyprus, Estonia Lithuania, the Netherlands and Slovenia have transmitted provisions implementing **Article 7(3)** of the Framework Decision, whereas this is not the case for

Greece, Malta and Poland. Hungary has not sent a specific provision implementing Article 7(3) but Article 3 (2) of the Act on penal measures applicable to legal persons leads to the conclusion that the punishment of both legal and natural persons at the same time is perfectly possible.

Furthermore, it must be noted that Greece's provisions only refer to private legal persons while Estonia, Lithuania and Poland expressly exclude the liability of public entities, in particular the state and local authorities and legal persons in public law. Similarly, Latvia expressly excludes the application of coercive measures to the State, local authorities and other legal persons regulated by public law.

8. ARTICLE 8: PENALTIES FOR LEGAL PERSONS

Article 8 obliges the Member States to provide for effective, proportionate and dissuasive penalties for legal persons held liable pursuant to Article 7, the minimum being to impose criminal or non-criminal fines, and moreover provides for optional penalties³⁷.

8.1. National Systems

Only the Cypriot bill, the Greek Law, and the Maltese and Estonian Criminal Codes contain special provisions concerning penalties for legal persons in the context of terrorist crimes.

In Section 19 (2) of its bill, **Cyprus** specifically stipulates the removal of the legal person from the relevant register or the temporary suspension of its operations, which corresponds to the optional sanction included in Article 8 (b) of the Framework Decision. There is no express reference to the imposition of fines; however, this might be contained among the penalties to which Section 19 generally refers.

Articles 237 and 237¹ to 237³ of the **Estonian Criminal Code** - respectively dealing with terrorist offences, offences related to terrorist groups, preparation and call for preparation of terrorist offences and funding and supporting criminal offences - state that legal persons held liable for terrorist offences shall be punished by compulsory winding-up. These articles presumably are a *lex specialis* to Article 46, which contains the generally applicable provision on compulsory dissolution of legal persons. This corresponds to the optional penalty laid down in Article 8(d) of the Framework Decision. Only Articles 237² and 237³, however, refer to fines, the minimum obligation imposed by Article 8 of the Framework Decision. Nevertheless, Estonia alludes to the generally applicable Article 44(8), dealing with pecuniary punishments concerning legal persons and allowing the court to "impose a pecuniary punishment of fifty thousand to two hundred and fifty million kroons", (approximately

37 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.

between 3.196 and 15.976.822 euros), which can also constitute "a supplementary punishment together with compulsory dissolution".

Malta has created an exemplary system of penalties for legal persons through two specific transposing provisions. According to its Article 328J, legal persons shall "be liable to the punishment of a fine of not less than 5,000 liri and not more than 1,000,000 liri" (approximately between 11.649 and 2.329.731 euros). Article 328K adds the possibility of additionally imposing the suspension or cancellation of any licence, permit or authority to engage in commercial activity, the temporary or permanent closure of any establishment used for the commission of the offence and the compulsory winding-up of the body corporate. Thus, Malta implements the optional penalties referred in Article 8 (b), (d) and (e).

Greece foresees specific penalties for legal persons liable for terrorist offences in Article 41 of the Law 3251/2004. In particular, it foresees "permanent or provisional deprivation of the undertaking's authorisation", "permanent or provisional exclusion from entitlement to public benefits" and "administrative fine of amount ranging from 20,000 to 3,000,000 euros". In addition, it clarifies the circumstances that must be taken into account for the cumulative or alternative imposition of the sanctions as well as for their computation: the seriousness of the offence, the degree of culpability, the financial status of the legal person and the particular circumstances of each case.

The other Member States implement Article 8 of the Framework Decision through general provisions on legal persons or explicitly applicable to them in the case of the Netherlands.

Hungary refers to Article 3 of its Act on the penal measures applicable to legal persons. This provision foresees the winding up of the legal person, the restriction of its activities and a fine as possible penalties.

Sections 70² to 70⁸ of the **Latvian** Criminal Code implement Article 8 with detailed and far reaching provisions. In addition to providing for pecuniary penalties, as required by the Framework Decision, the Code allows, in particular, for the winding-up of the legal person, the restriction of its rights and the confiscation of its property. These four possibilities are legislated for as basic penalties to be imposed alternatively. In addition to these basic punitive measures, confiscation of property and compensation for damages may be imposed.

The **Lithuanian** Criminal Code perfectly transposes Article 8 of the Framework Decision through its Articles 43, 47, 52 and 53. In particular, Article 43 enumerates the following possible penalties: fines, limitation of the activities of the legal person and winding-up of the legal person. Besides providing for fines, as required by the Framework Decision, it includes penalties laid down as optional under Article 8 (b) and (d). Articles 47, 52 and 53 respectively cover each of the three types of penalty. The fine may go up to 10,000 MGL (approximately 2.895 euros).

The **Netherlands** implements Article 8 of the Framework Decision through Article 23 of its Criminal Code which establishes six different categories of fines of increasing amounts up to a maximum of 450.000 euros under paragraph 4. According to this provision, if the fine category determined for the offence does not permit appropriate punishment, the judge may impose a fine of up to the maximum of the next highest category.

Poland has a wide range of penalties that appear divided into obligatory, or those that "shall" be imposed, under Articles 7 and 8 of the Polish Criminal Liability of Bodies Corporate Act

of 28 October 2002, and optional, or those that “may” be imposed under Article 9 of the same instrument. Article 7 lays down "a fine ranging from PLN 1.000 to 20.000.000 (approximately between 258 and 5.154.130 euros), insofar as the amount does not constitute more than 10% of the revenue or expenditure in the financial year during which the offence for which it is liable was committed". Article 8 deals with confiscation of items connected to the offence and benefits resulting from it and Article 9 enumerates other penalties, including those of Article 8 (a) and (b) of the Framework Decision. It is interesting to note that winding-up orders are explicitly excluded.

Through its Articles 12 to 15, the **Slovenian** Liability of Legal Persons for Criminal Offences Act has set out a system of penalties including fines between 500.000 and 150.000.000 tolar (approximately between 2.086 and 625.753 euros), expropriation of property and, as laid down under Article 8(d) of the Framework Decision, winding-up orders. Furthermore, according to Articles 18 to 20 of this Act, security measures such as confiscation of objects, publication of judgements and prohibition of a specific commercial activity, the latter corresponding to Article 8(b) of the Framework Decision, may be additionally imposed on legal persons.

Since the **Czech Republic** and **Slovakia** do not provide for the criminal liability of legal persons within the meaning of the Framework Decision, they also have not adopted provisions on the related penalties. Similarly, **Luxembourg** has not transmitted any provisions implementing Article 7, nor has it adopted legislation transposing Article 8.

8.2. Assessment

All the evaluated Member States that have implemented provisions on penalties for legal persons fulfil the minimum obligation of Article 8 to provide for criminal or non-criminal fines. They have either adopted a specific provision in relation to terrorist offences, i.e. Greece, Cyprus and Malta, or referred to general provisions, i.e. Hungary, Latvia, Lithuania, the Netherlands, Poland and Slovenia. In Estonia, compliance with Article 8 requires the combination of both the specific provision dealing with liability of legal persons for terrorist offences, some of which only lay down dissolution of the legal person, and the general rule under which pecuniary penalties may be imposed on legal persons in addition to the dissolution order. It should be noted that the full implementation of Article 8 requires the correct transposition of Article 7. Therefore, Latvian transposition is hindered by the incorrect implementation of Article 7.

The upper limit of the stipulated fine varies from approximately 2.895 euros in Lithuania to around 3,000,000 euros in Greece³⁸. Greece, together with Poland explicitly obliges the judge to take into consideration the financial situation of the legal person (Poland refers, in particular, to the revenue or expenditure of the legal person) when fixing the amount of the fine. The Framework Decision has specified that the fine should be "effective, proportionate and dissuasive" and taking into consideration the economic resources of legal persons at a given moment constitutes an important factor to comply with such request

Most of the named Member States also apply some of the other optional penalties included in Article 8 of the Framework Decision. Thus, a penalty corresponding to Article 8(a) is applied by Greece and Poland; a penalty corresponding to Article 8(b) is laid down by Cyprus,

38 However, it should be noted that not all Member States have provided for minimum or maximum fines.

Greece, Hungary, Latvia, Lithuania, Malta and Poland; a penalty corresponding to Article 8(d) is set out by Estonia, Hungary, Lithuania, Malta, Slovenia and Poland and, finally, a penalty corresponding to Article 8(e) is envisaged by Malta.

Some of the evaluated Member States stipulate additional penalties that are not mentioned in the Framework Decision, such as confiscation or expropriation (in Latvia, Poland, and Slovenia), or publication of the judgement (in Poland and Slovenia).

9. ARTICLE 9: JURISDICTION AND PROSECUTION

As set out in the first evaluation report³⁹, Article 9 regulates the cases in which Member States are obliged to take jurisdiction over the offences referred to in Articles 1 to 4 of the Framework Decision⁴⁰.

9.1. National Systems

Only Malta has implemented Article 9 through a specific provision dealing with the jurisdiction on terrorist offences. Estonia, Hungary, Latvia, Poland and Slovenia referred to generally applicable rules, while Greece and the Netherlands refer to terrorist crimes within its general provisions. Cyprus and Lithuania combine both general and specific provisions. Furthermore, some Member States (Cyprus, Lithuania, Poland, Slovenia and Slovakia) submitted rules establishing universal jurisdiction in relation to terrorist offences or at least to

39 See first evaluation report, p. 30.

40 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.

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.

some of them. It is interesting to note that Slovenia has parallel criteria to set up jurisdiction on respectively physical and legal persons. The grounds of territorial or extraterritorial jurisdiction are thus implemented by both provisions referring to physical and legal persons.

Unfortunately, the Czech Republic has not submitted any national provision dealing with jurisdiction or provided equivalent information and therefore it cannot be evaluated.

9.2. Article 9 (1)(a), (b) and (4)

All Member States evaluated on this score except Greece and Luxembourg have provided the Commission with the relevant national provisions implementing Article 9(1)(a). This provision contains the territoriality principle, which Article 9(1)(b) extends to vessels and aircraft registered in the Member State. Only Malta sent an explicit provision – Article 328M(e) – covering Article 9(4), which clarifies for offences related to terrorist groups that it should not make a difference where the terrorist group is based or pursues its criminal activities. Nevertheless, this paragraph can also be seen as an extension of the territoriality principle, and, as the first evaluation report states, it is presumed that all Member States comply with these provisions, as territoriality is the primary basis for criminal jurisdiction⁴¹.

9.3. Article 9(1) (c) - (e)

As clarified by the first evaluation report, Article 9(1) (c) – (e) obliges the Member States to establish extra-territorial jurisdiction where the offender is one of its nationals or residents, or where the offence is committed for the benefit of a legal person established in its territory or against its institutions or people or 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 State⁴².

Although **Cyprus** does not explicitly implement Article 9(1)(c) and (d), Section 4(2) of the 2006 Terrorism and Related Matters Bill in relation to Article 5(1)(e) of its penal code covers this provision, establishing jurisdiction for all offences referred to in Part II (termed terrorist offences - covering most offences listed in Articles 1 to 4 of the European instrument) committed "in any foreign country by any person". Article 9(1)(e) is implemented by Section 4(1) of the bill concerning European institutions or bodies. Once again, Section 4(2) of the bill in connection with Article 5(1)(e) of its Penal Code will cover the remaining cases referred to under points (e).

Article 7(1) of the **Estonian** Criminal Code implements Article 9(1)(c), establishing jurisdiction when the perpetrator is an Estonian citizen. Article 9(1) (d) does not seem to be covered by the Estonian Criminal Code. Article 9 of the Estonian Criminal Code partly implements Article 9(1)(e) of the Framework Decision, laying down the "applicability of Estonian penal law to acts against the legal rights of Estonia" that cause damage to the Estonian population or interfere with the exercise of state authority or the defence capability of Estonia. Estonia has not transmitted provisions implementing the second case referred to under point (e), concerning offences against the European institutions or bodies.

41 See first evaluation report, p. 31.

42 See first evaluation report, p. 31.

Greece has included terrorist offences among those committed abroad that are always punishable under Greek Criminal Law, by amending Article 8 of its Criminal Code. According to this provision terrorist offences committed abroad are punishable under Greek Criminal Law, irrespective of the nationality of the offender and the law of the country where the offence has been committed. This provision leads to universal jurisdiction over terrorist offences, complying with Article 9 (1) (c). Furthermore, the Greek provision may be also interpreted as covering the cases referred to in Article 9 (1) (d) and (e).

Article 3(2) of the **Hungarian** Criminal Code partially implements Article 9(1) (c) establishing jurisdiction when the offender is a Hungarian national. Although jurisdiction over terrorist offences committed by residents is not foreseen, some cases could be covered by Article 4(1) of the Criminal Code which establishes extraterritorial jurisdiction over acts committed by non-national Hungarian nationals punishable both in Hungary and in the country where they are committed. It must be noted that this last provision seems likely to create positive conflicts of jurisdiction. Unluckily, Hungary has not transmitted provisions complying with Article 9(1) (d) and (e) although Article 4(1) could also cover its implementation in some cases.

Latvia complies with Article 9(c) through Section 4(1) of its Criminal Code. Unfortunately, the case referred to under point (d) of the same paragraph does not seem to be included. Section 4(3) speaks of jurisdiction over "aliens and stateless persons (...) who have committed a serious or especially serious crime in the territory of another state which has been directed against the Republic of Latvia or the interests of its inhabitants". Assuming that the Sections implementing Articles 1 to 4 of the Framework Decision are contained in one of these categories of offences, this wording partly covers Article 9(1)(e). It does not, however, apply to offences against the European institutions or bodies.

In **Lithuania**, Article 9(1)(c) is perfectly implemented by the general provision of Article 5 of the Lithuanian Criminal Code. However, point (d) does not have an equivalent in Lithuanian law and the same applies to point (e). Article 7 of the Criminal Code does provide for jurisdiction for crimes laid down in international treaties, in particular terrorist acts under Article 250, hijacking, seizure of hostages under Articles 256 and 257 and crimes related to the disposal of (...) toxic or potent substances under Articles 259 to 269. This provision, by establishing universal jurisdiction for some particular crimes, would, therefore, cover the cases referred to under (d) and (e) of Article 9 (1), however only partially, since it does not apply to all offences referred to in Articles 1 to 4 of the Framework Decision.

The **Maltese** Criminal Code transposes Article 9 of the Framework Decision through a specific provision, Article 328M, which through its points (b), (d) and (f) - covers the jurisdiction criteria of Article 9 (1) (c), (d) and (e) of the Framework Decision.

The Netherlands partly implements the case referred to in point (c) through the existing Article 5 and the amended Article 5a of its Criminal Code. Article 5 establishes jurisdiction for Dutch citizens only for some of the offences implementing Articles 1 to 4 of the Framework Decision, whereas Article 5a has been amended so that it establishes jurisdiction for terrorist crimes committed outside the territory of the State by any alien who has a permanent domicile or place of residence in the Netherlands. Article 4 of the Criminal Code covers most of the remaining offences not yet covered by Article 5 and 5 a, even though setting up additional requirements in some cases. With regard to point (d), although it is not expressly considered, according to the jurisprudence of the Supreme Court of the Netherlands,

a Dutch legal person registered in the country is classified as Dutch citizen. The explanation provided states that further to this jurisprudence "a foreign legal person registered in the Netherlands may be classified as resident". If this person commits a crime, it would be held liable regardless of the question whether the legal person has received any benefit. Article 9(1)(e) of the Framework Decision has been implemented by the amended Article 4, Section 15 of the Criminal Code.

Article 109 of the **Polish** Criminal Code implements Article 9(1)(c), establishing jurisdiction when the offender is a Polish citizen who commits offences abroad. The case referred to in Article 9(1)(d) is not expressly implemented. Article 110(1), first alternative, refers to aliens that commit offences abroad against "the interests of the Polish Republic, Polish citizens, Polish bodies corporate or Polish entities", thus partly covering the case referred to under point (e), without mentioning the offences against the European institutions or bodies. However, the second alternative of Article 110(1) completes the Polish jurisdiction system setting out a universal principle: in particular, it extends Polish jurisdiction to terrorist offences committed abroad by foreigners and therefore complies with the second case referred to under points (e) and (d). However, it must be noted that this universal jurisdiction only concerns terrorist offences *stricto sensu* and not all offences referred to in Articles 1 to 4 of the Framework Decision. Furthermore, the scope of the principle depends on implementation of the definition of terrorist crimes, which was criticised above in the assessment of implementation of Article 1.

Slovakia implements Article 9(c) of the Framework Decision through Section 18 of its Criminal Code. Since Slovakia has not yet transposed the criminal liability of legal persons within the meaning of the Framework Decision, point (d) is not explicitly implemented. The case referred to under Article 9 (1)(e) is not expressly included either, although under Section 19 most provisions implementing Articles 1 to 4 of the Framework Decision are punishable under Slovak law - also when committed abroad by foreigners and stateless persons not permanently resident in the Slovak Republic.

Article 122 of the **Slovenian** Criminal Code implements Article 9(1)(c). As stated above, Slovenia has parallel criteria to set up jurisdiction on respectively physical and legal persons. Thus, Article 3 of the Liability of Legal Persons for Criminal Offences Act provides for several grounds, including "if the legal person has its head office in the territory of the Republic of Slovenia or exercise its activity therein" under paragraph (2). Article 9(1) (e) of the Framework Decision is implemented by Article 123 of the Criminal Code and Article 3 of the Liability of Legal Persons for Criminal Offences Act. Nevertheless, none of them deal with offences committed against the European institutions or bodies.

Luxembourg has not transmitted provisions implementing Article 9 (1) (c) (e).

9.4. Positive conflicts of jurisdiction, Article 9(2)

Article 9(2) contains rules to be implemented for the solving of positive conflicts of jurisdiction between Member States. Only **Lithuania** has transmitted a provision – Article 68 of its Code of Criminal Procedure – that deals with positive conflicts of jurisdiction, and it contains the two first criteria listed in Article 9(2) of the European instrument, territoriality and nationality. It does not guarantee, however, respect of the priority order established in the Framework Decision.

9.5. Article 9(3)

As stated in the first evaluation report, Article 9(3) sets up the necessary jurisdiction for the application of the principle “*aut dedere aut iudicare*”, which obliges Member States 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)⁴³.

Cyprus, Greece and Hungary have not transmitted information on a provision implementing Article 9(3).

Malta implements Article 9(3) through the specific Article 328M(c) of its Criminal Code, whereas in **Estonia, Slovakia and Slovenia**, Article 9(3) is implemented respectively by the general provisions of Article 7(1), Section 20(2) and Article 123(2) of their Criminal Codes.

Section 4(4) of the **Latvian** Criminal Code constitutes a general clause which aims to cover negative conflicts of jurisdiction by extending the Latvian jurisdiction to criminal offences committed abroad by aliens and stateless persons and for which they are not held liable in the territory of another State, in cases provided for in international agreements binding Latvia. Nonetheless, the extension of Latvian jurisdiction to cases where extradition is refused has not been provided for.

With regard to Article 9(3), **Lithuania** states that it has implemented the system of handing-over persons under the European Arrest Warrant and, therefore, the hand-over of persons is possible in many cases. Furthermore, it argues, the remaining cases would be covered by the principle of universal jurisdiction under Article 7 of its Criminal Code, which – as stated before - does not, however, cover all offences referred to in Articles 1 to 4.

Luxembourg implements Article 9(3) of the Framework Decision through the amended Article 7-4 of the Code of Criminal Procedure, extending jurisdiction over terrorist offences committed abroad, provided that an extradition request has been introduced and the requested person has not been extradited.

The **Netherlands** has added a specific paragraph on terrorist offences in Article 4a of the Criminal Code, implementing Article 9(3).

Article 110(2) of the **Polish** Criminal Code, applicable to all criminal offences, explicitly sets out Polish jurisdiction over offenders when it has been decided not to extradite them; however, this rule is more restrictive than Article 9(3), including additional requirements (i.e. minimal penalty of the offence of two years' imprisonment, residence in Poland of the offender). However, similarly to Lithuania, Article 110(1) of the Polish Criminal Code, which lays down a universal jurisdiction for terrorist offences committed abroad, partially covers the case referred to in Article 9(3) without referring to the particular case of refusing extradition.

43 See first evaluation report, p. 31.

9.6. Assessment

As stated above, the principle of territoriality, contained in Article 9(1)(a), (b) and (4) of the Framework Decision is assumed to have been implemented by all Member States evaluated.

From the information received, most of the evaluated Member States have also - at least partially – implemented Article 9(1) (c) - (e). Unfortunately, Luxembourg has not transmitted information on its implementing provisions.

The principle of active personality in Article 9(1)(c) has been perfectly implemented by Cyprus, Greece, Latvia, Lithuania, Malta and Slovakia, whereas Estonia, Hungary, Poland and Slovenia do not generally cover residents. As stated above, the Netherlands' provision on jurisdiction for crimes committed by its citizens does not cover all offences contained in Articles 1-4 of the Framework Decision.

Only Malta has an explicit provision implementing Article 9(1)(d), concerning offences committed for the benefit of a legal person established in its territory. The Netherlands has referred to the jurisprudence of its Supreme Court. Slovenia has transferred an implementing rule, but it seems to exclude jurisdiction over foreign legal persons when offences are committed abroad and the target is not the Republic of Slovenia, a citizen therein or a domestic legal person. In Cyprus, Greece, Lithuania and Poland, Article 9(1)(d) may be seen as contained in their universal jurisdiction clauses concerning terrorist offences.

The principle of passive personality in Article 9(1)(e) of the Framework Decision has been explicitly implemented by Cyprus, Estonia, Latvia, Malta, the Netherlands and Slovenia. Of these Member States, only Malta and the Netherlands have implemented this provision to its full extent. This being said, the Estonian, Latvian, Polish and Slovenian provisions implement this rule but fail to include offences against the European institutions or bodies, whereas Cyprus fails to implement the case of offences against the institutions or people of its State. Greece, Lithuania and Slovakia have not expressly transposed point (e), but it might be covered by the rule establishing universal jurisdiction for terrorist offences, which also applies to the missing criterion in the Cypriot and Polish provisions.

As stated in the first evaluation report, the introduction of extended jurisdictional rules also obliges Member States to introduce rules to solve positive conflicts of jurisdiction that might occur between them. Article 9(2) establishes a list of factors that must be sequentially taken into account to this end. However, only Lithuania has partially transposed this provision in Section 68 of its Criminal Code. It is important to insist on the fact that 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.⁴⁴

Article 9(3) of the Framework Decision has been expressly implemented by Estonia, Luxembourg, Malta, the Netherlands, Slovakia and Slovenia. In Cyprus, Greece, Lithuania and Poland, this rule may be covered by the clauses on universal jurisdiction. Hungary and Latvia have not provided transposing provisions.

44 See first evaluation report, p. 34.

Attention must be paid in the case rules referred to by Member States establish universal jurisdiction in relation to "terrorist offences". Even though this might constitute a good method to cover all cases covered by the Framework Decision without transposing them explicitly in separate provisions, it must be ensured that they do actually refer to all offences contained in Articles 1-4 of the Framework Decision, which implies perfect implementation of these provisions and, in particular, of the definition of terrorist offences.

10. ARTICLE 10 – PROTECTION OF, AND ASSISTANCE TO, VICTIMS

As stated in the first evaluation report⁴⁵, Article 10(1) of the Framework Decision obliges Member States to ensure that investigation and prosecution of offences covered by the Framework Decision are not dependant on a report or accusation made by the victim, at least if these offences are committed on the territory of the Member State⁴⁶. Similarly to the first evaluation, only some Member States have provided information on Article 10(1). In particular, Estonia, Poland and Slovakia referred to specific articles setting out the principle of prosecution "ex officio" – Estonia referred to Articles 193-197 of its Code of Criminal Procedure, Poland to Article 10 of its Code of Criminal Procedure and Slovakia to Section 2(3) of its Criminal Code. Other States (the Netherlands, Lithuania, Malta and Slovenia) have stated that their law contains the principle of prosecution of criminal offences independent of a report or accusation from the victim. As regards the Member States that have not provided any information concerning this point (Cyprus, the Czech Republic, Greece, Hungary, Latvia and Luxembourg.), it can be presumed that they have a similar principle.

Article 10(2) of the Framework Decision obliges the Member States to take, if necessary, all measures possible to ensure appropriate assistance for the families of the victims – in addition to the measures laid down in the Council Framework Decision on the standing of victims in criminal proceedings⁴⁷. Further to the first evaluation report, the assessment is focussed on additional measures to assist victims' families, since implementation of the Framework Decision on the standing of victims is the subject of an independent report⁴⁸.

Hungary, Luxembourg, Latvia, Poland, Malta and Slovakia have not provided any information on transposition of Article 10(2) whereas the information provided by the **Czech Republic** states its intention not to treat separately victims of terrorist offences and of other serious criminal offences. **The Netherlands** stated that existing arrangements for the protection of victims are generally applicable and therefore also applicable to terrorist victims.

Cyprus, Greece and Lithuania have referred to relevant national provisions without transmitting them. Cyprus has stated that Section 25 of the **Cypriot** bill specifically lays down the application of the 1997 Compensation of Victims of Violent Crimes Law, if any person suffered serious physical injury or health problems as a direct result of a terrorist offence

45 See first evaluation report, p. 35.

46 Article 10 - Protection of, and assistance to, victims

1. Member States shall ensure that investigations into, or prosecution of, offences covered by this Framework Decision are not dependent on a report or accusation made by a person subjected to the offence, at least if the acts were committed on the territory of the Member State.

47 2. In addition to the measures laid down in the Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings (OJ L 82, 22.3.2001, p.1), each Member State shall, if necessary, take all measures possible to ensure appropriate assistance for victims' families.

48 See first evaluation report, p. 35.

whereas **Lithuania** refers to the Law on Compensation of Damage Caused by Violent Crimes and the Law on Legal Assistance Guaranteed by the State and **Greece** to Article 42(6) of its Law 3251/2004 providing for the application of Article 9 and 10 of its Law 2928/01 –rules on witness protection- to terrorist offences.

Only Estonia and Slovenia have actually transmitted the implementing provisions. **Estonia** refers to the Victims Support Act, dealing with assistance to victims and also stipulating financial compensation to victims' dependants, and to the Witness Protection Act, which also places family members and close relatives of protected persons under protection. **Slovenia** sent detailed information regarding witness protection, including provisions from the Criminal Procedure Act and the Witness Protection Act, but has not forwarded the relevant provisions on the protection of victims' families.

In conclusion, compliance with Article 10(1) of the Framework Decision by all Member States evaluated can be assumed even if only some of them have specific implementing provisions. Indeed, the prosecution "ex officio" constitutes a general principle of criminal law and although, as mentioned above, various legal systems contains exceptions, considering that terrorist offences are particularly serious, presumably they are always treated as public offences for the purposes of investigation and prosecution.

Unfortunately, an evaluation of implementation of Article 10(2) – in particular the measures to assist the victims' families – has only been possible as regards Estonia and Slovenia, the sole Member States that have actually transmitted implementing provisions. Interestingly enough, both Member States make reference to their rules on witness protection - Slovenia actually only provided information on provisions dealing with witness protection. Although there may be some cases of overlap between witnesses needing protection and victims' families, the logic underlying witness' protection and assistance to victims' families is completely different. Indeed, the former sets out to avoid future criminal offences against witnesses while the latter aims to provide support to the family of the victim of a terrorist offence that has already been committed. Therefore, full compliance can only be confirmed in the case of Estonia.

Detailed analysis of Member States evaluated for the second time

INTRODUCTION

At the time of the first evaluation report, Germany and Ireland had provided the Commission with draft legislation, which has entered into force in both Member States in the meantime⁴⁹. Since there have been no relevant changes concerning the contents of the drafts, their implementation will not be evaluated again, unless the Member State has submitted additional information on a particular Article⁵⁰. Austria has only commented on Article 3 and announced legislative changes concerning the liability of legal persons. Belgium has commented on its implementation of Articles 2, 3, 4, 7, 9 and 10 of the Framework Decision. Denmark has

49 In Germany: Act of 22 December 2003 (BGBl. I, p. 2836), entered into force on 28 December 2003; in Ireland: Criminal Justice (Terrorist Offences) Act 2005, entered into force on 8 March 2005.

50 For changes in the numbers of sections due to the legislative process, see the table at the end of the document.

expressed its views on the assessment made by the Commission of its transposition of Articles 2, 3, 4, 5, 7, 8, 9 and 10. Finland has responded to the criticism of its implementation of Articles 2 and 5. France has undertaken legislative amendments concerning implementation of Articles 2(2)(a), 5(3) and 9(3) and has submitted further comments on Articles 1 and 4 of the Framework Decision. Italy has adopted additional measures further to the criticism made in the first evaluation report concerning Articles 1 and 2 and has forwarded explanations on Article 3. Portugal has clarified some points concerning transposition table and provided additional information on general rules of its Criminal Code concerning Articles 4 and 9 of the Framework Decision as well as laws on protection of families of victims. Spain has commented on its implementation of Article 7 of the Framework Decision. Sweden has provided further information particularly with regard to implementation of Articles 2, 5, 7, 8 and 9 – and for clarity's sake on Articles 3, 4 and 10 – of the Framework Decision. The United Kingdom has responded to the criticism made concerning its non-compliance with Article 5(2).

1. ARTICLE 1: TERRORIST OFFENCES

The first evaluation report concluded that eight Member States (Austria, Belgium, Denmark, France, Finland, Portugal, Spain and Sweden) complied with Article 1 in the sense that they have specifically proscribed terrorist offences as a separate category of crimes while Ireland was in the process of amending its legislation to this end. It stated that Italy and the United Kingdom had criminalised only a limited number of specific terrorist offences and then qualified common offences by reference to terrorist intent either as an aggravating circumstance (in Italy) or by applying a general definition of terrorism (United Kingdom). Germany was said not to comply with Article 1 of the Framework Decision⁵¹.

Concerning **Germany**, the first evaluation report criticised that the – in the meantime amended – Section 129a of the Criminal Code defined terrorist offences only in relation to forming or participating in an organisation, and did not cover an individual who commits one of the defined offences with the defined intent⁵². Germany has responded to this criticism that the individual offences specified in Section 1(1)(a) to (i) of the Framework Decision are defined as offences in German law and – according to Section 46(1) in relation to (2) of the Criminal Code – it would be the obligation of the judge to consider the offender's motivation and intention at the time of the offence. The effect would be that a terrorist intent is an essential factor for sentencing purposes. However, this argumentation is not convincing concerning implementation of Article 1 of the Framework Decision, which expressly demands that the listed forms of behaviour "shall be deemed to be terrorist offences". The fact that the judge is subject to a general obligation to take into consideration the offender's motivation and intention does not fulfil this requirement, especially since "terrorist intention" is neither defined in Section 46(2) of the Criminal Code, nor was it stated that it is fully determined in case-law.

The first evaluation report had criticised that **Italy** did not have a general legal definition of terrorism or terrorist offences⁵³. As regards the subjective element in particular, it stated that, although not following the wording of the Framework Decision, the indeterminate formula

51 See first evaluation report, p.7

52 See first evaluation report, p.5 and 7.

53 See first evaluation report, p. 6.

used by Italy seemed wide enough to cover the required intent⁵⁴. However, in the meantime Article 270 of the Criminal Code has been amended and presently contains a general definition of terrorist purpose, almost identical to that of Article 1(1) of the Framework Decision⁵⁵. Nevertheless, the deficiencies affecting the objective element of the definition remain the same. Only Articles 280, 280bis and 289bis of the Italian Criminal Code are expressly linked to terrorist purposes, while - as reflected in the annexed table - Italy has additionally referred to ordinary offences corresponding to forms of conduct 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 crimes⁵⁶.

Concerning the **Irish** legislation, amended in the meantime, few things can be added to the assessment carried out under the first evaluation report. Indeed, Section 6 of the Criminal Justice Act 2005 provides for terrorist offences as a separate category of offences by reference to the definition of terrorist activities set out in Section 4 of the same instrument. The said definition includes both a subjective element, which reproduces the wording of the Framework Decision, and an objective element by reference to the offences mentioned under Schedule 2, Part 1, of the same Act. These include the practical totality of the types of behaviour listed in the European instrument although some doubts remain concerning the compliance with letters (g) and (h), since some of the forms of conduct described are not expressly covered.

The first evaluation report expressed doubts with respect to those Member States which use indeterminate concepts as an intentional element (such as altering the constitutional order or public peace). It questioned in particular, whether or not their definitions would leave loopholes in relation to international organisations, where not explicitly mentioned (for example, in the provisions referred to by Spain, France or the United Kingdom)⁵⁷. Unfortunately, none of these countries have commented on this question.

Furthermore, the Commission expressed some doubts as to whether all the forms of conduct related to weapons (especially transport, research and development) are criminalised in Spain, France, Austria, Italy or Portugal⁵⁸.

The detailed explanation of **France's** relevant provisions has shown that it does outlaw the transport of weapons; however this explanation has not been able to dispel the Commission's doubts concerning the existence of sufficient provisions on research and development.

Italy has additionally referred to Articles 1, 2 and 4 of Law 895 of 2 October 1967. Whilst these provisions cover the transport of weapons, they do not criminalise research into and development of weapons.

The first evaluation report also doubted 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 Kingdom⁵⁹.

54 See first evaluation report, p. 8.

55 Introduced by Decree-Law 144 of 27 July 2005, converted by Law 155 of 31 July 2005.

56 See first evaluation report, p. 6.

57 See first evaluation report, p. 8.

58 See first evaluation report, p. 9.

Italy submitted Article 56 of the Criminal Code on attempted crime as the national provision implementing Article 1(1)(i). However, the Framework Decision, which criminalises threats and attempt under separate provisions, clearly shows that the latter does not cover the former. Furthermore, threatening to commit any of the acts under Article 1(1) (a) to (h) is a terrorist offence as such under the Framework Decision.

The further information provided by Member States, consisting of either additional provisions or more detailed explanations on their legislation, allows the Commission to note a higher level of compliance with Article 1 than at the time of the first evaluation report. However, none of the submitted comments entirely dispels the doubts expressed by the Commission in that report. Only the Irish legislation, amended in the meantime, confirms its compliance with Article 1. Thus, it can be concluded that nine Member States (Austria, Belgium, Denmark, France, Finland, Ireland, Portugal, Spain and Sweden) presently comply with Article 1 in the sense that they have specifically criminalised terrorist offences as a separate category of crimes.

2. ARTICLE 2: OFFENCES RELATING TO A TERRORIST GROUP

2.1. Article 2(1)

In relation to paragraph (1), the first evaluation report concluded that some Member States did not define terrorist groups (France, Germany and Italy) or explicitly included them under the wider categories of illegal or proscribed organisations (Spain, United Kingdom). Others had adopted the definition of the Framework Decision (Belgium, Ireland, and Finland) or closely followed it (Austria, Portugal).⁶⁰

France has referred to Article 421-1-1 of its Criminal Code under which participating in a group formed or an association established in order to prepare terrorist acts also constitutes a terrorist act. This provision therefore contains the definition of the notion "terrorist group".

Germany has specified that there is no necessity for a statutory definition of terrorist group under German law. The concept of group is fully defined in case-law and academic writing, while Section 129a of the Criminal Code specifies when such a group is a terrorist one, containing the intentional element and corresponding to all forms of behaviour listed in Article 1(1) of the Framework Decision.

2.2. Article 2(2)

As regards implementation of paragraph (2), the first evaluation report concluded that ten Member States (Austria, Belgium, Finland, France Germany, Ireland, Italy, Portugal, Spain and the United Kingdom) complied with this Article in the sense they have legislation that separately criminalises directing or participating in terrorist groups. It was that in Denmark and Sweden, directing terrorist groups or participating in their activities were not specifically criminalised. The conclusion at that time was that Denmark did comply with this provision to the extent that some acts of participation had been criminalised separately⁶¹.

59 See first evaluation report, p. 9.

60 See first evaluation report, p. 10.

61 See first evaluation report, p. 10.

Before commenting on the Member States' replies to the first evaluation report, the Commission's interpretation of Article 2 of the Framework Decision is once again referred to, since this is a prerequisite to understanding the Commission's appreciation of whether or not the provision has been fully implemented. As stated in the first evaluation report⁶², 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 Decision⁶³, it still derives from the logic of the instrument - without such criminalisation as separate criminal facts the provisions on inciting, aiding and abetting would not make much sense. Also, these offences should be assigned specific minimum-maximum penalties in keeping with the Framework Decision, may lead to the liability of legal persons and 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 cannot 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 excessive criminalisation, 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.

In view of this interpretation, the first evaluation reports concludes that, since the **Danish** Criminal Code does not explicitly criminalise directing or participating in terrorist groups but only some acts of participation are specifically punished, it only partially complies with the Framework Decision. Denmark expressed its disagreement with the above interpretation of Article 2(2) and remains of the opinion that Section 114 of its Criminal Code, defining terrorist offences in relation to Section 23 of the same instrument on participation, fully complies with the requirements of the Framework Decision.

Similarly, the first evaluation report stated that **Sweden** had not separately criminalised 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 Code⁶⁴. Sweden has further elaborated on this argumentation, making reference to the wide scope of the provisions mentioned, in particular the fact that they criminalise certain acts at an earlier stage than required by the Framework Decision.

It is important to note that, although both Member States claim to comply with Article 2(2) through their general rules on authorship and complicity, they do so by using very different arguments. Sweden defends its respect of the Framework Decision by insisting on the broad scope of its provisions on attempt, preparation, conspiracy and complicity. In particular, it has clarified how the scope of its provisions on preparation and conspiracy goes beyond the link

62 See first evaluation report, p. 14.

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

64 See first evaluation report, p. 13.

to a specific criminal offence, so that time, place and other circumstances do not need to be specified. Denmark, for its part, opposes the interpretation of Article 2(2) defended by the Commission in its first evaluation report and argues that this provision contains a requirement for intended participation in certain terrorist acts. In the Danish view, a link to certain terrorist offences is needed, and Danish general rules on participation would thus cover the scope of the provision. Contrary to Sweden, which intends to prove its compliance by stressing the wide scope of its national provisions, Denmark tries to do so by proving a narrower scope of Article 2(2).

The Danish interpretation of Article 2(2), which is that the provision would require the intended participation in certain terrorist acts cannot be accepted. As the first evaluation report clearly explained and has been repeated above, directing a terrorist group or participating in its activities as laid down in the Framework Decision goes beyond the contribution to a specific offence. Section 114 in relation to Section 23 of the Danish Criminal Code ensures that those directing a terrorist group or participating in its activities are held liable only when their behaviour is linked to the commission of specific terrorist offences. Therefore, these provisions do not fully implement Article 2(2), and may lead to punitive loopholes. From this point of view, the conclusion of the Commission in the first evaluation report cannot be altered.

Sections 114a and especially 114b of the Danish criminal code should nevertheless be paid due attention. The first evaluation report referred to the existence of Sections 114a and 114b in the Danish Criminal Code as specifically covering some of the acts included in Article 2(2)(b), and therefore acknowledging the insufficiency of participation rules to cover offences related to a terrorist group as required by the Framework Decision⁶⁵. However, these provisions might be looked at under a different light. In particular, it is important to consider whether it is possible to interpret the definition of "group or co-operative" under Section 114b as including not only the groups that have carried out terrorist offences but also those aiming to commit them. If this broad interpretation were to be shared by the Danish authorities, Danish legislation could in fact be considered to cover all cases of participation in the activities of a terrorist group as stipulated under Article 2(2)(b). In that case, the Commission's conclusion should be modified in the sense that participating in the activities of a terrorist group would be specifically criminalised in Denmark.

The explanations offered by Sweden on its national rules on attempt, preparation, conspiracy and complicity as being wide enough to ensure the criminal liability of those participating in the activities of a terrorist group as laid down in Article 2(2)(b) are quite convincing. Although it remains true that the acts of directing or participating in terrorist groups are not specifically criminalised in Sweden, it should be clarified that its widely formulated provisions on attempt, preparation, conspiracy and complicity may make it possible to hold those participating in a terrorist group liable. Additionally, Sweden has referred to Law (2002:444) on Criminal Responsibility for the Financing of Particularly Serious Crimes under which it is an offence in certain cases to collect, supply or receive funds or other assets with a view to using them, or in the knowledge that they are to be used, for committing such particularly serious crimes including terrorism. Therefore, this particular aspect of participation in the activities of a terrorist group is specifically criminalised.

65 See first evaluation report, p. 11.

Regarding implementation of Article 2(2)(a) by Denmark and Sweden, the latter does not comment on the direction of a terrorist group, while Denmark argues that national participation rules do not establish any distinction between the main author and secondary culprits. As a preliminary remark, it must be noted that the leadership of a terrorist group should not be confused with the role of the main author in the commission of a specific terrorist offence. This being said, it might be understood that the leadership of a terrorist group is punished as a form of participation under Sections 114a and 114b of the Danish Criminal Code. It might also be derived that the Swedish general rules on attempt, preparation, conspiracy and complicity can apply to both direction of and participation in a terrorist group. However, Article 2(2) of the Framework Decision clearly separates the two modalities with the open intention of qualifying direction as a more serious offence than participation. This aim is reflected in Article 5(3) of the same instrument, which requires Member States to impose a heavier penalty on the leader than on the participant.

Although the lack of separate criminalisation of collaboration with a terrorist group in Sweden and of leadership of such a group in both Sweden and Denmark does not automatically exclude attainment of the results sought by the Framework Decision, it may disrupt the systematic and political aim of this instrument and the clarity of implementation, and can hinder full implementation of related provisions. The concern regarding the incomplete implementation of linked provisions, mainly of those on inciting, aiding and abetting, was already expressed in the first evaluation report⁶⁶. In particular, the failure to separately criminalise the direction of a terrorist group does not necessarily imply that the leader of a terrorist group could not be prosecuted. However, the criminalisation of the direction of a terrorist group as an especially highlighted offence, more serious than participation in its activities, as intended by Article 2, is not guaranteed.

Therefore, it must be sustained that Sweden and Denmark have not fully implemented Article 2.

The first evaluation report's analysis concerning **Ireland's** implementation of Article 2 can be confirmed⁶⁷. Indeed, Irish legislation perfectly complies with both paragraphs (1) and (2) of this provision. Concerning paragraph (1), it can be added that Section 4 of the Criminal Justice (Terrorist Offences) Act specifies that "terrorist group" shall be understood as having the same meaning as the one included in the Framework Decision.

The first evaluation report stated that in **Belgium** and **Finland** punitive loopholes could derive from linking the offences mentioned in Article 2(2)(b) of the Framework Decision to the intention of committing specific terrorist offences⁶⁸.

Belgium has noted that its Penal Code indeed demands such a link between the participation act and the commission of a crime by the group, yet the crime would not necessarily have to be a terrorist offence itself.

Finland has specified that the condition - requiring that a behaviour would only be punishable if a terrorist offence had been attempted or committed within the terrorist group - was added at the request of the Finnish Parliament, which had pointed to the fact that criminalising

66 See first evaluation report, p. 15.

67 See first evaluation report, p. 5-6.

68 See first evaluation report, p. 14.

participation in the activity of terrorist groups formed in order to commit offences was a new development in Finland which created a number of areas of uncertainty. In view of this, the Parliament wished to enhance the precision of the regulation, as required by the principle of legality, and introduced a clause so that the promotion of the activities of terrorist groups is criminalised provided that the group has at least carried out some preparative act punishable by law.

Despite this further information, it cannot be concluded that Belgium and Finland have fully implemented Article 2 of the Framework Decision as far as participation is concerned. As explained above, participation in a terrorist group, 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 (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 offences⁶⁹.

As already announced at the time of the first evaluation report⁷⁰, **France** has in the meantime specifically criminalised directing a terrorist group in the amended Art 421-5 of the Criminal Code⁷¹, thus fully complying with Article 2.

Germany wished to specify that "support" for a terrorist organisation, for which Section 129a lays down a specific penalty and the meaning of which had been questioned by the first evaluation report, means the act whereby a non-member promotes, reinforces or secures the specific nefarious potential of the terrorist group and is useful to its organisation, whether or not the group actually makes use of the support. Thus, this broad definition also embraces supplying information or material resources, or funding its activity in the meaning of Article 2 of the Framework Decision.

The first evaluation report stated that, since the **Italian** Penal Code criminalises belonging to a terrorist group (Article 270bis) and additionally only criminalised specific acts of assistance (Article 270ter), it cannot be ruled out in theory that "atypical" ways of participating in the activities of a terrorist group could go unpunished⁷². In the meantime, Italy has modified Article 270ter clarifying that it does not cover acts of assistance when they constitute "cases of participation in the offence or aiding and abetting"⁷³. However, the new wording does not solve the problem noted in the first evaluation report, since the list provided in Article 270ter contains the same acts of assistance and is still exhaustive. However, the newly introduced Article 270 quarter and quinquies⁷⁴ does criminalise forms of behaviour in the context of recruitment for international or other terrorism and training in activities for international or other terrorist purposes, "other than in the cases of Article 270bis". This seems to indicate that recruitment and training in the context of a particular terrorist group are covered by Article 270bis. From this assumption, it might be concluded that the scope of this provision covers the cases of participation in the activities of a terrorist group that are not included as acts of

69 See first evaluation report, p. 14

70 See first evaluation report, p. 21, 22.

71 Law n° 2004-204 of 9 March 2004.

72 See first evaluation report, p. 14.

73 Article 270ter (assisting conspirators): Whoever gives refuge, board, lodging, means of transport or communication to any of the persons involved in the organisations listed in Articles 270 and 270bis, other than in cases of participation in the offence or aiding and abetting, shall be punished by imprisonment up to four years.

74 Introduced by Decree-Law 144 of 27 July 2005, converted by Law 155 of 31 July 2005.

assistance under Article 270ter. Nevertheless, this remains a mere hypothesis which only a clearer definition of the scope of both provisions Article 270bis and 270ter could confirm.

2.3. Conclusion

Regarding Article 2(1), France has forwarded Article 421-2-1 of its Criminal Code containing a definition of terrorist group and Germany confirmed its view that there is no necessity for a statutory definition of terrorist group, whereas Italy has not commented on its lack of definition.

As regards implementation of paragraph (2), the Commission has considerably altered its assessment concerning Denmark and Sweden and presently sustains the view that their national provisions might provide for criminal liability for directing terrorist groups and participating in their activities. These States still fail to ensure the criminalisation and punishment of the direction of a terrorist group as a more serious offence. Belgium and Finland have not been able to dispel the doubts regarding their linking the offences mentioned in Article 2(2)(b) of the Framework Decision to the intention or commission of terrorist offences. France now fully complies with this Article having specifically criminalised directing a terrorist group. The modifications undertaken in Italy have not fully excluded the possibility that "atypical" ways of participating in the activities of a terrorist group could go unpunished. A clear definition of the scope of both provisions Article 270bis and 270ter remains desirable.

3. ARTICLE 3: OFFENCES LINKED TO TERRORIST ACTIVITIES

The first evaluation concluded that only four Member States (Finland, France, Portugal and Spain) appeared to have legislation that fully complied with the obligations under this Article and that Ireland should be able to comply after its new legislation entered into force - which has happened in the meantime. The legislation of the remaining Member States was found to comply only partially with this Article, either because only some of its implications were specifically covered or because in certain cases similar results had been obtained through treating these offences as acts of collaboration with a terrorist group or as participation in specific terrorist offences⁷⁵. Austria, Italy and Sweden as well as Belgium and Denmark have submitted further explanations on implementation of this provision. **Portugal** has not commented on the criticism made in the first evaluation report that its legislation expressly criminalises the acts referred to in Article 3 (c) only as regards committing the acts in 1(1)(a) to(h) and not 2(2)(b)⁷⁶.

The Commission interpreted this provision in the first evaluation report pointing out that there is not an explicit obligation to criminalise these offences separately as long as the results sought by introducing this category of offences are sufficiently covered. As regards implementation, this would imply the establishment of a link between them and terrorism at least pursuant to the application of related provisions⁷⁷.

75 See first evaluation report, p. 18, 19 and summary, p. 6.

76 See first evaluation report, p. 16, Fn. 21.

77 See first evaluation report, p. 15, 16.

Italy and Sweden have once again referred to the fact that under their legislation the intent to support terrorist offences is to be regarded as an aggravating circumstance⁷⁸.

Italy wished to stress that the aggravating circumstance of acting with a terrorist purpose is also applicable to the ordinary crimes of theft, extortion and forgery included in the Italian Criminal Code⁷⁹. The presence of such an aggravating circumstance modifies the criteria for accumulation of several aggravating circumstances, substantially increasing the impossible penalty quantum.

Sweden has clarified that aggravated theft, extortion and forgery are incriminated in Sweden and that Article 5 of the Law (2003:148) on Criminal Liability for Terrorist Offences lays down that if one of these offences, or an attempt at such an offence, is committed "with the intent to support a terrorist offence, this shall be taken into account as an aggravating circumstance". In the first evaluation report, the Commission concluded that national measures such as those mentioned by Sweden and Italy make it possible to achieve at least some of the results sought by the introduction of terrorist-linked offences in the Framework Decision. It did not conclude that they amounted to full implementation because considering the terrorist intent as an aggravating factor implies that the connection to terrorism is taken into consideration to determine the penalties but it does not constitute the required link to terrorism in view of applying all the related provisions of the Framework Decision.

Austria insists that it has implemented Article 3 through Section 64(1) No 9 of the Penal Code, which considers aggravated theft, extortion and forgery and terrorism as "acts committed in connection with terrorist offences" but only for the purpose of applying the relevant rules on jurisdiction. Therefore, similarly to Italian and Swedish legislation, this national measure does not fully implement Article 3 because the connection with terrorism is taken into consideration only in one respect, but it does not constitute the required link to terrorism in view of applying all the related provisions of the Framework Decision.

In addition, Austria argues that, although an explicit provision is absent from its legislation, the content of Article 3 of the Framework Decision is entirely covered by the Austrian Penal Code. To support this argument, it cites an excerpt from the explanatory report regarding the governmental bill which became Criminal Law Amendment Act 2002: "Because of the relevant criminal offences in the Penal Code, because of the aggravating circumstances mentioned in Section 33 of the Penal Code, especially No 5 (behaviour for particularly reprehensible reasons), and because of the fact that Art 5 of the Framework Decision merely obliges Member States to ensure that these offences are punishable by effective, proportionate and dissuasive criminal penalties, the creation of independent offences is deemed not to be necessary". The explanation concerning Article 5 of the Framework Decision cannot be accepted, mainly because compliance with Article 5 does not imply implementation of Article 3. As for the existence of the relevant criminal offences under the Austrian Penal Code, as stated above, the Commission agrees that the creation of separate offences is not required in order to comply with Article 3. Nevertheless, it demands the establishment of a link between the offences mentioned in Article 3 of the Framework Decision and terrorism. Concerning the aggravating circumstance of "behaviour for particularly reprehensible reasons", it is too broad to constitute the required link to terrorism.

78 Also See first evaluation report, p. 16, 17.

79 See first evaluation report, p. 16.

The first evaluation report criticised that Belgium, Denmark, Germany and the United Kingdom did not have specific provisions applicable to terrorist-linked offences, even if these acts constituted ordinary crimes under their national legislation⁸⁰.

Belgium commented that many of these offences would constitute preparatory acts to or complicity with terrorist offences and therefore the rules on terrorist offences would be applicable.

Similarly, **Denmark** argued that it had fully implemented Article 3 since all relevant offences, when committed with the aim of carrying out an act of terrorism, may be punished as participation in the terrorist act itself. This argumentation was already discussed in the first evaluation report, which pointed out the significance of the fact that the Framework Decision has separated these acts from specific terrorist offences themselves, since the later may be committed by different people, at different times or might even not take place. Terrorist-linked offences, the first evaluation report clarifies, have their own *iter-criminis* or admit their own participants⁸¹. Denmark explains that under its legislation, anyone who attempts to commit aggravated theft, extortion and forgery with a view to committing a terrorist offence may be punished for attempted participation in a terrorist offence. Therefore, the consideration of terrorist-linked offences as acts of participation under Danish legislation does not seem to present the difficulties identified in the first evaluation report. In this sense, it can be concluded that, to the extent that Denmark has correctly implemented Article 4, it will be able to achieve the results sought by Article 3.

Germany and the United Kingdom have not commented on the criticism in the first evaluation report.

3.1. Conclusion

Apart from Denmark, no additional Member State has in the meantime been able to demonstrate that its legislation fully complies with Article 3 of the Framework Decision. As a result, the list of Member States (Finland, France, Portugal and Spain) that have perfectly implemented this provision has been extended only through the additional Denmark.

4. ARTICLE 4: INCITING, AIDING OR ABETTING, AND ATTEMPTING

The first evaluation concluded that although only some Member States had specific provisions implementing Article 4, it appeared that by applying general rules on complicity and inchoate offences, other Member States would be able to comply implicitly with Article 4, provided the preceding articles had been fully implemented⁸².

At the same time, the first implementation report refers to the lack of a legal definition of incitement in the Framework Decision as well as of convergent concepts in the national systems, and explains how this complicates the assessment of Member States' implementation⁸³.

80 See first evaluation report, p. 17.

81 See first evaluation report, p. 17.

82 See first evaluation report, p. 19.

83 See first evaluation report, p. 19.

4.1. Additional comments by Member States

In addition to the Criminal Code's general clause on complicity covering incitement, aiding or abetting to commit criminal offences, already communicated to the Commission for drafting of its first evaluation report, **France** has stressed that its legal system also contains specific and rather detailed provisions on terrorist incitement. These are Articles 23 and 24 of the Law on the Freedom of the Press of 29 July 1881, which refer to direct provocation to commit terrorist offences or their apology through the press, the distribution of printed documents or drawings as well as their exhibition in public places and their distribution, including via e-communications, as well as through speeches or threats pronounced in public places.

The first evaluation report noted that **Portugal** had only referred to specific provisions in relation to terrorism, in particular, provisions on promoting terrorist groups and preparatory acts to set up a terrorist group. The report consequently concluded that that these provisions covered the scope of Article in conjunction with Article 2 of the Framework Decision only partially. On this occasion, Portugal refers to the general provisions on authorship, complicity and attempt existing in its Criminal Code (Articles 26, 27, 22 and 23) allowing for a more complete view of the Portuguese system. In particular, Articles 26 and 27 perfectly transpose Article 4 of the Framework Decision as regards incitement and aiding and abetting that would be, respectively, forms of authorship and complicity under the Portuguese system.

Nevertheless, we cannot conclude that Portugal has fully implemented Article 4 of the Framework Decision as regards “attempt”. Article 23 of the Portuguese Criminal Code specifies that an “attempt” is punishable, unless expressly excluded, whenever the accomplished crime is punished by more than three years of imprisonment. Unfortunately, the provision does not clarify whether the imprisonment of three years relates to the maximum or the minimum penalty for the offence. Therefore, the Commission cannot assess Portuguese transposition of Article 4(2).

Since the first evaluation report does not refer to **Sweden** in its conclusions, Sweden has clarified its transposition of Article 4 through the general provisions on attempt, preparation, conspiracy and complicity (Sections 1-2 and 4 Criminal Code) together with the specific Article 4 of the Law (2003:148) on Criminal Liability for Terrorist Offences.

Concerning the attempt to commit terrorist offences, the situation described in the previous report from the Commission seems to have remained unchanged. As concluded on that occasion, the French criminal system, as well as the Belgian one, makes a distinction between "crimes" and "délits", which 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 these systems it could not be totally excluded that there might remain some terrorist “délits” in relation to which attempt would not be punishable⁸⁴.

Belgium underlined that this only concerns a very limited number of offences. Furthermore, a draft law prepared in order to fill these potential gaps is already under way. Once again, **France** points out that most offences included in Articles 1 and 3 of the Framework Decision can become a crime when committed with terrorist purposes due to the aggravation of penalties that applies. It further explains that the criminalisation of "attempt" is expressly

84 See first evaluation report, pp. 19, 20.

provided for in some specific cases, including some terrorist offences. Nevertheless, the Commission cannot but maintain the conclusion of the first report that, in these systems, it cannot be totally excluded that there might remain some terrorist "délits" in relation to which the attempt would not be punishable.

4.2. Conclusion

The conclusion of the first evaluation report must be maintained. Only some Member States have specific provisions implementing Article 4, but it appears that the legislation of most of them complies implicitly with Article 4, provided the preceding articles have been fully implemented. It should be added that Sweden's full transposition of this provision has been established and France has referred to the criminalisation of public provocation and apology of terrorist offences.

This being said, the explanations offered by Sweden and Denmark when arguing the compliance of their legislation with Article 2 highlight the substantial differences between the national legal systems of Member States regarding authorship and complicity⁸⁵. Indeed, the difficulties deriving from the lack of a legal definition of "incitement" in the Framework Decision as well as of convergent concepts in the national legal systems noted in the first evaluation report⁸⁶ must be confirmed and stressed. Indeed, it does not only concern the definition of "incitement" but also "aiding and abetting".

Otherwise, loopholes of implementation concerning the attempt to commit terrorist offences remain in France, Belgium and Portugal.

5. ARTICLE 5: PENALTIES

Concerning Article 5(1) of the Framework Decision, the first evaluation assumed that all Member States meet the terms of paragraph (1)⁸⁷.

5.1. Article 5(3)

As regards directing terrorist groups, according to the first evaluation report the legislation of seven Member States (Austria, Belgium, Germany, Ireland, Italy, Portugal and the United Kingdom) complies or would comply with the Framework Decision. The legislation of Denmark, France and Sweden complies only partially with this provision as directing a terrorist group was not specifically criminalised. However, when the acts referred to in the Framework Decision were punishable, the penalties provided for this conduct do meet the terms of the Framework Decision in Denmark and Sweden, and, in some cases, also in France. Spanish legislation 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 (Austria, Belgium, Finland, France,

85 For example, Denmark explains that its legal system does not distinguish between the main author and secondary culprits, and Sweden stresses that its provisions on preparation and conspiracy goes beyond the link to a specific criminal offence, so that time, place and other circumstances do not need to be specified.

86 See first evaluation report, p. 19.

87 See first evaluation report (summary), p. 6.

Ireland, Portugal, Spain and the United Kingdom) fully transposed this provision, which could be considered to be only partially transposed in Germany, Denmark, Italy and Sweden⁸⁸.

5.1.1. *Additional comments by Member States*

France has made amendments to its legislation concerning this point whereas Denmark, Finland, Germany, Italy and Sweden have submitted new comments.

At the time of the first evaluation report, in **France** directing a terrorist group was not specifically criminalised and the penalty laid down for participants, which would also apply in the case of directing, did not meet the terms of the Framework Decision⁸⁹. As stated above, France has specifically criminalised directing a terrorist group in the amended Article 421-5 of the Criminal Code⁹⁰, stipulating a maximum punishment of 20 years' imprisonment. French legislation now fully complies with Article 5(3) of the Framework Decision.

Since the **Danish** and **Swedish** legal systems do not fully comply with Article 2(2) of the Framework Decision, in particular with letter (a) in the sense that they fail to ensure the criminalisation of directing a terrorist group as a more serious offence than participating as referred to under letter (b), it must be maintained that Article 5(3) has not been fully implemented by these Member States.

Nevertheless, in **Denmark**, concerning the provisions implementing Article 2(2)(b), funding terrorist groups is specifically punished in Section 114a with imprisonment of up to 10 years whereas the participation in a terrorist group covered by Section 114b remains punished by imprisonment of up to six years, therefore below the minimum-maximum. This being said, it must be remembered that to the extent that it is 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 by life imprisonment and the maximum penalties covers participants according to general rules on participation⁹¹.

Concerning **Sweden**, the first evaluation report stated that, as the general penalty set up for terrorist offences is imprisonment for a fixed period of at least four years and at most ten years, or life, it seems that the required minimum-maximum penalties would be met, if these forms of conduct were to be punished as participating in a terrorist offence, as the penalty set for these would also cover attempts and participation⁹². Sweden clarified that the main rule for the punishment of complicity is that each actor (perpetrator, inciter or accomplice) will be punished in accordance with the same scale as applies to a person who has carried out the offence on his own. However, the penalties envisaged in the Act (2002:444) on Criminal Responsibility for the Financing of Particularly Serious Crime, which Sweden has pointed to as its provision implementing Article 2 of the Framework Decision, do not meet the minimum-maximum penalty demanded by the Framework Decision.

The first evaluation report concluded that **Finnish** legislation does not comply with Article 5(3) as regards directing terrorist groups⁹³, stipulating only a maximum punishment of twelve

88 See first evaluation report, p. 22, 23.

89 See first evaluation report, p. 21.

90 See the comments concerning Article 2.

91 See first evaluation report, p. 21.

92 See first evaluation report, p. 22.

93 See first evaluation report, p. 22.

years for directing a terrorist group and a maximum penalty of six years in the case of a threat of terrorist activity. In response to this criticism, Finland pointed out that Chapter 34 Section 3(3) of the Criminal Code needs to be taken into account. This provision states that "a person who is sentenced for directing a terrorist group shall also be sentenced for one of the terrorist offences defined in that section that he or she has committed or that has been committed in the activity of a terrorist group under his or her direction". In what is called a joint sentence the maximum penalty of twelve or respectively six years can be exceeded by three years, thus allowing a maximum sentence of fifteen and nine years respectively. However, such a joint punishment always requires the commission, attempt or at least preparation of a terrorist offence itself. Yet, – as already stated in the context of Article 2 – the Framework Decision demands a maximum sentence of not less than fifteen and eight years respectively for directing terrorist groups, regardless of the commission of a punishable act within the group. Had the leader of a terrorist group committed one or more terrorist offences, the sentences corresponding to these offences should be added to the minimum offence of fifteen or eight years for the direction of a terrorist group. Therefore, despite the possibility of joint sentences, Finland has not fully implemented Article 5(3).

The first evaluation report concluded that **Germany** had not always respected the requested minimum-maximum penalty as regards participating in a terrorist group⁹⁴. Section 129a(1), (2) and (5), first sentence of the Criminal Code lay down maximum penalties of 10 years for forming, participating in and supporting a terrorist group. However, recruiting members or supporters for a terrorist organisation is only punished by imprisonment between six months and five years (Section 129a(5) Criminal Code), whereas those who support terrorist organisations that only threaten to commit terrorist acts are punished by imprisonment of up to five years or a fine (Section 129a(3) Criminal Code).

It might be argued that the notion of support goes further than the concept of “participation” as laid down in Article 2(2)(b) and it can therefore be accepted that the penalty imposed for those who support terrorist organisations according to Section 129a(3) does not have to respect the maximum-minimum established by Article 5(3). In this sense, it could be even be defended that those recruiting supporters for a terrorist group do not have to be subject to this penalty threshold either. Nevertheless, it does not seem possible to conclude that the recruitment of members for a terrorist group does not amount to participation: if procurement of funding is explicitly contained under Article 2(2)(b), procurement of human resources should be included in the concept of participation with all the more reason.

Concerning Section 129a(3), the German authorities argued that the Framework Decision does not demand a minimum-maximum penalty for the participation in a terrorist organisation which only threatens to commit terrorist offences. However, this argument cannot be shared. The first evaluation report clarified this point: 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). Therefore the Commission considers that the eight year minimum-maximum is applicable to all the forms of conduct coming under the scope of Article 2(b)⁹⁵. Concerning Section 129a(5), Germany argued that this provision sets out penalties for recruiting members or supporters for a terrorist group only for instances in which that person is not a member of the terrorist group

94 See first evaluation report, p. 21.

95 See first evaluation report, p.21.

nor participates in its activities. However, it remains questionable if recruitment of members and supporters does not automatically imply participation in activities of a terrorist group.

The first evaluation report criticised that in **Italy**, while the general provision on directing of and participating in terrorist organisation (Article 270bis) complies with the Framework Decision, Article 270ter punishes specific acts of assistance to conspirators with imprisonment up to four years⁹⁶. Since the Italian implementation of Article 2(2) remains unclear, it is impossible to establish whether its legislation fully complies with Article 5(3) of the Framework Decision.

5.1.2. Conclusion

As regards directing terrorist groups, it can be concluded that French legislation now also complies perfectly with the Framework Decision, raising to eight the number of Member States (Austria, Belgium, France, Germany, Ireland, Italy, Portugal and the United Kingdom) that fully cover this provision. The arguments provided by Denmark and Sweden fail to change the Commission's conclusion, thus the legislation of these Member States still only complies partially with this provision since directing a terrorist group is not specifically criminalised. For Finland, despite the possibility of joint sentences, full compliance cannot be confirmed.

When it comes to participating in the activities of a terrorist group, Denmark and Sweden as well as Germany and Italy were not able to convince the Commission that their legal systems fully comply with the Framework Decision.

5.2. Article 5(2)

From the information provided to the Commission for the first evaluation report, it became clear that the legislation of eight Member States (Austria, Belgium, Denmark, Finland, France, Italy and Portugal plus Sweden, in keeping with the information it provided to the Commission) complies with this provision. In others (Germany, Ireland, Spain and the United Kingdom) it could not be concluded that enhanced penalties had been provided for all the offences in Articles 1(1) and 3⁹⁷.

Even though Germany points out once more that the existence of a terrorist intent leads to a more severe sentence according to Section 46(2) of the Criminal Code, the conclusion of the first evaluation report that **German** legislation does not fully comply with Article 5(2) must be maintained. As explained above, "terrorist intention" is neither defined in Section 46(2) of the Criminal Code, nor is it fully determined in case-law.

Ireland has not commented on the criticism of the first evaluation report concerning its implementation of Article 5 (2)⁹⁸. Furthermore, it must be noted that Section 7(e) of the Irish draft bill, which laid down imprisonment for a term not exceeding ten years for terrorist offences in "any other case" , has not entered into force. Therefore in this case the terms of Article 5(2) are still not met.

96 See first evaluation report, p.22.

97 See first evaluation report, p.26.

98 See first evaluation report, p. 25.

Unfortunately, **Italy** has not provided further information on implementation of Article 5 (2) and the doubts expressed in the first evaluation report remain unresolved⁹⁹.

The first evaluation report expressed some doubts concerning **Swedish** implementation since, while terrorist offences might be sanctioned with life imprisonment – the maximum possible sentence - Swedish law also provides the possibility of a punishment of imprisonment for a period of at most 6 years if the offence is “less serious”¹⁰⁰. Sweden clarified that in accordance with Swedish legal tradition, serious types of offences are usually divided into two or three degrees of severity, with a special scale of penalties for each degree. The court makes an overall judgment when deciding what degree of severity the offence will be regarded as having. In principle, the same criteria would be taken into account when choosing between different degrees of severity of the offence as when deciding the punishment itself. Sweden argued that therefore the practical result of different degrees of severity for each offence would be the same if only one scale of penalties applied to all cases. Following this argument it seems acceptable to state that Sweden has fully implemented Article 5(2), as a maximum penalty of life imprisonment is possible.

According to the first evaluation report, in the **United Kingdom** it could not be concluded that enhanced penalties had been provided for all the offences in Articles 1(1) and 4 of the Framework Decision. It was in particular criticised that it remains a matter of judicial discretion whether or not offences falling within the definition of terrorism in the United Kingdom are punished more heavily than those not covered by the definition¹⁰¹. In response, the United Kingdom clarified that “judicial discretion does not amount to a free hand when a judge is imposing a sentence. Judges determine sentence by applying principles developed by the Appeal Courts and by the Sentencing Guidelines Council”. In particular, they referred to the Guidelines “Overarching Principles: Seriousness”, which since 16 December 2004 have to be taken into account when determining the sentence. In terrorist cases, the judge can only impose a sentence in the upper range in the presence of serious (including aggravating) factors. However, even if some of these aggravating factors might be relevant in the case of terrorist offences, such as “planning of an offence”, “offenders operating in groups or gangs”, “‘professional’ offending” or “multiple victims”, they are not tailored to terrorist offences and are also applicable to other kinds of offences. Therefore, the requirement of the Framework Decision to ensure heavier custodial sentences in the specific case of terrorist intent has not been complied with. It must be clarified, however, that the United Kingdom has submitted the sentencing remarks of two cases in order to show that in practice the courts do impose heavier penalties to those liable for terrorist offences. In the first case, the explosive devices involved and the injury and damage caused are explicitly mentioned as criteria to determine the seriousness of the offence. In the second case, “persistent and serious terrorism” is taken into consideration to determine the penalty for the offender.

5.3. Conclusion

Unfortunately, despite the additional information sent by the Member States, the Commission's doubts concerning full compliance with Article 5(2) have only been resolved concerning Sweden.

99 See first evaluation report, p. 25.

100 See first evaluation report, p. 25.

101 See first evaluation report, p. 26.

6. ARTICLE 6 – PARTICULAR CIRCUMSTANCES

No additional comments have been submitted concerning Article 6. Therefore, it is presumed that still only six Member States specifically envisage particular circumstances under which the applicable penalties may be reduced (Austria, France, Germany, Italy, Portugal and Spain), whereas the rest have not referred to specific measures to implement this optional provision, although some stated that such circumstances were factors that a judge might take into account in reaching a decision on the appropriate level of penalty to be imposed¹⁰².

7. ARTICLE 7 – LIABILITY OF LEGAL PERSONS

The first evaluation report concluded that eight Member States (Belgium, Denmark, Finland, France, Germany, Ireland, Italy and Portugal) had implemented or would implement legislation ensuring that legal persons could be held liable for the offences referred to in Article 1 to 4 of the Framework Decision. Of these Member States, however, only Finland, Ireland, Italy and Portugal had provided enough information to consider that paragraph 2 was also covered.¹⁰³ Austria and Spain had not transposed Article 7 although Austria claimed to be addressing this issue by means of new legislation¹⁰⁴. Sweden and the United Kingdom did not provide enough information to consider this Article implemented¹⁰⁵. Austria, Spain and Sweden have provided new information on Article 7 in general, whereas Belgium and Denmark have commented on their implementation of Article 7(2).

7.1. Article 7(1)

Austria has amended the Legal Persons' Liability Act in order to implement Article 7 of the Framework Decision¹⁰⁶. According to this law, legal entities are punishable by criminal courts if a criminal offence has been committed by a person acting on its behalf. The legislation contains the substantial prerequisites for a conviction of a legal entity, possible sanctions and special procedural provisions. The Act covers the criteria mentioned in Article 7 of the Framework Decision in its Section 2. Austrian law now complies with Article 7(1).

The first evaluation report concluded that **Spain** had not transposed Article 7. Although legal persons are not criminally liable in Spain, it continued, Spanish authorities have clarified that terrorist groups are considered to be "illegal 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 supervision¹⁰⁷.

Firstly, Spain argues that Article 7 must be interpreted in conjunction with Article 8. The argument put forward is that if a Member State has adopted, in accordance with Article 8, "the necessary measures to ensure that a legal person held liable pursuant to Article 7 is punished", it cannot be stated that that Member State has not complied with the obligations laid down under Article 7. Secondly, Spain explains that it maintains the principle under which only

102 See first evaluation report, p. 26 and summary, p. 6.

103 See first evaluation report, p. 30.

104 The Legal Persons' Liability Act, entered into force 1 January 2006.

105 See first evaluation report, p. 30.

106 The Legal Persons' Liability Act, entered into force 1 January 2006.

107 See first evaluation report, p. 30.

physical persons can be held criminally liable but that, when that physical person is linked to a legal person, the latter is held criminally liable through certain measures or complementary penalties imposed.

The Commission must note that the first evaluation report did not conclude that the Spanish Penal Code entirely complies with Article 8. Moreover, although it is true that Articles 7 and 8 are closely related, compliance with the former does not imply implementation of the latter and vice versa. Actually, implementation of Article 7 works as a pre-condition for full compliance with Article 8, the same as transposition of Articles 1 to 3 constitutes a requirement for full compliance with Article 4. Concerning the second argument, Spain has not submitted additional provisions to uphold it. Therefore, in order to accept this reasoning, it would be necessary to establish that through the notion of "illegal association" under the Spanish Penal Code it is possible to cover the criminal liability of legal persons as laid down under Article 7. In this sense, the Commission must add that Spain has not referred to provisions containing the cases included in this Article.

The first evaluation report expressed doubts whether the **Swedish** provisions on corporate liability were enough to meet the terms of the Framework Decision as they seemed to refer to the liability of the entrepreneur, not of the legal person as such¹⁰⁸. Pursuant to former evaluation reports of the Commission on implementation of Framework Decisions including equivalent provisions on liability of and penalties for legal persons¹⁰⁹, the conclusion of the first evaluation report must be altered: it must thus be clarified that the Swedish legislation is satisfactory and legal persons can be held liable within the meaning of Article 7 of the Framework Decision. Furthermore, Sweden has amended Chapter 36 of its Criminal Code, extending the powers to impose corporate fines as from 1 July 2006. The requirement whereby the offence had to involve a flagrant disregard for specific obligations associated with the business, or to be of an otherwise serious nature, was eliminated. In addition, the requirement whereby the entrepreneur must have failed to do what might reasonably have been required to prevent the offence has been extended by a provision under the terms of which corporate fines can be imposed where the offence has been committed by a person in a managerial position or a person who has otherwise borne special responsibility for supervision or control in the enterprise. With these changes, Swedish legislation follows the Framework Decision even closer.

7.2. Article 7(2)

Section 3(3) No2 of the **Austrian** Legal Persons' Liability Act – which has been amended since the first evaluation report – now implements Article 7(2) of the Framework Decision, providing for a legal person's responsibility for criminal offences of staff if "commission of the offence was made possible or considerably easier due to the fact that decision makers failed to apply the due and reasonable care required in the respective circumstances".

108 See first evaluation report, p. 29.

109 Report on the Framework Decision on increasing protection against counterfeiting in connection with the introduction of the Euro (COM(2001) 771 final) and on the Framework Decision on combating fraud and counterfeiting of non-cash means of payment (COM(2004) 346 final).

Belgium has specified that Article 5 of the Criminal Code¹¹⁰ is interpreted by the Belgian jurisprudence in a way that provides for a legal person to be liable either when the realisation of the offence derives from an intentional decision taken within the legal person or when it is the result of negligence from within the legal person, provoked through a link of causality. This broad formulation also covers the cases set out in Article 7(2) of the Framework Decision.

Contrary to the first evaluation report's conclusion¹¹¹, Article 7(2) of the Framework Decision is fully covered by the **Danish** Criminal Code. Section 306 of the Danish Criminal Code generally provides for the possible criminal liability of legal persons for breaches of the Criminal Code, while Section 27 of the same instrument covers acts undertaken by any person who is "connected to" the legal person (any employee). Denmark specifies that the provision means a legal person can be punished regardless of inadequate supervision or control. Whereas the first evaluation report criticised in fact that liability for negligence in relation to terrorist offences had not been explicitly provided for, Denmark clarified matters, saying that the company would also be liable should an ordinary employee be negligent.

7.3. Conclusion

Taking into considerations the new comments and provisions, it can now be concluded that also Austrian and Swedish legislation ensure that legal persons can be held liable for the offences referred to in Articles 1 to 4 of the Framework Decision. Thus, ten Member States (Austria, Belgium, Denmark, Finland, France, Germany, Ireland, Italy, Portugal and Sweden) have correctly implemented Article 7(1). The arguments provided by Spain fail to change the Commission's conclusion regarding its lack of compliance with Article 7. Unfortunately, the United Kingdom has not provided further information on this provision.

Concerning Article 7(2) of the Framework Decision, Austria, Belgium and Denmark have provided further information that confirm their legislation complies with the Framework Decision. Seven Member States (Austria, Belgium, Denmark, Finland, Ireland, Italy and Portugal) have now implemented this Article.

8. ARTICLE 8 – PENALTIES FOR LEGAL PERSONS

The first evaluation report concluded that Belgium, Denmark, Germany, France, Italy, Portugal and Finland fulfilled the minimum obligation provided for in Article 8 to impose criminal or non-criminal fines for legal persons¹¹². Only Austria, Ireland and Sweden have submitted new comments concerning this provision.

Section 4 of the **Austrian** Legal Persons' Liability Act – as amended since the first evaluation report – now lays down that a fine can be imposed on legal entities, determined by the earnings in relation to the turnover. Additionally, orders to take technical, organisational and personnel measures as well as to pay damages may be issued. Thus, the minimum obligation contained in the Framework Decision to impose fines is met.

110 Article 5 Code Pénal: "Toute personne morale est pénalement responsable des infractions qui sont intrinsèquement liées à la réalisation de son objet ou à la défense de ses intérêts, ou de celles dont les faits concrets démontrent qu'elles ont été commises pour son compte."

111 See first evaluation report, p. 28.

112 See first evaluation report, p. 30.

Ireland has only referred to Section 7 of the Criminal Justice (Terrorist Offences) Act 2005 as the implementing provision. However, this Section deals generally with penalties in respect of terrorist offences and does not explicitly stipulates fines for legal persons or any of the optional penalties included in Article 8 of the Framework Decision.

Sweden has pointed to Chapter 36 of its Criminal Code, providing for corporate fines, modified on 1 July 2006. In particular new limits for the fines were introduced: from SEK 5.000 minimum to SEK 10 million maximum (approximately between 546 and 1.091.053 euros). Having resolved the doubts concerning implementation of Article 7 of the Framework Decision, Swedish legislation now also fulfils the minimum obligation provided for in Article 8.

Therefore, the Commission can state that Austria and Sweden have joined the Member States which have fully implemented Article 8.

9. ARTICLE 9 – JURISDICTION AND PROSECUTION

9.1. Article 9(1)(a), (b) and (4)

The first evaluation report presumed that all Member States complied with Article 9(1)(a), (b) and (4), as territoriality is the primary basis for criminal jurisdiction¹¹³.

9.2. Article 9(1)(c)-(e) and (3)

Furthermore, it stated that twelve Member States (Austria, Belgium, Denmark, Finland, France, Germany, Italy, Ireland, Portugal, Spain, 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)¹¹⁴.

The same was 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 bodies¹¹⁵.

According to the first evaluation report, Article 9(1)(d) has been expressly transposed only by Austria and Ireland although it seemed that Finnish, Italian and Portuguese legislation would also be in line with this provision¹¹⁶.

As regards Article 9(3) it was concluded that Austria, Germany, Ireland, Italy and Portugal explicitly provide for the possibility of prosecuting an offender who has committed a terrorist crime abroad and cannot be extradited. Other Member States (Belgium, Denmark or France) had pointed to provisions which extend jurisdiction to offences committed abroad when covered by an international agreement or convention under which they were obliged to

113 See first evaluation report, p. 31.

114 See first evaluation report, p. 34.

115 See first evaluation report, p. 34.

116 See first evaluation report, p. 34.

prosecute. Unless the Framework Decision itself were considered to be an international agreement, these rules might only partially cover the scope of this provision¹¹⁷.

Concerning Article 9(1)(d), **Belgium** commented that a terrorist offence committed in the interest of a Belgian legal person could be prosecuted in Belgium according to Article 6 of the Preliminary Title of the Code of Criminal Procedure, which is also applicable to legal persons. Belgian legislation therefore complies with Article 9(1)(d). On implementation of Article 9(3), Belgium responded that the modified Article 12bis of the Preliminary Title of the Code of Criminal Procedure,¹¹⁸ which extends jurisdiction to offences committed abroad when covered by an international agreement, now explicitly refers to the "rules of law derived from the European Union" and therefore includes Framework Decisions. This provision ensures a perfect implementation.

In response to the first evaluation report's criticism concerning its implementation of Article 9(1)(c), (d) and (3)¹¹⁹, **Denmark** pointed to Section 8, number 5 of its Criminal Code which states that "acts committed abroad fall under Danish jurisdiction where the act is covered by an international agreement under which Denmark is obliged to prosecute". The Danish authorities further clarified that under Danish law the reference to an international agreement includes "framework agreements" and that the provision also applies to cases where the obligation is formulated as an obligation to "have jurisdiction" and not only when it is formulated as an obligation to prosecute. Following these explanations, the Commission can agree that "Denmark does have criminal jurisdiction as regards those obligations that arise from Article 9 of the Framework Decision even if the obligation extends beyond Danish jurisdiction".

France has newly introduced Article 113-8-1 into this Criminal Code¹²⁰ implementing Article 9(3) of the Framework Decision. However, the provision has a narrower scope than the Framework Decision since it requires that the "crime" or "délit" in question is punishable by at least five years' imprisonment and that the refusal of extradition is due to specific reasons. Additionally, residents are still not generally covered under the French provisions. Furthermore, France has not commented on whether its reference to international agreements includes the Framework Decision.

Germany has specified that Article 9(1)(c) can be seen as included in Section 7(2), No2 of the Criminal Code. However, this provision contains the additional requirement that the Extradition Act would permit extradition but the foreigner is not extradited. Therefore, it does not generally cover residents and full compliance with this paragraph is not achieved. Additionally, Germany has rightly pointed out that no transposition is necessary concerning points (d) and (e). According to Section 3 in relation to Section 9(1) of the Criminal Code, the principle of territoriality also covers acts where effects of the act occur or are intended by the perpetrator to occur in Germany. Offences committed for the benefit of a legal person established in Germany or against the institutions or people of Germany or a European institution or body based in Germany are therefore covered.

117 See first evaluation report, p. 34.

118 Entered into force 10 January 2004.

119 See first evaluation report, p. 31, 32.

120 Introduced by Law n° 2004-204 of 9 March 2004.

9.3. Article 9(2)

Unfortunately, the situation has not improved since the first evaluation report was drawn up and **Ireland** continues to be the only Member State that has transposed this provision (even if partially) in Section 6(9)¹²¹ of the Criminal Justice (Terrorist Offences) Act 2005, which has in the meantime entered into force.

Sweden considers that its legislation meets the requirements of Article 9(2) of the Framework Decision. It explains that, if a question of where a trial should be held arises in a Swedish investigation of an offence, the prosecutor normally would contact the authorities in the country or countries which are involved to determine where the trial will be held. The circumstances listed in Article 9(2) would constitute the basis for discussions in this respect. Terrorist offences would be handled by a number of specially selected prosecutors with special competence in the field. The prosecutors would also be national contacts of Eurojust for questions concerning terrorism, participating in a special forum for solving jurisdictional questions. However, even if there seems to be a systematic approach to solve positive jurisdiction conflicts in Sweden, the Framework Decision requires Member States to transpose the rules contained in Article 9(2) as national rules on jurisdiction, which does not seem to be the case.

9.4. Conclusion

From the information provided it appears that the Belgian legislation also covers Articles 9(1)(d) and 9(3) and German legislation now complies with Articles 9(1)(d) and (e) of the Framework Decision. Denmark has referred to its obligation to prosecute in all cases established in Framework Decisions. It may be considered that Sweden has universal jurisdiction for terrorist offences. The French amendment in order to implement Article 9(3) unfortunately failed to change the Commission's prior conclusion about France's implementation of this paragraph.

10. ARTICLE 10: PROTECTION OF, AND ASSISTANCE TO, VICTIMS

10.1. Article 10(1)

At the time of the first evaluation report, it was established that only Austria had provided enough information to demonstrate compliance with Article 10(1) although it seemed likely that terrorist offences were in all Member States treated as public offences for the purposes of investigation and prosecution.¹²² Belgium, Denmark, France and Sweden have submitted further comments.

Belgium pointed out that public investigation is not dependent on a preliminary charge – notably on behalf of the victim – unless otherwise stated, which is not the case for terrorist offences and mentioned the relevant provisions of the Criminal Procedure Code.

121 At the time of the first evaluation report: Section 6(7) of the draft Bill - 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 (See first evaluation report, p. 34).

122 See first evaluation report (summary), p. 7.

Similarly, **France** stated that, under French Law, the prosecution of terrorist acts does not require a complaint or accusation from the victim.

Denmark explained that, under Section 118a of its Criminal Code, offences referred to in Sections 111-115 and 118, including the provisions of Sections 114-114d on terrorism, are always liable to public prosecution. Moreover, under Section 742(2) of the Administration of Justice Act, the police, either further to a report or at its own initiative, would initiate investigations where it is reasonable to assume that a punishable act liable to public prosecution has been committed.

Sweden stated that the offences covered by the Framework Decision are liable to public prosecution. Under Chapter 23, Article 1 of the Code of Judicial Procedure, a preliminary investigation is initiated as soon as, on the basis of a report or for some other reason, there is cause to believe that an offence liable to public prosecution has been committed. Thus, it is not necessary for the victim of the offence to report or notify such an offence for a preliminary investigation to be started.

10.2. Article 10(2)

Concerning Article 10(2), the first evaluation report focussed on measures to assist victims' families, as implementation of the Council Framework Decision on the standing of victims in criminal proceedings¹²³ is the subject of an independent report. Only eight Member States (Austria, Belgium, France, Germany, Ireland, Italy, Spain and the United Kingdom) had provided specific information on this matter¹²⁴.

For this second evaluation report, **Denmark** referred to the existence of various arrangements for aid and assistance to the victims of offences and their families, regardless of the type of offence to which the person concerned may have been exposed. However, no further details on the content of these arrangements have been forwarded.

Portugal provided further information on their Decree Law No 423/91 of 30 October on the Legal Regime to Protect Victims of Violent Crimes (with its successive amendments i.e. Law No 10/96, 136/99, 62/2004) and Implementing Decree No 4/93 of 22 February, on the creation and functioning of a committee responsible for processing compensation requests. Although the legislation forwarded does not directly cover the assistance to the families of the victims, Article 1(b) of the Decree-Law 423/91 includes as a criterion to qualify for compensation a serious disturbance of the spending power of the victim or that of his/her dependants. This paragraph shows that the needs of the family and not only those of the victim are taken into consideration when foreseeing to compensation. Therefore, the Portuguese legislation transmitted covers the assistance to the victims' families.

Sweden clarified its compliance with Article 10(2) of the Framework Decision. It pointed to a number of different measures it has taken to improve the care of victims of offences and to strengthen the victim's position both in and outside criminal trials. However, Sweden has not provided further details on measures to assist the families of the victims.

123 OJ L 82, 22.3.2001, p.1.

124 See first evaluation report, p. 35.

10.3. Conclusion

The Belgian, Danish, French and Swedish comments on implementation of Article 10(1) enforce the Commission's presumption that in all Member States terrorist offences are subject to public prosecution.

TABLE OF NATIONAL MEASURES TAKEN TO COMPLY WITH THE FRAMEWORK DECISION: MEMBER STATES EVALUATED FOR THE FIRST TIME (articles 1 to 4)

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)
Cyprus	Sections 6-8 and 15 of draft bill "The 2006 Terrorism and Related Matters Bill"	Part II of draft bill and Sections 9-14, 16 and 17 in particular, definition in part 1	Part II of draft bill, in particular Section 6 and 11	Sections 6(1), 18 draft bill
Czech Republic	Section 95 Criminal Code	Sections 95, 163a Criminal Code	No transposing provision	Sections 7, 9, 10, 95, 164 Criminal Code
Estonia	Article 237 Criminal Code	Arts. 2371 - 2373 Criminal Code	No transposing provision	Arts. 22, 25, 2372 , 2373 Criminal Code
Greece	Article 187A (1) and (3) Criminal Code	Article 187A (4) to (6) Criminal Code	Article 187A (7) Criminal Code	Article 42, 46 and 47 Criminal Code Article 187A (3) Criminal Code
Hungary	Article 261 Criminal Code	Article 261 (5) Criminal Code	Article 261 (9) Criminal Code	Arts. 16, 17 and 19 to 21 Criminal Code
Latvia	Section 88 Criminal Code	Section 88(2), (3) Criminal Code	No information provided	Sections 15, 19, 20 Criminal Code
Lithuania	Article 250 Criminal Code	Arts. 250(6), 25 and 249 Criminal Code	Arts. 180, 181, 300 Criminal Code	Arts. 22, 24, 26, 250 Criminal Code
Luxembourg	Article 135-1 Criminal Code	Arts. 135-3, 135-4, 135-5 Criminal Code	Article 135-1 Criminal Code	No information provided

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)
Malta	Article 328A Criminal Code	Article 328B Criminal Code	Article 328C Criminal Code	Arts. 41, 328D Criminal Code
Poland	Article 115 (20) Criminal Code	Article 258 Criminal Code	Arts. 279-282, 18(2),(3) Criminal Code	Arts. 13-15, 18 Criminal Code
Slovakia	Sections 93, 94 Criminal Code	Sections 89(26)-(28), 185a(2) Criminal Code	Sections 176, 235, 247 Criminal Code	Sections 8, 10, 164 Criminal Code
Slovenia	Arts. 355, 388 Criminal Code	Arts. 126, 297, 388a Criminal Code	Article 388a Criminal Code	Arts. 22-29 Criminal Code
The Netherlands	Article 83 and 83a Criminal Code	Article 140a Criminal Code	Arts. 311(1),6°, 312(2),5°, 317(3), 225 Criminal Code	Arts. 45, 46a, 47, 48 Criminal Code

**TABLE OF NATIONAL MEASURES TAKEN TO COMPLY WITH THE FRAMEWORK DECISION: MEMBER STATES EVALUATED
FOR THE FIRST TIME (articles 5 to 10)**

Member State	Article 5 (Penalties)	Article 6 (Particular circumstances)	Article 7 and 8 (Liability of / penalties for legal persons)	Article 9 (Jurisdiction and prosecution)	Article 10 (Protection of, and assistance to, victims)
Cyprus	Sections 7-9, 11, 17, 18 and 32 draft bill Specific reference to 5 (2) Section 22 draft bill	Section 23 (1) draft bill	Section 19 draft bill	Article 5 Criminal Code, Section 4 and 18 draft bill	(1) No information provided (2) Section 25 draft bill in relation to 1997 Compensation of Victims of Violent Crimes Law
Czech Republic	Transposing provisions not forwarded	Transposing provisions not forwarded	No transposing provision	Transposing provisions not forwarded	(1) No information provided (2) No transposing provision
Estonia	Arts. 2371 - 2373 Criminal Code Specific reference to 5 (2) Article 237 Criminal Code	No specific provision: General rule Article 57 Criminal Code	Arts. 14, [44(8)], 237 (2), 2371(2), 2372(2), 2373 (2) Criminal Code	Arts. 6, 7(1) and 9 Criminal Code	(1) No legal basis provided (2) Victims Support Act, Witness Protection Act
Greece	Arts. 187A (1) and (4) to (7) Criminal Code Specific reference to 5(2) Article 187A (1) Criminal Code	Article 187B Criminal Code	Article 41 Law 3251/2004	Article 8(a) Criminal Code	(1) No information provided (2) No transposing provision
Hungary	Article 261 (1) and (7) Criminal Code Specific reference to 5 (2) Article 261 (1) Criminal Code	Article 261 Criminal Code (3)	Article 2 and 3 Act on penal measures applicable to legal persons	Article 3 and 4 Criminal Code	No information provided

Member State	Article 5 (Penalties)	Article 6 (Particular circumstances)	Article 7 and 8 (Liability of / penalties for legal persons)	Article 9 (Jurisdiction and prosecution)	Article 10 (Protection of, and assistance to, victims)
Latvia	Section 88 Criminal Code Specific reference to 5 (2) No transposing provision	No specific provision: General rule Section 47 Criminal Code	Sections 701 to 708 in relation to Section 12(1) Criminal Code	Sections 2, 3 and 4 Criminal Code	No information provided
Lithuania	Article 250(6), 249 Criminal Code Specific reference to 5 (2) No transposing provision	No specific provision: General rule Article 59 Criminal Code<0} <0}	Arts. 20; 43, 47, 52 and 53 Criminal Code	Arts. 5 and 7 Criminal Code	(1) No legal basis provided. (2) Law on Compensation and Damage Caused by Violent Crimes, Law on legal assistance guaranteed by the State
Luxembourg	Arts. 135-1 – 135-4 Criminal Code Specific reference to 5 (2) Arts. 5(2), 135-1 and 135-2 Criminal Code	Article 135-7(2) Criminal Code	No information provided	Article 7-4 Code of Criminal Procedure	No information provided
Malta	Arts. 328A(3), 328B(3), 328C, 328D Specific reference to 5 (2) Article 328A (3)	No transposing provision	Arts.121D, 328J and 328K Criminal Code	Arts. 5 and 328M Criminal Code	(1) No legal basis provided (2) No information provided

Member State	Article 5 (Penalties)	Article 6 (Particular circumstances)	Article 7 and 8 (Liability of / penalties for legal persons)	Article 9 (Jurisdiction and prosecution)	Article 10 (Protection of, and assistance to, victims)
Poland	Arts. 65, 258 Criminal Code Specific reference to 5 (2) Article 65 in relation to 64(2) Criminal Code	No specific provision: General rules, Art 60 Criminal Code	Arts. 3, 7, 8, 9, and 16(1), 12) Criminal Liability of Bodies Corporate Act of 28 October 2002	Arts. 5, 109, 110 Criminal Code	(1) Article 10 of the Code of Criminal Procedure (2) No information provided
Slovakia	Sections 93, 94, 176, 185a, 235 and 247 Criminal Code Specific reference to 5 (2) No transposing provision	Sections 33(j), 40(3) and 40(4) Criminal Code	No transposing provision.	Sections 17-19 and 20(2) Criminal Code	(1) Section 2(3) Criminal Code (2) No information provided
Slovenia	Arts. 309, 310, 330, 331, 355, 356, 388, 388a, 390 Criminal Code Specific reference to 5 (2) No transposing provision	Article 297(3) in relation to Article 42(3) Criminal Code	Article 33 Criminal Code, Article 4, 5, 12-15, 18-20 and 25 of the Liability of Legal Persons for Criminal Offences Act	Arts. 120-123 Criminal Code, Article 3 of the Liability of Legal Persons for Criminal Offences Act	(1) No legal basis provided. (2) Article 141a(2), 240a Criminal Procedure Act and Witness Protection Act

Member State	Article 5 (Penalties)	Article 6 (Particular circumstances)	Article 7 and 8 (Liability of / penalties for legal persons)	Article 9 (Jurisdiction and prosecution)	Article 10 (Protection of, and assistance to, victims)
The Netherlands	<p>Arts. 10(3), 114a, 120a, 130a, 140a, 176a, 282b, 285(3), 288a, 304a, 415a Criminal Code, Arts. 5, 6 Extradition Act, Article 55(5) Arms and Ammunition Act, Article 6(4) Economic Offences Act, Article 33a Explosives for Civil Use Act, Article 79 Nuclear Power Act</p> <p>Specific reference to 5 (2)</p> <p>Arts. 10 (3), 114a, 120a, 130a, 176a, 304a, 415a Criminal Code</p>	<p>No specific provision: judicial discretion</p>	<p>Arts. 23, 51 Criminal Code Paragraph 2 and 3:</p>	<p>Arts. 2, 3, 4, section°16, 4a(2), 5, 5a Criminal Code</p>	<p>(1) No legal basis provided</p> <p>(2) No transposing provision</p>

TABLE OF NATIONAL MEASURES TAKEN TO COMPLY WITH THE FRAMEWORK DECISION: MEMBER STATES EVALUATED FOR THE SECOND TIME (articles 1 to 5)

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)	Article 5 (Penalties)
Austria	Section 278c(1) 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 278b and 278c Criminal Code	Section 278b Criminal Code Specific reference to 5(2) Section 278c(2), 12 and 15(1) Criminal Code
Belgium	Art 137 in relation to 141bis and 141ter Criminal Code	Arts 139, 140, 141 Criminal Code	Arts 461 et seq, 470 et seq, 193 Criminal Code.	Arts 66-69 and 51-53 Criminal Code	Arts 140 and 141 Criminal Code Specific reference to 5(2) Arts 138 Criminal Code
Denmark	Section 114 Criminal Code	Sections 114, 114a, 114b and 23 Criminal Code	Sections 114 and 23 Criminal Code	Sections 21, 23, 114b Criminal Code	Sections 2 and 2a of the Danish Extradition Act Section 114 Criminal Code Specific reference to 5(2) 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

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)	Article 5 (Penalties)
Finland	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	Chapter 34a Sections 3,4, and 5 Criminal Code Specific reference to 5(2) Section 34a Criminal Code in relation to 25:7, 34:10, 21:13, 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
France	Art 421-1, 421-2, 222-17 Criminal Code	Arts 421-2-1, 421-2-2, 421-5 Criminal Code	Arts 421-1 in relation to 441-2 and Art 312-10 ("chantage") Criminal Code	Arts 121-4,121-6,121-7, 332-4, 332-11, 332-7 Criminal Code, Arts 23, 24 Loi sur la liberté de la presse du 29 juillet 1881	Arts 421-5 Criminal Code Specific reference to 5(2) Art 421-3 Criminal Code

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)	Article 5 (Penalties)
Germany	<p>Sections 46(2), 129a Criminal Code</p> <p>Common offences: Sections 126, 211, 212, 226, 239a, 239b, 303b, 305, 305a, 306-306c, 307(1)-(3), 308(1)-(4), 309(1)-(5), 310, 311-314, 315(1),(3),(4), 315b (1),(3),(4), 316b(1),(3), 316c(1)-(3), 317(1), 318,325, 328, 330, 330a, Section 19-22a Gesetz über die Kontrolle von Kriegswaffen, Sections 51(1)-(3), 52(1)No1-4 Arms Act, Section 40(1)-(3) Explosives Act</p>	<p>Sections 129a, 129b, 27 Criminal Code</p>	<p>Arts 242bis, 244a, 253, 255, 267, 271, 273, 275, 276, 276a, and 281 Criminal Code</p>	<p>Arts.26, 27,25(2),23(1) Criminal Code</p>	<p>Section 129a Criminal Code in relation to Art 38(2) Criminal Code</p> <p>Specific reference to 5(2)</p> <p>Section 46(2) Criminal Code</p>
Ireland	<p>Sections 4 in relation to Part 1 of Schedule 2, Section 6 Criminal Justice (Terrorist Offences) Act 2005</p>	<p>Sections 4,5, 49 Criminal Justice (Terrorist Offences) Act 2005, Sections 21, 21A Offences against the State Act 1939, Section 6 Offences against the State (Amendment) Act 1998</p>	<p>Section 4, Parts 2 and 3 of Schedule 2, Section 6 Criminal Justice (Terrorist Offences) Act 2005</p>	<p>Section 3 Criminal Law Act 1976, Section 7 Criminal Law Act 1997, Section 6 Criminal Justice (Terrorist Offences) Act 2005</p>	<p>Sections 7, 48, 49, 13 Criminal Justice (Terrorist Offences) Act 2005/Section 6 Offences against the State(Amendment) Act 1998</p> <p>Specific reference to 5(2)</p> <p>Section 7 Justice (Terrorist Offences) Act 2005</p>

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)	Article 5 (Penalties)
Italy	Arts 270sexies, 280, 280bis, 289bis Criminal Code Common offences: Arts 56, 285,420, 422, 426, 432, 433, 438, 439 Criminal Code, Arts 1, 2, 4 Law 895 of 02-10-1967, Art 1 Law 342 of 10-05-1976, Art 3 Law 422 of 28-12-1989, Art 10 Law 496 of 18-11-1995, Art 1138 Navigation Code	Arts 270bis, ter, quater and quinquies Criminal Code	Art 1 Decree-Law 625/1979 in relation to Arts 624,629 and 479 Criminal Code	Arts 56, 110, 302, 414 Criminal Code	Art 270bis Criminal Code Specific reference to 5(2) Art 1 Decree-Law 625/1979
Portugal	Art 4(1) in relation to 2(1) Law n° 52/2003	Arts 2 and 3 Law 52/2003	Art 4(2) Law 52/2003	Art 26, 27, 22, 23 Criminal Code	Art 2(2)-2(4) Law 52/2003 Specific reference to 5(2) Arts 4(1) and 5 Law 52/2003
Spain	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	Arts 516 and 576 Criminal Code Specific reference to 5(2) Arts 571-575 and 577 Criminal Code

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)	Article 5 (Penalties)
Sweden	Section 2 and 3 Act (2003:148)	Sections 3 and 4 Act (2003:148) in relation to Chapter 23 sections 1,2,4 and 6 Criminal Code; Act (2002:444) on Criminal Responsibility for the Financing of Particularly Serious Crime in some cases	Section 5 Act (2003:148)	Section 4 Act (2003:148), Sections 1-2 and 4 Criminal Code	Sections 2-4 Act (2003:148), Chapter 23, Sections 1-4 Criminal Code
United Kingdom	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 1983/Biological Weapons Act 1974/Chemical Weapons Act 1996	Part II (Sections 3-13) and 56-58 Terrorism Act 2000	Sections 57,15-18 Terrorism Act 2000	Sections 59-61 Terrorism Act 2000	Section 56; Sections 11,12,15-18,22,57 and 58 Terrorism Act 2000 Specific reference to 5(2) No specific provision: judicial discretion

**TABLE OF NATIONAL MEASURES TAKEN TO COMPLY WITH THE FRAMEWORK DECISION: MEMBER STATES EVALUATED
FOR THE SECOND TIME (articles 6, 7, 8, 9, 10, 12)**

Member State	Article 6 (Particular circumstances)	Articles 7 and 8 (Liability of /penalties for legal persons)	Article 9 (Jurisdiction and prosecution)	Article 10 (Protection of, and assistance to, victims)	Article 12 (Territorial application)
Austria	Section 41a Criminal Code	Sections 2 – 4 Legal Persons' Liability Act	Sections 62, 63, 64(1)(9), 65(1)(1)and (2), 67 Criminal Code	(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
Belgium	No specific provision: General rules Arts 79-85 Criminal Code	Arts 5,7bis and 41bis Criminal Code	Arts 3 and 5 Criminal Code; Arts 6(1)ter, 10ter and 12bis Preliminary Title Code of Criminal Procedure	(1)Art 2, 6, 7 (a contrario) Preliminary Title Code of Criminal Procedure (2) Art 3bis Code of Criminal Procedure	Not relevant
Denmark	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	(1) Section 118a Criminal Code and 742 (2) Danish Administration of Justice Act (2) No information provided	Not relevant
Finland	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	(1) No legal basis provided (2) No information provided	Not relevant
France	Art 422-2 Criminal Code	Arts 422-5,121-2,131-39 Criminal Code	Arts 113-2 to 4, 113-6 and 7, 114-8-1, 113-10 Criminal Code; Arts 689 to 689-9 Code of Criminal Procedure	(1)No legal basis provided (2) Article 422-7 of the Criminal Code	Not relevant

Member State	Article 6 (Particular circumstances)	Articles 7 and 8 (Liability of /penalties for legal persons)	Article 9 (Jurisdiction and prosecution)	Article 10 (Protection of, and assistance to, victims)	Article 12 (Territorial application)
Germany	Section 129a (7) in relation to Section 129(6), Section 46(2) Criminal Code	Sections 30 and 130 Act on Regulatory Offences	Sections 3,4,7,9 and 129b Criminal Code	(1) Principle of legality (2) Criminal Injuries Compensation Act, compensation fund for victims of terrorism, support from private organisations.	Not relevant
Ireland	No specific provision: judicial discretion	Section 45 Criminal Justice (Terrorist Offences) Act 2005	Sections 6 and 43 Criminal Justice (Terrorist Offences) Act 2005	(1) No legal basis provided (2) Range of legal and administrative measures	Not relevant
Italy	Arts 2, 3 Law 304 of 29-5-1982	Arts 5, 6, 9, 16, 25quarter Legislative Decree 231 of 08-06-2001	Arts 4,6,7,9,10 Criminal Code; Art 4 Legislative Decree 231 of 08-06-2001	(1)No information provided (2) Law 20-10-90 n.302	Not relevant
Portugal	Arts 2(5), 3(2), 4(3) Law 52/2003	Art 6 Law 52/2003	Art 4-6 Criminal Code; Article 8 Law 52/2003	(1)Arts 113-117 Criminal Code (2) Decree Law No 423/91 of 30 October – Legal regime to protect victims of violent crimes (with its successive amendments Law No 10/96, 136/99, 62/2004) and implementing Decree No 4/93 of 22 February laying down the conditions for State compensation for the victims of violent crimes	Not relevant

Member State	Article 6 (Particular circumstances)	Articles 7 and 8 (Liability of /penalties for legal persons)	Article 9 (Jurisdiction and prosecution)	Article 10 (Protection of, and assistance to, victims)	Article 12 (Territorial application)
Spain	Article 579(3) Criminal Code	Arts 515, 520, 129 Criminal Code	Art 23.1 and 4.b) Organic Law of the Judiciary	(1) No information provided (2) Law 32/1999 of 8 October of "Solidarity with the victims of terrorism"	Not relevant
Sweden	No specific provision	Chapter 36, Sections 7-10 Criminal Code	Chapter 2, Sections 1-3 Criminal Code	(1) Chapter 23, section 1 Code of Judicial Procedure (2) Reference to COM report	Not relevant
United Kingdom	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 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	(1) No information provided (2) Great Britain Injuries Compensation Scheme	No specific information provided