



Strasbourg, 15 November 2016

GOP (2016) 9

GROUP OF PARTIES TO THE COUNCIL OF EUROPE CONVENTION ON THE PREVENTION OF TERRORISM [CETS NO. 196]

SUMMARY OF THEMATIC ASSESSMENT REPORT ON THE IMPLEMENTATION OF ARTICLE 1 (“TERMINOLOGY”) OF THE COUNCIL OF EUROPE CONVENTION ON THE PREVENTION OF TERRORISM [CETS No 196] (2016)

Secretariat of Terrorism Division
Information Society and Action against Crime Directorate, DG I

codexter@coe.int - <http://www.coe.int/terrorism>

1. Introduction

1. The Council of Europe Convention on the Prevention of Terrorism (CETS No. 196) was opened for signature in Warsaw on 16 May 2005 and entered into force on 1 June 2007. As of 15 November 2016, the Convention has been ratified by 36 States. In addition, 11 States and the European Union have signed but not yet ratified the Convention.
2. At its 10th meeting, on 18 May 2016, the Group of Parties to the Convention decided to devote its fifth Thematic Assessment Report to Article 1 of the Convention.
3. Article 1 deals with the terminology. The provision stipulates that:
 - 1 *For the purposes of this Convention, "terrorist offence" means any of the offences within the scope of and as defined in one of the treaties listed in the Appendix.*
 - 2 *On depositing its instrument of ratification, acceptance, approval or accession, a State or the European Community which is not a party to a treaty listed in the Appendix may declare that, in the application of this Convention to the Party concerned, that treaty shall be deemed not to be included in the Appendix. This declaration shall cease to have effect as soon as the treaty enters into force for the Party having made such a declaration, which shall notify the Secretary General of the Council of Europe of this entry into force.*
4. The Group of Parties agreed to inquire whether the definition of "terrorist offence" contained in Paragraph 1 of Article 1 is still sufficient for achieving the aims of the Convention. If this definition is not deemed sufficient, the Parties to the Convention are requested to provide suggestions for amending Article 1. Additionally, the Group of Parties agreed to include a request for comments and/or additional information on Article 1.
5. The Group of Parties agreed on a template for the assessment of Article 1 (see Annex II) containing a series of six questions grouped under the following main headings:
 - The transposition of Article 1
 - Additional information
6. This template questionnaire was distributed to the Parties to the Convention, which were asked to send in their replies by 4 November 2016. 17 Parties submitted replies (see Annex I).
7. The Group of Parties examined the replies to the template questionnaire at its meeting on 15 November 2016 and prepared the present Thematic Assessment Report.
8. The Thematic Assessment Report contains an analysis and synthesis of the state of implementation in Parties based on the replies received, as well as certain recommendations to Parties adopted by the Group of Parties.
9. Thus, the Thematic Assessment Report does not attempt to provide a detailed comparative analysis of all relevant aspects of the legal systems in the 17 responding Parties, but instead provides a snapshot of the state of implementation of Article 1.

2. Descriptive Part

10. This chapter offers a synthesis of the 17 replies received and provides a general overview of the state of implementation by Parties regarding Article 1 of the Convention.
11. The Group of Parties takes note that one of the Parties has made a reservation with regard to the provision of the Convention covered by this Thematic Assessment Report. Specifically, the

referred-to Party declared that, in accordance with Paragraph 2 of Article 1, the International Convention for the Suppression of Acts of Nuclear Terrorism, adopted in New York on 13 April 2005, shall be deemed not to be included in the Appendix to the Convention. Another Party initially made the same reservation, but ratified the aforementioned Convention on 20 February 2014 (although this ratification is yet to be notified to the Secretary General of the Council of Europe).

Article 1

12. Paragraph 1 of Article 1 provides that for the purposes of the Convention, the term “terrorist offence” is taken to mean any of the offences within the scope of and as defined in one of the treaties listed in the Appendix to the Convention. As stated in the Explanatory Report (paragraph 49), the reference to the offences «*within the scope and as defined*» in the legal instruments listed in the Appendix indicates that, in addition to the definitions of crimes, there may be other provisions in these conventions that affect their scope of application. Moreover, when establishing the offences in their national law, Parties should bear in mind the purpose of the Convention (Article 2) and the principle of proportionality (Article 12, paragraph 2). Hence, the Convention obliges Parties to criminalise conduct that has the potential to lead to terrorist offences, but it does not aim at, and create a legal basis for, the criminalisation of conduct which has only a theoretical connection to such offences (i.e. the Convention does not address hypothetical chains of events).
13. The purpose of Paragraph 2 of Article 1 is to deal with the situation where a Party to the present Convention is not a party to a treaty listed in the Appendix, taking into account the consequences that this could cause for the Party concerned in terms of the treaty obligations incumbent upon it. Parties are therefore given the possibility to exclude from the Appendix (by means of a declaration) any of the treaties to which they are not a party.
14. All the responding Parties have transposed Paragraph 1 of Article 1 in their domestic legislation. However, there is not enough information to assess how the Parties to the Convention have made the transposition of Article 1.
15. Five Parties have enacted specific acts or laws which transpose criminal law provisions on terrorist offences into their domestic legislation. One of these Parties further specified that its most recently adopted act on terrorist offences contains provisions for the implementation of the Council of Europe Convention on the Prevention of Terrorism, the Council of the EU Framework Decision 2008/919/JHA of 28 November 2008 amending Framework Decision 2002/475/JHA on combating terrorism, and paragraph 6 of the UN Security Council Resolution 2178 (2014).
16. None of the responding Parties has made a declaration as provided for in Paragraph 2 of Article 1 of the Convention. 15 out of the 17 responding Parties are Party to all the treaties listed in the Appendix. Nevertheless, two of the responding Parties have not yet ratified the International Convention for the Suppression of Acts of Nuclear Terrorism, adopted in New York on 13 April 2005.
17. All the responding Parties stated that their domestic legislation contain a definition of “terrorism” or “terrorist offence” or the similar, other than that contained in Paragraph 1 of Article 1.

Additional information

18. 7 out of the 17 responding Parties have provided additional information on the definition of “terrorist offence” contained in Paragraph 1 of Article 1. Four of them considered that the definition is still sufficient for achieving the aims of the Convention, while three other Parties

did not deem the definition to be comprehensive enough, and proposed suggestions for amending Article 1.

3. Analytical Part

19. This chapter focuses on identifying and providing comments on main approaches and trends in the way the responding Parties have implemented Article 1.

The transposition of Article 1:

20. Article 1 has been transposed by the responding Parties in two different ways, either by the establishment of a specific legal framework concerning the criminalisation of “terrorist offences”, or by considering that serious criminal offences are terrorist offences in nature if committed with certain purposes.
21. It should be underlined, that there is no legal obligation for Parties under the Convention to transpose Article 1 in their domestic law in a particular manner. Both approaches mentioned in the paragraph above fulfil the requirements under international treaty law and the choice remains strictly within the discretion of Parties, as long as the method of transposition does not affect the ability of a Party to apply the Convention effectively. Furthermore, Parties must bear in mind that States have a positive obligation to protect the fundamental rights of everyone within their jurisdiction against terrorist acts (especially the right to life). In this context, the Group of Parties draws the attention to Rule III (Lawfulness of anti-terrorist measures) of the Council of Europe Guidelines on “Human rights and the fight against terrorism” (2002), which states in its second paragraph that *«[w]hen a measure restricts human rights, restrictions must be defined as precisely as possible and be necessary and proportionate to the aim pursued.»*
22. The Group of Parties notes that all but two of the responding Parties have ratified all the international instruments listed in the Appendix to the Convention, including the International Convention for the Suppression of Acts of Nuclear Terrorism, adopted in New York on 13 April 2005. This treaty was incorporated *a posteriori* to the Appendix by the Committee of Ministers at its 1034th meeting (11 September 2008, item 10.1) and entered into force on 13 September 2009 in accordance with Article 28 of the Convention.
23. The Group of Parties notes that 8 out of the 17 responding Parties have based the definition of “terrorist offence” in their national legislation on Article 1 of the Council of the EU Framework Decision 2002/475/JHA of 13 June 2002 on Combating Terrorism, while a number of Parties are to a certain extent influenced by the above Framework Decision.
24. The Group of Parties also notes that two of the responding Parties do not have a definition of “terrorist offence” or “terrorism” in their national criminal codes; however they have similar definitions in their national legislation. On the other hand, apart from the definition of “terrorist offence”, one of the responding Parties included a definition of “terrorism” in its national legislation, while another Party defines the terms “terrorism”, “terrorist act”, “terrorist activity”, “international terrorist activity” and “crimes of a terrorist nature”.
25. The Group of Parties finally notes that none of the responding Parties have reported encountering any specific legal problems in the process of transposition of Article 1 in their domestic legislations.

Possible amendments to Article 1:

26. The Group of Parties notes that only 7 of the responding Parties have provided their insight as to whether the definition of “terrorist offence” contained in Paragraph 1 of Article 1 is sufficient for achieving the aims of the Convention or needs to be amended.

27. Three Parties regarded Article 1 as not sufficient and suggested amendments for Article 1:

- One Party pointed out that recent attacks on so-called “soft targets” committed with bladed weapons are not fully covered by the treaties listed in the Appendix. Therefore, this Party deems necessary to include attacks upon a person’s life which may cause death or severe bodily injury in the definition, in accordance with Article 1 §1 (a) and (b) of Council of the EU Framework Decision 2002/475/JHA.
- Another Party remarked that the offences stipulated in the treaties listed in the Appendix often do not make reference to the subjective element (a terrorist intent) of the offence and, therefore, it could be argued that in some cases the criminalisation of acts related to terrorist offences (such as Articles 5 to 7 of the Convention) may not have actual connection to terrorism (while acknowledging that there is not an internationally agreed definition of terrorism and also that this issue is briefly addressed in paragraph 49 of the Explanatory Report). Hence, this Party wonders whether or not the definition of “terrorist offence” should include, as a terrorist motive, a *mens rea* component (the terrorist’s intention or knowledge of committing a criminal offence). It is likely to allow for a different approach, other than referring to the Appendix, and would perhaps enable a broader scope of objective acts (e.g. some serious computer-related offences, any attack upon a person’s life which may cause death, etc.).
- A third Party considers that the definition of “terrorist offence” contained in the Council of the EU Framework Decision 2002/475/JHA is more comprehensive, since it lists all intentional acts which shall be deemed to be terrorist offences under certain conditions.

Annex I**List of responding Parties
(in alphabetical order)**

Austria

Cyprus

Denmark

Estonia

France

Germany

Hungary

Latvia

Lithuania

Montenegro

Netherlands

Norway

Poland

Portugal

Republic of Moldova

Romania

Sweden

Annex II

Article 1 – Terminology

1. For the purposes of this Convention “terrorist offence” means any of the offences within the scope of and as defined in one of the treaties listed in the Appendix.
2. On depositing its instrument of ratification, acceptance, approval or accession, a State or the European Community which is not party to a treaty listed in the Appendix may declare that, in the application of this Convention to the Party concerned, that treaty shall be deemed not to be included in the Appendix. This declaration shall cease to have effect as soon as the treaty enters into force for the Party having made such a declaration, which shall notify the Secretary General of the Council of Europe of this entry into force.

Appendix

1. Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970;
2. Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, concluded at Montreal on 23 September 1971;
3. Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents, adopted in New York on 14 December 1973;
4. International Convention Against the Taking of Hostages, adopted in New York on 17 December 1979
5. Convention on the Physical Protection of Nuclear Material, adopted in Vienna on 3 March 1980;
6. Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, done at Montreal on 24 February 1988;
7. Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, done at Rome on 10 March 1988;
8. Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on 10 March 1988;
9. International Convention for the Suppression of Terrorist Bombings, adopted in New York on 15 December 1997;
10. International Convention for the Suppression of Financing of Terrorism, adopted in New York on 9 December 1999;
11. International Convention for the Suppression of Acts of Nuclear Terrorism, adopted in New York on 13 April 2005.

TEMPLATE

FOR THE ASSESSMENT OF THE IMPLEMENTATION OF ARTICLE 1 “TERMINOLOGY” OF THE COUNCIL OF EUROPE CONVENTION ON THE PREVENTION OF TERRORISM

[CETS No. 196]

Party to the Convention:

Name of Providing Expert:

The transposition of Article 1:

Question 1: Please provide a description of how Paragraph 1 of Article 1 has been transposed in your domestic legislation.

Question 2: Has your State made a declaration as provided for in Paragraph 2 of Article 1?

If yes, please state the main reasons.

Question 3: Does your domestic legislation contain a definition of “terrorism” or “terrorist offences” or the similar, other than that contained in Paragraph 1 of Article 1?

If yes, please provide a translation of the provision(s) in question in one of the official languages (EN or FR).

Additional information

In addition to the observations provided above, Parties are invited to provide, if they so wish, any further information on the definition of the term “terrorist offence”. This could concern, *inter alia*:

Question 4: Do you consider that the definition of “terrorist offence” contained in Paragraph 1 of Article 1 is still sufficient for achieving the aims of the Convention? Please provide a short reasoning for your answer.

Question 5: If you do not deem the definition of “terrorist offence” contained in Paragraph 1 of Article 1 to be sufficient, do you have any suggestions for amending Article 1?

Question 6: Do you have any other comments on Article 1 or any additional information about the transposition of that provision in your domestic law, which has not been touched upon in your replies to questions 1 – 5 above?