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Explanatory Report to the Protocol amending the Council of Europe Convention on the Prevention of Terrorism

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I. The Committee of Ministers of the Council of Europe took note of this Explanatory Report on 9 July 2025 on the occasion of the 1534th meeting of the Ministers' Deputies.

II. The text of this Explanatory Report does not constitute an instrument providing an authoritative interpretation of the Protocol amending the Convention on the Prevention of Terrorism (CETS No. 196), hereafter the Amending Protocol, although it may be of such nature as to facilitate the application of the provisions contained therein.

Introduction to the Amending Protocol

1. The Amending Protocol to the 2005 Council of Europe Convention on the Prevention of Terrorism (CETS No. 196), also known as the Warsaw Convention (hereafter "the Convention"), is intended to replace the current approach towards terrorist offences in Article 1 of the Convention with a comprehensive pan-European definition of a terrorist offence.

2. By providing a clear and precise legal definition of a terrorist offence, the Amending Protocol seeks to advance the purpose of the Convention by enhancing the efforts of Parties to prevent terrorism as one of the most serious threats to international peace, security and well-being of citizens in Europe and globally, both by measures to be taken at national level and through international co-operation.

3. The Convention was drafted between 2003 and 2005 "to enhance the efforts of Parties in preventing terrorism and its negative effects on the full enjoyment of human rights and in particular the right to life, both by measures to be taken at national level and through international co-operation, with due regard to the existing applicable multilateral or bilateral treaties or arrangements between the Parties". The Additional Protocol to the Council of Europe Convention on Terrorism (CETS No. 217), hereafter "the Additional Protocol", followed up on United Nations Security Council Resolution 2178 (2014) adopted by the Security Council of the United Nations at its 7272nd meeting on 24 September 2014. The main aim of the Additional Protocol is thus to supplement the Convention with a series of measures aimed at preventing and curbing the flow of foreign terrorist fighters to conflict zones.

4. Currently, the Convention does not provide an autonomous definition of a terrorist offence in Article 1, instead relying on key international anti-terrorism treaties negotiated in the context of the United Nations, contained in the Appendix to the Convention. As such, a number of offences which could be considered terrorist by their nature and context do not fall within the scope of these treaties. The Amending Protocol expands the scope of the definition of a terrorist offence under the Convention, while also providing more legal certainty on the acts which constitute terrorist offences.

5. Parties to the Convention must ensure that all measures taken in the fight against terrorism must respect the rule of law and democratic values, human rights and fundamental freedoms as well as other provisions of international law, including, where applicable, international humanitarian law. In providing a clearer enumeration of acts that are terrorist offences, the definition aims to improve the consistent and appropriate use of counter-terrorism measures within the scope of the Convention, while also further safeguarding against arbitrary, erroneous or abusive use of such measures.

Background

CDCT-DEF Sub-Group

6. The Sub-group for the Purpose of Examining the Feasibility of Elaborating a Definition of Terrorism (CDCT-DEF) was established by the Council of Europe Committee on Counter-Terrorism (CDCT) in May 2018 and held its first meeting in October 2018. Two further meetings of the CDCT-DEF were held in February and October 2019, respectively. The Sub-Group's final report was presented to the CDCT 4th plenary Meeting in November 2019, where the CDCT decided to continue the examination of which legal elements could be included in a definition of a terrorist offence.

7. The Sub-Group considered that an updated Article 1 would provide an improved legal basis to all actions and measures to prevent terrorism in the context of the Convention. A clear legal definition establishes appropriate parameters to counter-terrorism activity, and ensures that counter-terrorism legislation is, in design and implementation, fully compatible with relevant rule of law principles, as well as the norms and obligations of the European Convention on Human Rights (ECHR) and other international human rights law instruments. Furthermore, given the penalties often prescribed for terrorist offences, the Sub-Group considered it vital that any counter-terrorism legislation is drafted in a clear, precise and comprehensive manner in order to provide legal certainty.

8. The Sub-Group's key findings were that the current wording of Article 1 of the Convention does not encompass all forms of terrorism currently prevalent in Europe and globally and that merely updating the Appendix would not remedy this deficiency. The Sub-Group concluded that it was feasible to elaborate a common pan-European legal definition of a terrorist offence.

9. The Sub-Group did not submit a formal proposal for a definition of a terrorist offence, but instead provided the CDCT with an illustrative model which identified and combined the key elements of a definition of a terrorist offence for their reflection. However, due to the emergence of the Covid-19 pandemic and the altered working methods of the CDCT in 2020 and 2021, it was decided to put further discussion on hold until the plenary could meet in person again.

Negotiations

10. At its 9th plenary meeting on 30 November – 2 December 2022, the CDCT, meeting in person, decided that it was still feasible to advance a new definition of a terrorist offence and to formally open negotiations at its next plenary meeting and to examine and discuss any proposals or comments then.

11. Subsequently, during its 10th plenary meeting (23-25 May 2023), the CDCT members were presented with the history of the work on developing a pan-European definition of a terrorist offence and its main milestones. This included the key findings and recommendations of the CDCT-DEF Working Group on the feasibility of elaborating such a definition, the main characteristics of the definition, its correlation with other provisions of the Convention and with other relevant legal instruments.

12. Drawing upon the previous work done by the CDCT-DEF, a proposed text of the definition was put forward. This new proposal introduced the two limbs of the definition set out in Article 1 of the Amending Protocol through the addition of a list of criminal acts which, when intentionally committed with a terrorist aim and given their nature or context may seriously damage a country or an international organisation, were to be considered as terrorist offences alongside the offences contained within the treaties in the Appendix to the Convention. The new text was also more closely aligned with other relevant guidance and legislative developments that had emerged since the original opening of the Convention, notably the relevant United Nations Security Council Resolutions and the Directive 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism. The European Commission was authorised by the Council of the European Union to participate in the negotiations, on behalf of the European Union, as regards matters falling within the European Union's competence, as defined by the treaties, and in respect of which the European Union has adopted rules, namely the amendment of the Council of Europe Convention on the prevention of terrorism (CETS No. 196) with a view to modifying the definition of terrorist offences.[1]

13. Comments on the draft text were received from several CDCT delegations. Some of these comments included suggested changes to the text or requested various clarifications, as well as concerns about the exact breadth and nature of the language used in the proposed text, and the relationship between the definition of a terrorist offence and other relevant legal frameworks such as financing of terrorism, the nexus between terrorist offences and organised crime, acts causing serious destruction of natural resources and environmental damage, and the importance of safeguards and exemptions for humanitarian actors and other legitimate activities. All these proposals and requests were carefully examined and taken into account in the course of discussions and negotiations which followed. These comments were dealt with during the 11th plenary meeting of the CDCT held in Helsinki in December 2023, at which time the CDCT approved the draft text of the definition.

14. Subsequently, at the 12th CDCT plenary in May 2024, the CDCT opted for an Amending Protocol to incorporate the draft text of the definition into the Convention.

15. In their considerations, the CDCT members drew inspiration from other amending protocols within the Council of Europe Treaty Series, including, *inter alia*, the Protocol amending the European Social Charter (ETS No. 142); Protocol amending the Convention on Mutual Administrative Assistance in Tax Matters (CETS No. 208) and Protocol amending the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (CETS No. 223).

Impact of the Amending Protocol on the Additional Protocol to the Convention

16. The amended Article 1 of the Convention would also apply to the Additional Protocol in accordance with its Article 9, which states that "the words and expressions used in this Protocol shall be interpreted within the meaning of the Convention. As between the Parties, all the provisions of the Convention shall apply accordingly, with the exception of Article 9 [on ancillary offences]."

Scope of the Amending Protocol

Preamble

17. The Preamble sets out the main principles and aims of the Amending Protocol.

[1] COUNCIL DECISION (EU) authorising the European Commission to participate, on behalf of the European Union, in negotiations on the revision or amendment of the Council of Europe Convention on the prevention of terrorism (CETS No. 196), with a view to modifying the definition of terrorist offences included in that Convention (Document ST 9413/23).

18. At the outset, the Preamble recalls the importance of international co-operation in combating terrorism internationally and the need to strengthen these efforts. It also echoes the Convention in recalling that under no circumstances can terrorist offences covered by this Protocol be justifiable.

19. The Preamble recognises that the nature, type, and form of terrorist offences has evolved since the Convention was initially drafted and entered into force. A number of terrorist attacks have taken place in Europe and beyond using methods and means not initially envisaged in the 2005 Convention or the treaties listed in the Appendix.

20. Mirroring the Convention, the Preamble also reaffirms the obligation of implementing the Amending Protocol in line with relevant human rights and rule of law standards and principles, as well as maintaining the integrity and coherence of related and interconnected international legal frameworks, notably international humanitarian law.

Article 1

21. This article is the main substantive provision of the Amending Protocol. It states that the text of the Amending Protocol replaces Article 1 of the Convention, thus all uses of the term “terrorist offence” throughout the Convention are to be understood to have that meaning. Similarly, any such use and/or interpretation has to be done in accordance with relevant human rights and fundamental freedoms, as well as other obligations under international law, following the existing obligation stemming from Article 12 of the Convention, reiterated in the Preamble of the Amending Protocol.

Paragraph 1

22. The definition of a “terrorist offence” for the purposes of the Convention is built on two main limbs. The first limb is the acts covered by the international treaties listed in the Appendix to the Convention.

The second limb includes any of the acts listed in paragraph 1 (a) to (j), when intentionally committed with one of the aims in paragraph 2 and given their nature or context may seriously damage a country or an international organisation. The list of acts is designed to be consistent and coherent with the international treaties contained in the Appendix. Together, the two limbs of Article 1 provide a complete set of terrorist offences for the purposes of the Convention.

23. The Appendix of international treaties remains unchanged from its initial 2005 version. This includes the 1970 Convention for the Suppression of Unlawful Seizure of Aircraft, the 1971 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation and its 1988 Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, the 1973 Internationally Protected Persons Convention, the 1979 Hostages Convention, the 1980 Nuclear Material Convention, the 1988 Safety of Maritime Navigation Convention and its 1988 Fixed Platforms Protocol, the 1997 Terrorist Bombings Convention, the 1999 Financing of Terrorism Convention and the 2005 Convention for the Suppression of Acts of Nuclear Terrorism. Some of the treaties in the Appendix require criminalisation of certain acts as defined by the instrument, committed intentionally and unlawfully in pursuit of a terrorist aim.

24. The drafters of the Amending Protocol also considered the potential inclusion of several treaties which were adopted after CETS No. 196. However, these treaties were not considered to be essential for the purposes of the definition as the main provisions were considered to be largely captured by the acts contained within Article 1, paragraph 1.

25. The second limb of the definition provides a list of criminal acts in points (a) to (j) which, when committed intentionally with the terrorist aim in paragraph 2 and given their nature or context may seriously damage a country or an international organisation, constitute a terrorist offence for the purposes of the Convention.

26. As many of the acts contained in this list are already regulated as common offences in the criminal codes of member States, Parties to the Amending Protocol can ensure the criminalisation of these acts in accordance with their relevant domestic legal framework. However, in accordance with international law, in particular human rights law and the case law of the European Court of Human Rights, the elements of the criminal offence should be defined in clear and precise language in order to ensure that such laws are reasonably foreseeable in both application and consequences. As such, in order to meet the interests of legal certainty, individuals can understand from the wording of the relevant provision (or as interpreted by judicial authorities) what acts and omissions are likely to entail criminal liability.

27. In order to separate ordinary criminal offences from the terrorist offences covered by the Convention, the chapeau provides the condition that the "nature or context" of such an act "may seriously damage a country or an international organisation". This condition sets the gravity threshold to ensure that only serious offences fall under the scope of the definition. It is also intended to ensure that there is a real risk of damage to a country or international organisation resulting from the commission of such an offence, though it gives Parties discretion to identify such acts as terrorism in light of the particular facts of the case.

28. For acts under the second limb of the definition, the Amending Protocol stipulates that such acts must be committed "intentionally". Given the serious nature of the crime, the element of intent serves as one of the thresholds ensuring that the definition of the offense is not too broad. Moreover, the intentional nature of an act may be inferred from objective, factual circumstances. The intention applies to the entirety of the acts as listed under Article 1 (1), including the consequences of the acts as described for some of the listed acts (e.g. release of dangerous substances the effect of which is to endanger human life). This element is also in conformity with most of the Appendix treaties containing definitions of terrorist offences and the Articles criminalising offences related to terrorist activities in Convention No. 196 (Articles 5 to 7) and its Additional Protocol, notably Convention No. 217 (Articles 2 to 6).

29. Sub-clause (j) refers to the threat to commit the preceding acts in (a) to (i). However, in a manner similar to the Convention itself, the definition of a terrorist offence in the Amending Protocol does not aim at the criminalisation of conduct which only has a theoretical connection to actual terrorist offences. As such, it does not address hypothetical chains of events.

Paragraph 2: Aims

30. Alongside the commission of the underlying act under the second limb of paragraph 1 of the definition, paragraph 2 provides the three aims at least one of which must be met in order for an act to qualify as a terrorist offence.

31. The aims echo the Preamble to the Convention, which recalls that "[…] *acts of terrorism have the purpose by their nature or context to seriously intimidate a population or unduly compel a government or an international organisation to perform or abstain from performing any act or seriously destabilise or destroy the fundamental political, constitutional, economic or social structures of a country or an international organisation*".

32. These three aims are key distinguishing features separating terrorism from other forms of criminal activity which may appear similar. The motive of the perpetrator is fundamental in the planning and commission of the act(s). A terrorist offence is carried out with a special intent that distinguishes it from other serious criminal offences, insofar as the act has an intended impact beyond the immediate victims and is motivated by an individual seeking to pursue a political, ideological, racial, ethnic, religious "cause" or other considerations of a similar nature. While such an act usually damages the physical or psychological integrity of individuals or groups, their property or their

freedom, in a similar way that many serious criminal offences do, the perpetrator's motivation for carrying out the offence go further in pursuit of the aims mentioned in paragraph 2.

33. Similar language to these aims is found in several of the international treaties in the Appendix. The 1979 International Convention against the Taking of Hostages refers in its Article 1 to the underlying act of hostage taking "in order to compel a third party, namely a State, an international intergovernmental organization, a natural or juridical person, or a group of persons, to do or abstain from doing any act as an explicit or implicit condition for the release of the hostage". The 1999 Financing of Terrorism Convention requires parties to criminalise terrorist acts "when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organisation to do or to abstain from doing any act". The language used in the Amending Protocol mirrors that of the Preamble of CETS No. 196 and Article 3(2) of EU Directive (EU) 2017/541, which also contains all three aims.

34. All three aims include specific qualifiers, namely "seriously" in (a) and (c), and "unduly" in (b). These qualifiers are necessary to characterise both the special intent and the gravity of terrorist offences and to further separate terrorist offences from other forms of crimes. These qualifiers are also in place to avoid the risk of overcriminalisation or arbitrary application of terrorist offences, insofar as it pertains to acts which do not meet the threshold of terrorist offences. Any of the listed acts under paragraph 1 of Article 1 amount to a terrorist offence when all the abovementioned conditions are met, meaning the act, the intent, the aim, and the gravity threshold.

35. While the aim of the perpetrator in carrying out a specific act is to be determined by the nature, context and circumstances of the crime based on the facts of the case at hand, it is not necessary for the underlying act to have a realistic chance of succeeding in creating the impact desired. In some circumstances, a specific act will not, for example, actually seriously destabilise or destroy the fundamental political, constitutional, economic or social structures of a country. However, in order to qualify as a terrorist offence, it must be established that the perpetrator aimed to do so through the commission of the act that would potentially reach this effect.

36. The aims in paragraph 2 shall be interpreted in a manner that is consistent with other obligations under international law and implemented in national law in accordance with relevant human rights standards and principles, including the case law of the European Court of Human Rights. Accordingly, legitimate activities that are protected by human rights laws, such as freedom of religion and conscience, freedom of expression or publication, should not be subject to criminalisation by virtue of these provisions. While the language is broadly conceived to allow member States to implement it in a manner that is compatible with their domestic legal principles, as well as their political, cultural, religious, economic, historical, or other contexts, the aims in paragraph 2 are intended to only apply to genuine terrorist activity. It should not be interpreted or implemented in a manner that would, for example, criminalise or suppress non-violent attempts to change or alter the fundamental political, constitutional, economic or social structures of a country or international organisation, insofar as such activity is carried out in accordance with relevant principles of human rights, democracy and the rule of law.

Article 2: Signature and ratification

37. This provision is in line with current Council of Europe practice for signature and ratification.

Article 3: Entry into Force

Paragraph 1

38. According to the usual practice within the Council of Europe, an Amending Protocol enters into force at the specified date after the acceptance or ratification by all the Parties to the Convention.

39. Once the Amending Protocol comes into force and is ratified by all Parties, it ceases to have an autonomous existence. The amendments to the Convention by the Protocol are then fully incorporated into the Convention, which, in turn, ceases to exist in its previous configuration.

Paragraph 2

40. This provision sets out alternative means of entry into force for the Amending Protocol in the absence of ratification by all Parties to the Convention in accordance with paragraph 1. It stipulates a minimum timeline for entry into force as well as a minimum number of ratifications by Parties to the Convention. The timeline is set at three years from the opening for signature of the Protocol, meaning that it would only enter into force on or after this date and when the ratification threshold of two thirds of Parties to the Convention is met. This timeline was set with the general aim of ensuring the ratification of the Amending Protocol by the highest possible number of State Parties as soon as practically possible but does not preclude reaching the threshold of two thirds even after this date.

41. This paragraph also stipulates that the amended Convention would only enter into force between those Parties to the Convention that have ratified the Protocol. Parties to the Convention that have not ratified the Protocol would thus only remain bound by the provisions of the Convention in its original form.

Article 4: Declarations related to the Convention

42. The Amending Protocol specifies that any declarations made in relation to Article 1 will lapse. At the time of the opening of this Amending Protocol, all declarations related to Article 1 were in reference to the non-applicability of certain Treaties contained in the Appendix. While the Appendix is unchanged by this Protocol, as Article 1 is completely replaced, previous declarations are considered to be no longer be valid once the Amending Protocol is in force. As such, in order to ensure consistency between Parties to the Convention, any declarations made with regards to the original Article 1 would, where appropriate, need to be resubmitted in relation to the Amending Protocol.

Article 5: Reservations

43. The list of offences covered by the Convention, alongside the offences contained in the Appendix, is considered to be essential. For this reason, the Amending Protocol permits no reservations to be made.

Article 6: Notifications

44. These provisions are in conformity with the standard final clauses contained in other Council of Europe conventions.