

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

Strasbourg, 12 March 2015

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COMMITTEE ON FOREIGN TERRORIST FIGHTERS
AND RELATED ISSUES

(COD-CTE)

DRAFT
ADDITIONAL PROTOCOL TO THE COUNCIL OF EUROPE
CONVENTION ON THE PREVENTION OF TERRORISM

The member States of the Council of Europe and the other Parties to the Council of Europe Convention on the Prevention of Terrorism, signatory to this Protocol,

Considering that the aim of the Council of Europe is to achieve greater unity between its members;

Desirous of further strengthening the efforts to prevent and suppress terrorism in all its forms, both in Europe and globally, while respecting human rights and the rule of law;

Recalling the human rights and fundamental freedoms enshrined in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols, as well as in the International Covenant on Civil and Political Rights;

Expressing their grave concern about the threat posed by persons travelling abroad for the purpose of committing, contributing to, or participating in, terrorist offences, or the providing or receiving of training for terrorism in the territory of another State;

Having regard in this respect to Resolution 2178 (2014) adopted by the Security Council of the United Nations at its 7272nd meeting on 24 September 2014, in particular Paragraphs 4 to 6 thereof;

Considering it desirable to supplement the Council of Europe Convention on the Prevention of Terrorism (CETS No. 196) in certain respects;

Have agreed as follows:

Article 1 – Purpose

The purpose of this Protocol is to supplement, as between the Parties to the Protocol, the provisions of the Council of Europe Convention on the Prevention of Terrorism, opened for signature in Warsaw on 16 May 2005 (hereinafter referred to as “the Convention”) as regards the prevention and criminalisation of the acts described in Articles 2 to 6 of this Protocol, thereby enhancing the efforts of Parties in preventing terrorism and its negative effects on the full enjoyment of human rights, 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 agreements between the Parties.

Article 2 – Participation in an association or group for the purpose of terrorism

1. For the purpose of this Protocol, “participation in an association or group for the purpose of terrorism” means to join an association or group and participate in its activities for the purpose of committing or contributing to the commission of one or more terrorist offences by the association or the group.
2. Each Party shall adopt such measures as may be necessary to establish “participation in an association or group for the purpose of terrorism”, as defined in paragraph 1, when committed unlawfully and intentionally, as a criminal offence under its domestic law.

Article 3 – Receiving training for terrorism

1. For the purpose of this Protocol, “receiving training for terrorism” means to receive instruction from another person in the making or use of explosives, firearms or other weapons or noxious or hazardous substances, or in other specific methods or techniques, for the purpose of carrying out or contributing to the commission of a terrorist offence.
2. Each Party shall adopt such measures as may be necessary to establish receiving training for terrorism, as defined in paragraph 1, when committed unlawfully and intentionally, as a criminal offence under its domestic law.

Article 4 – Travelling abroad for the purpose of terrorism

1. For the purpose of this Protocol, “travelling abroad for the purpose of terrorism” means travelling to a State, which is not that of the traveller’s nationality or residence, for the purpose of the commission of, contribution to, or participation in, a terrorist offence, or the providing or receiving of training for terrorism.
2. Each Party shall adopt such measures as may be necessary to establish travelling abroad from its territory for the purpose of terrorism, as defined in paragraph 1, when committed unlawfully and intentionally, as a criminal offence under its domestic law.
3. Each Party shall also adopt such measures as may be necessary to establish as a criminal offence under, and in accordance with, its domestic law the attempt to commit an offence as set forth in this article.

Article 5 – Funding travelling abroad for the purpose of terrorism

1. For the purpose of this Protocol, “funding travelling abroad for the purpose of terrorism” means providing or collecting, by any means, directly or indirectly, funds fully or partially enabling any person to travel abroad for the purpose of terrorism, as defined in Article 4, paragraphs 1 and 2 of this Protocol, knowing that the funds are fully or partially intended to be used for this purpose.
2. Each Party shall adopt such measures as may be necessary to establish the funding of travelling abroad for the purpose of terrorism, as defined in paragraph 1, when committed unlawfully and intentionally, as a criminal offence under its domestic law.

Article 6 – Organising or otherwise facilitating travelling abroad for the purpose of terrorism

1. For the purpose of this Protocol, “organising or otherwise facilitating travelling abroad for the purpose of terrorism” means any act of organisation or facilitation that assists any person in travelling abroad for the purpose of terrorism, as defined in Article 4, paragraphs 1 and 2 of this Protocol, knowing that the assistance thus rendered is for the purpose of terrorism.
2. Each Party shall adopt such measures as may be necessary to establish organising or otherwise facilitating travelling abroad for the purpose of terrorism, as defined in paragraph 1, when committed unlawfully and intentionally, as a criminal offence under its domestic law.

Article 7 – Conditions and safeguards

- 1 Each Party shall ensure that the establishment, implementation and application of the criminalisation under Articles 2 to 6 of this Protocol are carried out while respecting human rights obligations, in particular the right to freedom of movement, freedom of expression, freedom of association and freedom of religion, as set forth in, where applicable to that Party, the Convention for the Protection of Human Rights and Fundamental Freedoms, the International Covenant on Civil and Political Rights, and other obligations under international law.
- 2 The establishment, implementation and application of the criminalisation under Articles 2 to 6 of this Protocol should furthermore be subject to the principle of proportionality, with respect to the legitimate aims pursued and to their necessity in a democratic society, and should exclude any form of arbitrariness or discriminatory or racist treatment.

Article 7bis - Prevention and international co-operation

1. Each Party shall adopt such measures as may be necessary to co-operate in efforts to prevent persons travelling abroad for the purpose of terrorism, cf. Article 4, paragraphs 1 and 2, from crossing its borders.
2. Each Party shall, where appropriate, endeavour to take measures to prevent the criminal offence set forth in Article 4.

Article 8 – 24/7 points of contact

1. Without prejudice to Article 3, paragraph 2, letter a, of the Convention, each Party shall designate a point of contact available on a twenty-four hour, seven-days-a-week basis, in order to strengthen the timely exchange between Parties of any available operational information concerning persons suspected of travelling abroad for the purpose of terrorism, cf. Article 4, paragraphs 1 and 2, in accordance with its domestic law and existing international obligations.
2. A Party may choose to designate an already existing point of contact under paragraph 1.
3. A Party’s point of contact shall have the capacity to carry out communications with the point of contact of another Party on an expedited basis.

Article 9 – Relation between this Protocol and the Convention

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.

Article 10 – Signature and entry into force

1. This Protocol shall be open for signature by Signatories to the Convention. It shall be subject to ratification, acceptance or approval. A Signatory may not ratify, accept or approve this Protocol unless it has previously ratified, accepted or approved the Convention, or does so simultaneously. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.
2. This Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the deposit of the third instrument of ratification, acceptance or approval, including at least x member States of the Council of Europe.
3. In respect of any Signatory which subsequently deposits its instrument of ratification, acceptance or approval, this Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of ratification, acceptance or approval.

Article 11 – Accession to the Protocol

1. After the entry into force of this Protocol, any State, which has acceded to the Convention, may also accede to this Protocol or do so simultaneously.
2. In respect of any State acceding to the Protocol under paragraph 1 above, the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of accession with the Secretary General of the Council of Europe.

Article 12 – Territorial application

1. Any State or the European Union may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Protocol shall apply.
2. Any Party may, at any later time, by declaration addressed to the Secretary General of the Council of Europe, extend the application of this Protocol to any other territory specified in the declaration. In respect of such territory the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of the declaration by the Secretary General.
3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General of the Council of Europe. The withdrawal shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

Article 13 – Denunciation

1. Any Party may, at any time, denounce this Protocol by means of a notification addressed to the Secretary General of the Council of Europe.
2. Such denunciation shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of the notification by the Secretary General of the Council of Europe.
3. Denunciation of the Convention automatically entails denunciation of this Protocol.

Article 14 – Notifications

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe, the European Union, the non-member States which have participated in the elaboration of this Protocol as well as any State which has acceded to, or has been invited to accede to, this Protocol of:

- a any signature;
- b the deposit of any instrument of ratification, acceptance, approval or accession;
- c any date of entry into force of this Protocol in accordance with Articles 9 and 10;
- d any other act, declaration, notification or communication relating to this Protocol.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

Done at ..., this ... day of ... 201., in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe, to the European Union, to the non-member States which have participated in the elaboration of this Protocol, and to any State invited to accede to it.