



Strasbourg, 19 November 2019

COP(2019)05

CONSULTATION OF THE PARTIES TO THE COUNCIL OF EUROPE CONVENTION ON THE PREVENTION OF TERRORISM [CETS NO. 196] AND ITS ADDITIONAL PROTOCOL [CETS NO. 217]

**SUMMARY OF THE THEMATIC ASSESSMENT REPORT ON THE
IMPLEMENTATION OF ARTICLES 4, 5 and 6 OF THE ADDITIONAL
PROTOCOL TO THE COUNCIL OF EUROPE CONVENTION ON THE
PREVENTION OF TERRORISM
(CETS No. 217)**

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

DG1.CDCT@coe.int / www.coe.int/terrorism

1. Introduction

1. The Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism (CETS No. 217) (hereinafter referred to as “the Protocol”) was opened for signature in Riga on 22 October 2015 and entered into force on 1 July 2017. As of 4 November 2019, the Protocol has been ratified by 17 States and by the European Union. In addition, 23 States have signed but not yet ratified the Convention. One member State has indicated that it has accomplished the ratification process related to the Additional Protocol.
2. At its 3rd meeting, on 13 November 2018, the Consultation of the Parties to the Convention decided to devote its second assessment round to the implementation of the Protocol, in particular to three of its core provisions, namely Articles 4 (travelling abroad for the purpose of terrorism), 5 (funding the travelling abroad for the purpose of terrorism), and 6 (organising or otherwise facilitating the travelling abroad for the purpose of terrorism).
3. The Consultation of the Parties also agreed to include within the questionnaire a series of questions relating to the application in the States Parties of Articles 4, 5 and 6. The Consultation of the Parties decided to make it voluntary for States Parties whether or not to reply to these questions included in the questionnaire. This thematic assessment report has been prepared on the basis of the replies from States Parties. The replies from States Signatories have also been taken into consideration. The recommendations provided by the Consultation of the Parties are only binding for Parties to the Protocol.
4. The Consultation of the Parties agreed on a questionnaire template for the assessment of Articles 4, 5 and 6 (see Annex II) containing a series of questions grouped under the following main headings:
 - The transposition of Article 4
 - The transposition of Article 5
 - The transposition of Article 6
 - Conditions and safeguards in respect of the application of Articles 4, 5 and 6
 - Additional information
5. This template questionnaire was distributed to States Parties and States Signatories to the Protocol, which were asked to send in their replies by 30 August 2019, deadline that was extended until 13 September 2019. A total of 22 States submitted their replies.
6. Following the decisions taken at its 3rd Consultation meeting on 13 November 2018, the Consultation of the Parties examined the replies to the template questionnaire and prepared the present thematic assessment report.
7. The thematic assessment report contains an analysis and synthesis of the state of implementation of Articles 4, 5 and 6 of the Protocol by States Parties and States Signatories based on the replies received, as well as certain general and specific recommendations to States Parties adopted by the Consultation of the Parties.
8. Thus, this report does not attempt to provide a detailed comparative analysis of all relevant aspects of the criminal law systems in the 22 responding States, but instead provides a snapshot of the state of implementation of Articles 4, 5 and 6 thereby enabling the Council of Europe

Committee on Counter-Terrorism (CDCT) to address possible shortcomings in the Protocol itself or its interpretation.

2. Descriptive Part

9. This chapter offers a synthesis of the 22 replies received and provides a general overview of the state of implementation by States Parties and States Signatories regarding the provisions contained in Articles 4, 5 and 6 of the Protocol. A summary of the information provided by States Parties and States Signatories on certain aspects of the practical application of Articles 4, 5 and 6 is also included under the heading “Additional Observations”.
10. The Consultation of the Parties takes note that none of the States Parties that have participated through the submission of their questionnaires have made declarations or reservations with regard to the provisions of the Protocol covered by this thematic assessment report.

Article 4

11. Article 4 is one of the essential provisions of the Protocol. Article 4, paragraph 2, obliges States Parties to criminalise the travelling abroad for the purpose of terrorism. According to Article 4, paragraph 1, travelling abroad consists in the act of 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.
12. The Consultation of the Parties notes that all States Parties and States Signatories, which have submitted replies to the questionnaire, criminalise or are in the process of criminalising the provision of travelling abroad for the purpose of terrorism in full accordance with the obligations flowing from the Protocol. The transposition of Article 4 into domestic legislations has been done in different ways: the majority of States Parties and States Signatories rely on separate provisions in their criminal codes or in other relevant domestic law criminalising travelling abroad, whereas some States Parties rely on a combination of offences, including in the same provision travelling abroad for the purpose of terrorism and other offences linked to terrorism, such as promotion of or training for terrorism.
13. Travelling abroad for the purpose of terrorism has been established as a self-standing offence in the majority of States Parties and States Signatories that have responded to the questionnaire, except for two member States, which have criminalised it as a preparatory act to the main terrorist offence and for one member State, where the travelling abroad for the purpose of terrorism has a preparatory function but may be assessed in terms of attempt or in terms of participation in a terrorist association or group.
14. None of the responding States Parties and States Signatories, with the exception of two member States has made use of the possibility to establish conditions for the application of Article 4 in line with their constitutional principles. In the case of one member State, its Criminal Code (Section 89a (2a)) provides that in addition to the intended purpose of travel, only travel to countries where terrorists are given training is relevant under its domestic criminal law.
15. None of the responding States Parties have encountered legal problems in transposing Article 4 in their domestic legislation, nor do they see any imminent need for amending the wording of the provision.

-
16. The majority of States Parties and States Signatories which have submitted replies to the questionnaire are criminalising the act of travelling abroad for the purpose of terrorism, either directly or construing it as an inchoate or preparatory act to the commission of a terrorist offence. A minority of them consider it as an attempt or participation in a terrorist association or group or as part of a more general offence

Article 5

17. Article 5, paragraph 2, obliges States Parties to criminalise the funding of travelling abroad for the purpose of terrorism. According to Article 5, paragraph 1, funding travelling abroad consists in the act of 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, paragraph 1, of this Protocol, knowing that the funds are fully or partially intended to be used for this purpose.
18. All States Parties and States Signatories criminalise the act of “funding travelling abroad for the purpose of terrorism” in full accordance with the obligations flowing from Article 5 of the Protocol. The transposition of Article 5 into domestic legislations has been done in different ways: while some States Parties and States Signatories rely on separate provisions in their criminal codes or in other relevant domestic law criminalising the funding of travelling abroad for the purpose of terrorism, the majority of them rely on an inclusion of the offence described in Article 5 within a more general provision of financing of terrorism and therefore, considering the funding of travelling abroad as one of the different offences that may constitute financing of terrorism.
19. Funding travelling abroad for the purpose of terrorism does not constitute a separate offence in most of the States Parties and States Signatories that have answered the questionnaire and therefore this offence is embodied, as already mentioned, in the general provision of financing of terrorism. As an exception to this approach, five member States have established the funding of travelling abroad as a self-standing offence.
20. None of the States Parties have encountered legal problems in transposing Article 5 in their domestic legislation; neither do they see an imminent need for amending the wording of the provision.
21. All States Parties and States Signatories which have submitted replies to the questionnaire are currently criminalising the funding of travelling abroad for the purpose of terrorism, either directly or construing it as part of the general offence of financing of terrorism.

Article 6

22. Article 6, paragraph 2, obliges States Parties to criminalise the act of organising or otherwise facilitating travelling abroad for the purpose of terrorism. In addition, under Article 6, paragraph 1, organising or otherwise facilitating travelling abroad for the purpose of terrorism consists in the act of organisation or facilitation that assists any person in travelling abroad for the purpose of terrorism, as defined in Article 4, paragraph 1, of this Protocol, knowing that the assistance thus rendered is for the purpose of terrorism.
23. All States Parties and States Signatories criminalise the act of “organising or otherwise facilitating travelling abroad for the purpose of terrorism” in full accordance with the obligations flowing from Article 6 of the Protocol. The transposition of Article 6 into domestic legislations has been done in different ways: while some States Parties and States Signatories rely on separate

provisions in their criminal codes or in other relevant domestic law criminalising organising or otherwise facilitating travelling abroad for the purpose of terrorism, other states do not have a specific provision to criminalise this offence and rely on an inclusion of the offence described in Article 6 within a general provision (. The specific offence stipulated in Article 6 is sometimes included within various general offences such as “organisation for participation in combat operations on a foreign state”, “support and promotion of terrorism”, “financing of terrorism”, “participation in crime”, “participation in Foreign Armed Formations” or as “collaboration in any terrorist offence”. In the case of four member States this terrorist offence is classified as aiding and abetting to the main offence (travelling for the purpose of terrorism). The criminal codes of two other member States consider it as a complicity in committing the criminal offence of travelling for the purpose of terrorism. One member State considers it as contributing to the main offence of travelling for the purpose of terrorism. In the case of one member State, this offence could be classified as a preparatory act to the main offence (if the offence is considered as part of Article 46 or 96.2) or a separate criminal offence that includes various preparatory acts with regards to terrorist offences (Article 134a).

24. According to the answers to the questionnaire received, organising or otherwise facilitating travelling abroad for the purpose of terrorism is criminalised in various ways. Some States Parties and States Signatories make it a part of general provisions or include it in a combination of more general and terrorism-specific provisions in their criminal codes or in other relevant domestic law, while other States Parties and States Signatories consider it as a separate offence. The offence described in Article 6 is also considered by certain States Parties and States Signatories either as aiding and abetting travelling for the purpose of terrorism, or as a complicity to commit the main offence or as a contribution to travelling abroad for the purpose of terrorism. In the case of one member State, depending on the circumstances surrounding the commission of the offence, judges may interpret this offence as a preparatory act to main offence or as a separate criminal offence that includes various preparatory acts with regards to terrorist offences.
25. None of the States Parties have encountered legal problems in transposing Article 6 in their domestic legislation; neither do they see an imminent need for amending the wording of the provision.
26. The Consultation of the Parties notes with satisfaction that the legal requirements set out in Article 6 have been fully met in all domestic legislations of the States Parties and States Signatories which responded to the questionnaire. All States Parties and States Signatories are currently criminalising the act of organising or otherwise facilitating the travelling abroad for the purpose of terrorism, either directly as a separate offence or construing it as part of a general offence.

Additional Observations

27. A total of 22 States Parties and States Signatories have on a voluntary basis provided replies to some or all of questions 1 to 11.

3. Analytical Part

28. This chapter focuses on identifying and providing comments on main approaches and trends in the way States Parties and States Signatories have implemented the provisions enumerated in chapter 2 (above).

The transposition of Article 4:

29. Article 4 has been transposed by the responding States Parties and States Signatories in two different ways, either by introducing of a separate offence in domestic criminal law or specific terrorism-related legislation, or by subsuming the offence of travelling abroad under a number of (usually already existing) provisions in domestic criminal law and/or specific terrorism-related legislation. In the case of Italy, the action of travelling must be accompanied by facts, as an indication of terrorism and therefore, the offence is considered to have a preparatory function, but it may be assessed in terms of attempt or participation in a terrorist association or group.
30. It should be stressed, that there is no legal obligation for States Parties under the Protocol to transpose Article 4 in their domestic law in a particular manner. Whether a State Party chooses to introduce a new specific provision on the travelling abroad for the purpose of terrorism in its domestic law, or prefers to rely on already existing provisions, or a combination of such provisions, the choice remains strictly within the discretion the State Party, as long as the method of transposition does not affect its ability to effectively apply the Protocol. All mentioned approaches fulfil the requirements under international treaty law.
31. As enshrined in Article 4, paragraph 3 of the Protocol, the attempt of travelling abroad for the purpose of terrorism must be criminalised. This has been done in the criminal codes of six member States in accordance with their domestic law. One member State has included attempts in its main offence by making it applicable also to beginning to travel abroad.
32. The Consultation of the Parties finally notes that none of the responding States Parties and States Signatories have reported encountering any specific legal problems in the process of transposition of Article 4 in their domestic legislations.

Possible amendments to Article 4:

33. The Consultation of the Parties notes firstly, that none of the responding States Parties and States Signatories see any need for amending the provision.

The transposition of Article 5:

34. In the majority of the responding States Parties and States Signatories the content of Article 5 was already part of the general offence “financing of terrorism”. Those States have subsumed the offence of funding travelling abroad for the purpose of terrorism in a general provision that already existed in domestic criminal law and/or specific terrorism-related legislation. Only a minority of States Parties and States Signatories have transposed Article 5 by introducing a separate offence in domestic criminal law which clearly makes a distinction between the act of funding travelling abroad and other offences related or linked to the financing of terrorism.
35. The Consultation of the Parties finally notes that none of the responding States Parties and States Signatories have reported encountering any specific legal problems in the process of transposition of Article 5 in their domestic legislations.

Possible amendments to Article 5:

36. The Consultation of the Parties notes, that none of the responding States Parties and States Signatories see any need for amending the provision.

The transposition of Article 6:

37. In the majority of the responding States Parties and States Signatories the behaviour described in Article 6 was already part of a general offence. Those States have subsumed the offence of organising or otherwise facilitating travelling abroad for the purpose of terrorism in a general provision that already existed in domestic criminal law and/or specific terrorism-related legislation. Only a minority of States Parties and States Signatories have transposed Article 6 by introducing a separate offence in domestic criminal law. The offence described in Article 6 is considered by certain States Parties and States Signatories as aiding and abetting travelling for the purpose of terrorism, i.e. as complicity or as contribution to the criminal act of travelling abroad for the purpose of terrorism.
38. The Consultation of the Parties finally notes that none of the responding States Parties and States Signatories have reported encountering any specific legal problems in the process of transposition of Article 6 in their domestic legislations.

Possible amendments to Article 6:

39. The Consultation of the Parties notes, that none of the responding States Parties and States Signatories see any need for amending the provision.

Conditions and safeguards in respect of the application of Articles 4, 5 and 6:

40. The Consultation of the Parties wishes to underline the immense importance of adhering to human rights obligations and the principle of rule of law in preventing and combating terrorism in a democratic society.
41. The Consultation of the Parties therefore observes with satisfaction that all responding States Parties and States Signatories provide for adequate legislative and procedural safeguards, including by applying normal procedural criminal law safeguards to terrorism cases without any restrictions. In this context, it should be noted that none of the responding States Parties and States Signatories have considered it necessary to provide for further legislative amendments in order to implement Article 8 of the Protocol.

Additional information

42. The Consultation of the Parties takes due note of the fact that many of the responding States Parties and States Signatories have, on a voluntary basis, submitted information on the different administrative measures foreseen at domestic level to counter the travelling abroad for the purpose of terrorism, as described in Article 4.
43. Various administrative measures have been taken in a number of States Parties and States Signatories in conjunction with the criminalisation of the offence of travelling abroad for the purpose of terrorism. These administrative measures include the creation of a checklist of persons suspected of involvement with terrorism, cooperation agreements with States outside Europe to share information about nationals and foreign terrorism suspects, detention by the Alien Police, prohibition to leave the country, immediate invalidation of identity and travel

documents, police surveillance with restriction of movement, temporary confiscation of passports, special controls at the border points, prohibition from entering and/or transiting national territory, the denial of issuance of passport, empowerment of security authorities in the course of a border control to check if minors have the permission of the person having the parental authority to travel abroad, and if necessary withhold the travel documents of the minor, the use of covert measures and secret surveillance (upon prior judicial authorisation), the rejection or cancellation of passports/identity cards , the ban on leaving the country and/or passport and national identity cards invalidation.

44. As for the submission of relevant case law about the practical application of the provisions of Article 4, 5 and 6 of the Protocol, only three of the responding States provided information about domestic cases and not all of them referred to the specific offences described in Articles 4, 5 and 6.
45. It appears from the replies, that in practice only a few criminal cases on travelling abroad for the purpose of terrorism or on the funding of such travels have so far been prosecuted by the competent authorities of States Parties and States Signatories. The Consultation of the Parties expects that in the future more criminal cases concerning the travelling abroad for the purpose of terrorism, its funding and its organisation or otherwise facilitation, will be brought before the competent courts of States Parties and intends to revisit this question at a later stage.

Annex

TEMPLATE

**FOR THE ASSESSMENT OF THE IMPLEMENTATION OF ARTICLES 4, 5 AND 6 OF THE
ADDITIONAL PROTOCOL TO THE COUNCIL OF EUROPE CONVENTION ON
THE PREVENTION OF TERRORISM [CETS No. 217]**

Party to the Convention:

Name of Providing Expert:

The transposition of Article 4:

Question 1: A) Please provide a description of how Article 4 has been transposed in your domestic legislation, including if in the corresponding domestic legislation you consider the offence described in Article 4, as either a separate offence, or as a preparatory act to the main offence, or as an attempt to commit an offence. If possible, please provide a translation of the exact wording of the provision(s) in question in English or French.

B) If you have not yet transposed Article 4 in your domestic legislation, please provide a short summary of the reasons, as well as an indication as to when you expect the transposition of that provision to be finalised.

Question 2: Please describe if you have made use of the possibility to establish conditions for the application of Article 4 in line with your constitutional principles and, if so, what these conditions are.

Question 3: Please describe if you have encountered any specific legal problems in transposing Article 4 in your domestic legislation, including a short description of the nature of the problems encountered by you, and what solution has been identified.

The transposition of Article 5:

Question 4: A) Please provide a description of how Article 5 has been transposed in your domestic legislation, including if in the corresponding domestic legislation you consider the offence described in Article 5, as either a separate offence, or as a preparatory act to the main offence, or as aiding or abetting to the main offence. If possible, please provide a translation of the exact wording of the provision(s) in question in English or French.

B) If you have not yet transposed Article 5 in your domestic legislation, please provide a short summary of the reasons, as well as an indication as to when you expect the transposition of that provision to be finalised.

Question 5: Please describe if you have encountered any specific legal problems in transposing Article 5 in your domestic legislation, including a short description of the nature of the problems encountered by you, and what solution has been identified.

The Transposition of Article 6:

Question 6: A) Please provide a description of how Article 6 has been transposed in your domestic legislation, including if in the corresponding domestic legislation you consider the offence described in Article 6, as either a separate offence, or as a preparatory act to the main offence, or as aiding or abetting to the main offence. If possible, please provide a translation of the exact wording of the provision(s) in question in English or French.

B) If you have not yet transposed Article 6 in your domestic legislation, please provide a short summary of the reasons, as well as an indication as to when you expect the transposition of that provision to be finalised.

Question 7: Please describe if you have encountered any specific legal problems in transposing Article 6 in your domestic legislation, including a short description of the nature of the problems encountered by you, and what solution has been identified.

Conditions and safeguards in respect of the application of Articles 4, 5 and 6

Question 8: Please provide a description of how Article 8 (conditions and safeguards) of the Additional Protocol has been implemented in your domestic legislation with regard to Articles 4, 5 and 6.

Additional information

In addition to the observations provided above, Parties are invited to provide, if they so wish, any further information regarding Articles 4, 5 and 6. This could concern, *inter alia*:

Question 9: In regard to Article 4, please provide information about any administrative measures which are foreseen in your domestic legislation to counter the travelling abroad for the purpose of terrorism as described in Article 4. Please describe how such measures interact with the criminalisation of the travelling abroad for the purpose of terrorism as described in Article 4.

Question 10: Please provide information about any case law from your domestic courts concerning the application of Articles 4, 5 and 6 in your domestic legislation.

Question 11: Do you have any other comments on Articles 4, 5 and 6, or any additional information about the transposition of these provisions in your domestic law, which has not been touched upon in your replies to questions 1 – 10 above?