



Strasbourg, 29 October 2020

COP(2020)04-rev2

**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 ARTICLE 3 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 29 October 2020, the Protocol has been ratified by 19 States and by the European Union. In addition, 22 States have signed but not yet ratified the Protocol.
2. At its 4th meeting, on 18 November 2019, the Consultation of the Parties decided to devote its next assessment round to the implementation of the Protocol, starting with Article 3.
3. Article 3 concerns the provision of receiving training for terrorism and obliges Parties to criminalise the act of receiving training for the purpose of carrying out or contributing to the commission of a terrorist offence. The provision stipulates that:

“1 For the purpose of this Protocol, “receiving training for terrorism” means to receive instruction, including obtaining knowledge or practical skills, 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.”

The Consultation of the Parties also agreed to include within the questionnaire a series of questions relating to the application of Article 3. The Consultation of the Parties decided to make it voluntary for 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 Parties and Signatories. In addition, the replies from two other member States, which are neither Parties nor Signatories, have also been taken into consideration. The recommendations provided by the Consultation of the Parties are only applicable to the Parties to the Protocol.

4. The Consultation of the Parties agreed on a questionnaire template for the assessment of Article 3 (see Annex II) containing a series of questions grouped under the following main headings:
 - The transposition of Article 3
 - Conditions and safeguards in respect of the application of Article 3
 - Additional information
5. This template questionnaire was distributed to Parties and Signatories to the Protocol. All of them were asked to send in their replies by 18 September 2020. After the deadline, two additional replies were received which have been included in this Thematic Assessment report by decision of the Consultation of the Parties. A total of 21 Parties, Signatories and other States submitted their replies.
6. Following the decisions taken at its 4th Consultation meeting on 18 November 2019, 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 Article 3 of the Protocol by the responding Parties, Signatories and other States based on the replies received, as well as certain general and specific recommendations to 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 19 responding Parties and Signatories together with other two member States, but instead provides a snapshot of the state of implementation of Article 3 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 21 replies received and provides a general overview of the state of implementation by responding States regarding the provisions contained in Article 3 of the Protocol. A summary of the information provided with the answers received on certain aspects of the practical application of Article 3 is also included under the heading “Additional Observations”.
10. The Consultation of the Parties takes note that none of the 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 3

11. Article 3 is one of the essential provisions of the Protocol. Article 3, paragraph 2, obliges Parties to criminalise the provision of receiving training for terrorism. According to Article 3, paragraph 1, receiving training for terrorism consists in the act of receiving instruction, including obtaining knowledge or practical skills, 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.
12. The Consultation of the Parties notes that the majority of Parties, Signatories and other States which have submitted replies to the questionnaire, criminalise the provision of receiving training for terrorism in accordance with the obligations flowing from the Protocol. In the case of two member States, the replies indicate that there is not a sufficiently clear legal basis in their domestic legislations for applying Article 3 *vis-à-vis* other Parties. The transposition of Article 3 into domestic legislations has been done in different ways: the majority of national criminal codes rely on specific provisions to criminalise receiving of terrorism, whereas other criminal codes implicitly subsume through an umbrella provision the act of receiving training for terrorism as part of many other different kinds of preparatory behaviours for the purpose of the commission of a terrorist act. In the majority of national criminal codes receiving training for terrorism was incorporated within the same article that criminalises providing training for terrorism. Concerning the EU, Directive 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism also covers the receiving of training for terrorism purposes among its provisions.

13. None of the Parties and Signatories have encountered legal problems in transposing Article 3 in their domestic legislation; neither do they see an imminent need for amending the wording of the provision.

Additional Observations

14. A total of 19 Parties and Signatories together with two other member States have on a voluntary basis provided replies to some or all of questions 1 to 5.

3. Analytical Part

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

The transposition of Article 3:

16. Article 3 has been transposed by the majority of responding Parties, Signatories and other States in two different ways, either by the introduction of a separate offence in domestic criminal law or specific terrorism-related legislation, or by subsuming the offence of receiving training for terrorism under a number of (usually already existing) provisions in domestic criminal law and/or specific terrorism-related legislation. In the majority of cases, the offence described in Article 3 was already part of the domestic legislation.
17. It should be stressed, that there is no legal obligation for Parties under the Protocol to transpose Article 3 in their domestic law in a particular manner. Whether a Party chooses to introduce a new specific provision on receiving training for 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 of the Party, as long as the method of transposition does not affect its ability to effectively apply the Protocol. With the exception of two member States, all mentioned approaches fulfil the requirements under international treaty law.
18. The Consultation of the Parties finally notes that none of the Parties, Signatories and other States that answered the questionnaire have reported encountering any specific legal problems in the process of transposition of Article 3 in their domestic legislations.

Possible amendments to Article 3:

19. The Consultation of the Parties notes that all responding Parties, Signatories and other States do not see any need for amending the provision.

Conditions and safeguards in respect of the application of Article 3:

20. 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.
21. The Consultation of the Parties therefore observes with satisfaction that the majority of responding Parties, Signatories and other States provide for adequate legislative and procedural safeguards, including by applying normal procedural criminal law safeguards to terrorism cases

without any restrictions. In this context, all States have not considered necessary to make further legislative amendments to implement Article 8 of the Protocol.

Additional information

22. As for the submission of relevant case law about the practical application of the provisions of Article 3 of the Protocol, seven replies provided examples about domestic cases, three of which consisted in an in-depth description of the facts and/or the application of the content of Article 3.
23. It appears from the replies, that in practice only a few criminal cases on receiving training for terrorism have so far been prosecuted by the competent national authorities. The Consultation of the Parties expects that in the future more criminal cases concerning the receiving of training for terrorism will be brought before the competent courts of Parties to the Protocol and intends to revisit this question at later stage.

Annex II**TEMPLATE****FOR THE ASSESSMENT OF THE IMPLEMENTATION OF ARTICLE 3 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 3:

Question 1: A) Please provide a description of how Article 3 has been transposed in your domestic legislation. If possible, please provide a translation of the exact wording of the provision in question in English or French.

B) If you have not yet transposed Article 3 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 encountered any specific legal problems in transposing Article 3 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 Article 3

Question 3: 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 Article 3.

Additional information

In addition to the observations provided above, Parties are invited to provide, if they so wish, any further information regarding Article 3. This could concern, inter alia:

Question 4: *Please provide information about any case law from your domestic courts concerning the application of Article 3 in your domestic legislation.*

Question 5: *Do you have any other comments on Article 3, or any additional information about the transposition of this provision in your domestic law, which has not been touched upon in your replies to questions 1 – 4 above?*