



Explanatory Memorandum to the Recommendation CM/Rec(2018)... on terrorists acting alone

1. The Committee of Ministers on 19 May 2015 adopted the Council of Europe Action Plan on “The fight against violent extremism and radicalisation leading to terrorism (2015 – 2017)” (CM(2015)74-addfinal) which, inter alia, called for the elaboration of a recommendation on terrorists acting alone.
2. At its 30th Plenary Meeting on 19 and 20 May 2016, the Steering Committee on counter-terrorism of the Council of Europe, the Committee of Experts on Terrorism (CODEXTER), established a drafting committee consisting of members of the CODEXTER, representatives of States having observers status with the Council of Europe and of the United Nations Office on Drugs and Crime (UNODC), the Organization for Democracy and Economic Development (GUAM), and of relevant Council of Europe’s bodies and institutions, such as the European Committee on Crime Problems (CDPC), the Steering Committee on Media and Information Society (CDMSI) and the Steering Committee for Human Rights (CDDH).
3. The drafting committee held a total of four meetings and prepared a preliminary draft recommendation, the text of which was examined by the CODEXTER at its 33rd Plenary Meeting on 22 and 23 November 2017, and submitted to the Committee of Ministers for finalisation and formal adoption.
4. The Committee of Ministers at its meeting of the Ministers’ Deputies on xx.yy 2018, adopted the Recommendation.

Preamble

5. The preamble of the Recommendation refers to the most important global and regional legal instruments and principles, as well as specific guidelines governing the fight against terrorism in general, and in particular measures taken against terrorists acting alone. It also briefly recalls the reasons why it is necessary to address the issue of terrorists acting alone in a specific instrument.

Chapter I – Scope and definition

6. Paragraph 1 contains the scope of the Recommendation and the definition of the term “terrorists acting alone”. Whereas there are indeed terrorists, who commit terrorist offences totally independently of any terrorist association or group, such individuals are not frequently encountered, and the majority of terrorist attacks – even when carried out by individuals apparently acting on their own initiative – are in reality orchestrated by terrorist associations or groups, or at least are inspired by the ideology of such associations or groups. Despite the fact that current national legislation of some member States contains other criteria than those set out in this definition, the latter was drafted for the understanding of the provisions of the Recommendation.
7. It is clear that in order for the present Recommendation to constitute an efficient tool for member States, the three main sub-categories of “terrorists acting alone” should be covered. These are:
 - Individuals genuinely acting on their own in the preparation and/or commission of terrorist offences, without any links to terrorist associations or groups.
 - Individuals who, having only a loose or informal connection with terrorist associations or groups, act on a general call made by such associations or groups to commit terrorist offences. These individuals rarely receive any support from a terrorist association or group, but nevertheless pledge allegiance to it and act in its name.
 - Individuals who participate in a terrorist association or group and are instructed by it to prepare and/or commit terrorist offences, but for reasons of avoiding detection by the competent authorities of member States adopt the *modus operandi* of a terrorist acting alone (i.e. none or very limited contacts and communications with other members of the association or group).
8. Hence, the definition of “terrorists acting alone” can be divided into two parts. The first part, set out in paragraph 2 (i), describes the “genuine” terrorist acting alone, i.e. individuals who prepare or commit a terrorist offence “without participating in, or being incited, instructed, supported by, or otherwise linked to a terrorist association or group”. The second part of the definition, as set out in paragraph 2 (ii), concerns the two other sub-categories of “terrorists acting alone” referred to in paragraph 7 above, namely those individuals who, “while acting alone in the preparation or commission of the terrorist offence, are nevertheless incited, instructed, supported by, or otherwise linked to, a terrorist association or group, including through the Internet”. The actions of these individuals may or may not be coordinated in detail by a terrorist association or group, and they may therefore be acting on their own or within a more fluid and amorphous framework than a cell. The reference to the Internet is intended to point out that the acts of incitement, instruction or support by the terrorist association or group need not to involve the physical presence in a member State of other individuals than the terrorist acting alone. As regards what constitutes a “terrorist offence” for the purpose of this Recommendation, reference is made to Article 1 of the Council of Europe Convention on the Prevention of Terrorism (CETS No. 196), which states that: “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”. The Appendix, currently contains references to the following 11 treaties:
 - Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970;
 - Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, concluded at Montreal on 23 September 1971;
 - Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents, adopted in New York on 14 December 1973;
 - International Convention Against the Taking of Hostages, adopted in New York on 17 December 1979;

- Convention on the Physical Protection of Nuclear Material, adopted in Vienna on 3 March 1980;
- Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, done at Montreal on 24 February 1988;
- Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, done at Rome on 10 March 1988;
- 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;
- International Convention for the Suppression of Terrorist Bombings, adopted in New York on 15 December 1997;
- International Convention for the Suppression of the Financing of Terrorism, adopted in New York on 9 December 1999;
- International Convention for the Suppression of Acts of Nuclear Terrorism, adopted in New York on 13 April 2005.

Chapter II – Safeguards

9. Paragraph 3 of the Recommendation consists of a safeguard clause reiterating the requirement for member States to abide by the rule of law and relevant international human rights standards, including the European Convention on Human Rights and Fundamental Freedoms in addressing the phenomenon of terrorists acting alone. Measures taken in accordance with the Recommendation should be proportionate and non-discriminatory. Since one of the main aims of counter-terrorism measures, including measures aimed at countering radicalisation leading individuals to terrorism, is to protect democracy against attacks directed at it and intended to make it break down, it is underlined that all such counter-measures should respect the basic principles of democracy. Taking into account the nature of some of the measures under this Recommendation, it should be reiterated that member States shall always act in accordance with the requirements set out in the safeguards clause.

Chapter III – Prevention of radicalisation leading individuals to terrorism

10. It should be noted that the scope of the Recommendation is to focus on preventing and combating radicalisation leading to terrorism, and not any kind of radicalisation. Accordingly, radicalisation consists of the action or process of causing individuals or groups to adopt radical positions on political, religious or social issues which *per se* does not constitute a criminal behaviour.

National criminal law measures and strategies

11. Paragraph 5 contains an invitation for member States to sign, ratify and implement the Council of Europe Convention on the Prevention of Terrorism (CETS No. 196) and its Additional Protocol (CETS No. 217) as well as implement UNSCR 2178 of 24 September 2014, dealing with measures aimed at stopping foreign terrorist fighters from travelling abroad for the purpose of terrorism. It is considered that prevention efforts aimed at individuals susceptible of becoming terrorists acting alone will normally benefit from a systematic application of relevant measures, including such criminal law measures contained in the Convention and its Additional Protocol, at State, regional and local levels, as applicable. Given the nature of the current (and likely future) terrorist threats, foreign terrorist and returned foreign terrorist fighters (referred to as “returnees”), insofar as they could become terrorists acting alone, should be included in such preventative and criminal law measures, as foreseen in paragraph 6. In paragraph 7, special emphasis has been put on the potential usefulness of helplines for anyone seeking assistance and advice, also anonymously, on how to counter an on-going radicalisation process. Persons making use of this could e.g. be parents or other family members, teachers, friends or other concerned persons, who suspect that an individual is undergoing a radicalisation process leading to terrorism. In order to improve such help, member States should, in accordance with their domestic law, foster professional confidentiality of front-line actors, such as social workers, educators and teachers, and consider an

exchange of information between law enforcement agencies and those actors in order to promote prevention of radicalisation leading to terrorist acts, particularly among young people.

Promoting social cohesion and inclusive education in order to prevent terrorism

12. An individual taking a path towards radicalisation leading to terrorism will usually be reacting to what that individual considers as grievances, often of a purely personal nature, but sometimes of a more systemic character. Such real or perceived grievances may include the experience of some degree of exclusion from mainstream society, based on e.g. ethnicity, culture or religion, or a general feeling of rootlessness and alienation. In order to avoid social polarisation and to counter radicalisation leading to terrorism, member States are therefore called upon to promote various forms of social inclusion, tolerance and dialogue, as well as eliminate any forms of discrimination, cf. paragraph 8 of the Recommendation.
13. Lack of education and knowledge about society and the rights and obligations of its individuals is an important facilitating factor for radicalisation leading an individual to terrorism. Hence, paragraph 9 encourages member States to provide inclusive education for all who are in need thereof, in accordance with their domestic law and international obligations and to the extent possible and feasible. This latter qualification is meant to further emphasise that member States obviously have a rather large margin of appreciation, if they decide to follow up on the Recommendation contained in paragraph 9. For the purposes of the Recommendation, the term “inclusive education” should be understood as education which aims specifically at focusing the attention of minors and young people, regardless of their cultural background, their ethnicity or religion, on issues and themes linked to human rights, democracy and equality before the law. As part of a preventive strategy, this education might also include targeted media and information literacy. The aim is, in particular, to raise minors and young people’ awareness of false and/or propagandistic information being promoted by terrorist associations and groups for the purpose of radicalisation and to eliminate the conditions contributing to their vulnerability, including through countering potential social alienation and exclusion.
14. In paragraph 10 member States are called upon to encourage academic research into the phenomenon of terrorists acting alone and how to prevent it. They also should provide training relevant for identifying and countering radicalisation processes to law enforcement, education and social services professionals, as well as to other front-line actors who, depending on their professional profiles, may be in frequent contact with persons at risk of radicalisation leading to terrorism. Finally, paragraph 11 contains a call for member States to consider implementing public awareness-raising campaigns on the risks and consequences of radicalisation leading to terrorism. In this context, the Recommendation stresses the potential benefits of involving representatives of “relevant” communities, i.e. communities whose members are deemed to be at a higher level of risk of radicalisation leading to terrorism than the average population, as well as involving the aforesaid front-line actors in the designing and implementation of such campaigns.

Development of narratives and messages countering terrorist propaganda

15. The abuse of Internet based social media for the purpose of propaganda by terrorist organisations and associations has made it absolutely essential for States and the international community to devise efficient counter narratives and messages. Hence in paragraph 12 member States “*are encouraged to develop tailored narratives and messages countering terrorist propaganda*”. If not handled correctly, engaging in an “information war” with terrorists comes with serious risks of undermining the trustworthiness of the State and the functioning of democracy. To avoid this and to improve their efficiency, counter narratives and messages should be based on factual information and should also take due account of cultural specificities and sensibilities, including religious beliefs. To improve the efficiency of counter narratives and messages, member States are invited to consider involving e.g. members of academia, civil society and religious and community leaders in the preparation and subsequent distribution of such narratives and messages. Specific reference is made in paragraph 13 to the importance of existing global instruments dealing with narratives

and messages countering terrorist propaganda, in particular UNSCR 2354 (2017), as well as regional and national best practices in this regard.

Measures specifically aimed at returnees insofar as they could become terrorists acting alone

16. In addition to criminal law measures, it is important to also consider other preventive measures to stop returnees from becoming terrorists acting alone or radicalising others to engage in terrorism. These preventive measures may include surveillance, interviews to establish the level of danger to the public that a returnee may pose and other forms of relevant outreach by the competent authorities, including de-radicalisation or exit programs. The aim is to ensure that even in those cases, where no criminal charges are brought against a returnee, all reasonable measures are still taken to ensure that the individual in question abstains from engaging in terrorism or provokes others to commit terrorist offences.
17. Paragraph 15 encourages member States to improve their information exchange concerning the movements and activities of foreign terrorist fighters, including returnees. Various international and global frameworks for the exchange of this kind of information exist, including the Council of Europe 24/7 Network of Contact Points on Foreign Terrorist Fighters. Ensuring that terrorists are brought to justice remains a priority. To this end, member States are also encouraged to provide mutual legal assistance to each other in terrorism cases, and where necessary, further improve the use of, or supplement, relevant existing legal frameworks.

Chapter IV – Detection and interception

18. This chapter is structured following the chronological order in which the various measures would apply. The timely detection and interception of terrorists acting alone, before they can carry out attacks, is obviously of the utmost importance to member States. In some of the recent cases of terrorist attacks carried out by individuals in Europe, the terrorists were known to the competent authorities as radicalised, yet they have not been considered to constitute an immediate danger. Hence, in paragraph 16, the Recommendation calls on member States to establish or further improve their systems for assessing the risks of attacks being perpetrated by a terrorist acting alone, taking into account experiences from previous attacks and related investigations. In order to create synergies and promote efficiency, member States are encouraged to share their experiences in this regard and consider the establishment of a common set of indicators. Indicators should be identified on the basis of the analysis of acts and suspicious behaviours as concrete factors to take into account in the prevention of radicalisation leading to terrorism. These indicators could *inter alia* consist of shifts in a person's social relations, behaviour, and ideology. Some of these changes may include: withdrawing from existing social activities and friends; disputes with family and friends based on extreme behaviour or ideas; attempts to coerce those around them to follow an extreme ideology; possession of extremist material; statements of moral superiority over, or hatred towards, other groups; statements promoting the use of violence to advance a cause or change of policy; and assaults and hate crimes on those seen as different (GCTF Initiative to Address the Life Cycle of Radicalization to Violence Neuchâtel Memorandum on Good Practices for Juvenile Justice in a Counterterrorism Context). The Council of Europe Committee on Counter-Terrorism (CDCT) could serve as a forum for such exchanges and deliberations.
19. Member States are also encouraged to engage more broadly with relevant communities in order to facilitate the early detection of terrorists acting alone. This engagement can, where appropriate, take place through "front-line actors", such as social workers, and representatives of the communities in question, e.g. religious leaders or other individuals who through their professional functions are likely to be in possession of relevant information.
20. In paragraph 18, member States are invited to consider setting up dedicated communication channels for reporting on suspected terrorists acting alone. As relevant information may come from persons close to the terrorist acting alone such reporting could take place anonymously, where allowed under national legislation.

21. For the purpose of this Recommendation, “intelligence-based policing” means a policing method for assessing and managing risks related to terrorist offences. In practice police investigations and measures to prevent terrorist offences are to be based on relevant information gathered and analysed by intelligence officers of the competent authorities and shared with the police or other relevant agencies as appropriate, rather than being “reactive”, i.e. the police only acts on offences once they are committed or reported to it. It is not primarily the police itself which gathers the information to be turned into intelligence, but police informants and community police officers may contribute to this process, in accordance with relevant domestic legislation. Community policing can be an efficient counter-terrorism measure for engaging with local communities in which terrorists may be hiding while preparing, or after having committed, an attack. Community police officers are to acquaint themselves with the local community in which they function and engage with local residents in a positive fashion. This in turn should improve the ability of community police officers of detecting signs of unusual activity in a neighbourhood and picking up relevant information, which may lead to the detection and interception of terrorists acting alone. To be able to do so, community police officers should receive the necessary resources to be efficient and be trained in recognising suspicious behaviour based on the indicators used for the aforementioned risk assessment of terrorists acting alone.
22. Since attacks committed by terrorists acting alone are usually more difficult to prevent, the competent authorities must be able to intervene on a very short notice to intercept the perpetrator and minimise the impact of the attack once they receive reports thereof. Hence member States are called upon to draw up, where appropriate, contingency plans for rapid responses to terrorist attacks. As underlined in paragraph 20, *in fine*, member States should ensure that law enforcement and other relevant services, including rescue services, are equipped to deal with terrorist attacks.
23. “Special investigation techniques” are a key tool for law enforcement in the investigation and prosecution of terrorist offences. For the definition of “special investigation techniques” reference is made to the Recommendation of the Committee of Ministers to member States on “special investigation techniques” in relation to serious crimes including acts of terrorism (Recommendation CM/Rec(2017)6). Experience shows that terrorists, including some of those falling under the definition of “terrorists acting alone”, often have been active in more than one jurisdiction during the preparation of an attack. It is therefore important that member States exchange relevant information concerning terrorist suspects and consider the feasibility of establishing joint investigation teams, thus assisting each other in the prevention and investigation of terrorist attacks.
24. In paragraph 22, reference is also made to “joint investigation teams”. As extensively explained in the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters of 8 November 2001, “By mutual agreement, the competent authorities of two or more Parties may set up a joint investigation team for a specific purpose and a limited period, which may be extended by mutual consent, to carry out criminal investigations in one or more of the Parties setting up the team.” The above mentioned Additional Protocol clarifies: “A joint investigation team may, in particular, be set up where: a) Party’s investigations into criminal offences require difficult and demanding investigations having links with other Parties; b) number of Parties are conducting investigations into criminal offences in which the circumstances of the case necessitate co-ordinated, concerted action in the Parties involved.”
25. Terrorists acting alone have increasingly resorted to small arms and light weapons to conduct their attacks. The Recommendation includes a paragraph highlighting the necessity to prevent terrorists from acquiring weapons and to halt the armed capabilities of terrorists acting alone. Paragraph 23 follows the wording and the findings of the UN Security Council Resolution 2370 of 2 August 2017 on “Threats to international peace and security caused by terrorist acts – Preventing terrorists from acquiring weapons”. Inter alia, the aforesaid Resolution urges member States to eliminate the supply of weapons to terrorists, to act cooperatively to this end, to counter threats posed by improvised explosive devices and to become parties to related international and regional

instruments. The need to reinforce current operations to disrupt arms trafficking was also stressed at the occasion of the Council of Europe International Conference on Terrorism and Organised Crime held in Malaga, Spain, on 21 and 22 of September 2017. It is worth noticing that the conference also focused on the successful co-ordination and logistical challenges faced by multistate teams to investigate trafficking in arms.

Chapter V – Disengagement and de-radicalisation

26. Member States are encouraged to establish de-radicalisation and disengagement programmes for individuals at risk of becoming terrorists acting alone. A way of ensuring that de-radicalised individuals as well as individuals who have disengaged from terrorism do not revert to terrorism is to offer an alternative to radicalisation through a sense of belonging to society as opposed to alienation and seclusion from it. Member States are consequently invited to consider the establishment of social, including professional, reintegration programs for such individuals. As regards the special situation of foreign terrorist fighters, including returnees, member States are also encouraged to consider establishing de-radicalisation programs tailored to them. Participation in such de-radicalisation programs is without prejudice to criminal law procedures, indeed these two may be applied in tandem.

Chapter VI – Role of civil society and the private sector

27. In order for preventive measures to be efficient it is often necessary to involve civil society and the private sector, both to build trust and to forge co-operation. This is particularly important as regards preventing radicalisation via the Internet.

The role of civil society in countering radicalisation leading individuals to terrorism

28. Involvement of civil society actors in identifying push and pull factors in radicalisation processes and in the designing of programs to prevent and pre-empt such processes may be important for ensuring efficiency. Paragraph 29 describes in more detail the main components which should be included in prevention programs.

The role of the Internet and social media

29. The Internet and social media have become increasingly important vehicles for terrorist propaganda and should be addressed in the context of countering radicalisation leading individuals to terrorism. Establishing effective co-operation with the private sector and civil society is of crucial importance for eradicating the effects of terrorist propaganda.
30. The frameworks referred to in paragraph 31 may provide for the filtering and removal of illegal content and the blocking of access to social media accounts used by terrorist organisations or associations and individual terrorists. Ensuring compliance by the private sector is vital to this effect. In some member States efficient referral mechanisms allowing the competent authorities to alert Internet service providers of illegal content and request its removal have already been established.
31. In this context, it is recalled that at the 1296th meeting of the Ministers' Deputies (4 October 2017), pursuant to the Council of Europe Internet governance strategy 2016-2019, the Ministers' Deputies authorised the Secretary General to exchange letters with Internet companies and/or their representative associations, in order to facilitate co-operation between these companies/associations and the Council of Europe with a view to promoting respect for human rights and the rule of law online. This exchange of letters aims at providing Internet companies with the opportunity to sit side-by-side with governments and to address current challenges through joint action.

Chapter VII – Co-ordination within States and co-operation between States

32. The co-ordination within States and the co-operation between States is of major importance for the successful prevention of attacks carried out by terrorists acting alone. Hence this chapter of the Recommendation is dedicated to this subject.

Co-ordination within States

33. Paragraph 32 of the Recommendation sets out the main requirements for efficient co-ordination between the various competent authorities operating within member States. Depending on the geographic size and internal organisational structure of a member State, the complexity of co-ordination may vary considerably. In any case, member States should ensure, to the greatest extent possible, that their legislation and co-ordination mechanisms allow for the timely exchange of information and the passing of instructions concerning the detection of, and prevention of offences in preparation by terrorists acting alone. Likewise, member States should ensure proper co-ordination between different competent authorities on prevention issues. These recommendations are based on the experiences of a number of member States in dealing with concrete terrorist threats.

Co-operation between States

34. While it is important for a member State to ensure internal co-ordination on counter-terrorism issues, the efficiency of any efforts to detect terrorists acting alone and prevent them from committing attacks equally depends on the level of co-operation between member States. Paragraphs 33 and 34 of the Recommendation call on member States to make full use of existing international frameworks and arrangements for judicial and police co-operation, such as INTERPOL's policing capabilities, related to terrorists acting alone and to regularly exchange best practices on prevention of terrorism, de-radicalisation and social reintegration programs.

Chapter VIII – Review of the Recommendation

35. Chapter VIII contains the final clause, which deals with the assessment of the Recommendation and its implementation. The use of the word "assessment" does not imply any formal monitoring activity. The assessment process consists of the exchange of information between member States on how they make use of the Recommendation and whether they consider it fit for purpose or possibly in need of review and revision.