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European Union

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OUTCOME OF PROCEEDINGS

From:	General Secretariat of the Council
To:	Delegations
No. prev. doc.:	8738/23 + ADD 1, 8768/23 + ADD 1 + ADD 2
No. Cion doc.:	7763/23 + ADD 1
Subject:	Council Decision 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 - Text as adopted by the Council

Delegations will find attached the text of the above-mentioned Decision, as adopted by the Council (Education, Youth, Culture and Sport) at its 3947th meeting on 15 May 2023, as well as the accompanying negotiating directives.

The Council Decision will be notified to the Commission.

COUNCIL DECISION (EU) 2023/...

of ...

**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**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular
Article 83(1) in conjunction with Article 218(3) and (4) thereof,

Having regard to the recommendation from the European Commission,

Whereas:

- (1) In 2022, the Council of Europe Committee of Ministers mandated the Council of Europe Committee on Counter-terrorism ('CDCT') to launch negotiations on the modification of the definition of terrorist offences to be applied among the Parties to the Council of Europe Convention on the Prevention of Terrorism ('Convention No. 196').
- (2) On 2 December 2022, the CDCT decided to modify the definition of terrorist offences and to open formal negotiations on the text of that definition at its meeting on 23-25 May 2023.
- (3) The Union is a party to Convention No. 196 and its additional protocol. It has exercised its competence through the adoption of Directive (EU) 2017/541 of the European Parliament and of the Council¹, establishing minimum rules concerning the definition of criminal offences and sanctions in the area of terrorist offences and offences related to terrorist activities.
- (4) The definition of terrorist offences is covered by Union law, notably by Article 3 of Directive (EU) 2017/541, which is founded on the legal basis provided for in Article 83(1) TFEU. The modification of the definition of terrorist offences in Convention No. 196 may affect common rules established by Directive (EU) 2017/541 or alter its scope.
- (5) In order to protect the integrity of Union law and to ensure consistency between the rules of international law and Union law, it is necessary that the Commission participate in the negotiations on the modification of the definition of terrorist offences in Convention No. 196, for matters falling within the Union's competence, as defined by the Treaties, and in respect of which the Union has adopted rules.

¹ Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA (OJ L 88, 31.3.2017, p. 6).

- (6) This Decision should be without prejudice to the division of competences between the Union and its Member States as defined by the Treaties, to the participation of Member States in the negotiations, and to any subsequent decision to conclude, sign or ratify the revision or amendment of Convention No. 196.
- (7) The negotiating directives set out in the addendum to this Decision are addressed to the Commission and may be revised and further developed if appropriate depending on the evolution of the negotiations.
- (8) In view of the fact that all Member States are also Members of the Council of Europe, the Member States participating in the negotiations should support the Union negotiator in carrying out the tasks following from the Treaties, in accordance with the principle of sincere cooperation as referred to in Article 4(3) of the TEU, in full mutual respect.
- (9) In accordance with the principle of sincere cooperation, the Commission and the Member States should cooperate closely during the negotiation process, including via regular contact with the Member States' experts and their representatives in Strasbourg.
- (10) In accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, Ireland is not taking part in the adoption of this Decision and is not bound by it or subject to its application.
- (11) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Decision and is not bound by it or subject to its application,

HAS ADOPTED THIS DECISION:

Article 1

1. The Commission is hereby authorised to negotiate, on behalf of the Union, as regards matters falling within the Union's competence, as defined by the treaties, and in respect of which the Union has adopted rules, 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.
2. The negotiations shall be conducted on the basis of the negotiating directives set out in the addendum to this Decision, subject to any directives which the Council may subsequently issue to the Commission.

Article 2

The negotiations shall be conducted in consultation with the Council Working Party on Judicial Cooperation in Criminal Matters (COPEN), which is hereby designated as the special committee within the meaning of the Article 218(4) TFEU.

The Commission shall regularly report to the special committee referred to in the first paragraph on the progress of the negotiations and shall forward all negotiating documents to it as early as possible.

Whenever so requested by the Council, the Commission shall report to the Council on the conduct and the outcome of the negotiations, including in writing.

Article 3

This Decision is addressed to the Commission.

Done at Brussels,

For the Council

The President

Addendum

NEGOTIATING DIRECTIVES

Regarding the process of the negotiations, the Union should aim to achieve that:

- (1) The negotiation process is open, inclusive and transparent, and based on cooperation in good faith.
- (2) Input received from all the Parties to the Convention are considered on an equal basis to ensure an inclusive process.
- (3) The negotiation process is based on an effective and realistic work programme.

Regarding the general objectives for the negotiations, the Union should aim to achieve that:

- (4) The definition of terrorist offences in the Convention is, insofar as possible, compatible with Union law and Member States' obligations under Union law, in particular Directive (EU) 2017/541.
- (5) The definition of terrorist offences adequately and comprehensively reflects the scope of terrorist offences, taking into account the evolving terrorist threat moving beyond traditional targets and modus operandi.
- (6) The definition of terrorist offences laid down in Article 3 of Directive (EU) 2017/541 is preserved in the Union and continues to be applied in mutual relations among the Member States applying that Directive.
- (7) The negotiations ensure respect for the fundamental rights, freedoms and general principles of Union law as enshrined in the European Union Treaties and the Charter of Fundamental Rights of the European Union.

Regarding the substance of the negotiations, the Union should aim to achieve that:

- (8) The definition of terrorist offences in the Convention is defined in a manner that ensures clarity and legal certainty.
- (9) The definition of terrorist offences should be formulated in general terms. The wording should, as far as possible, be compatible with relevant Union law and UN counter-terrorism treaties listed in the Appendix to the Convention.
- (10) Insofar as possible, there are no discrepancies between the definition of terrorist offences in the Convention and the definition of terrorist offences laid down in Article 3 of Directive (EU) 2017/541.
- (11) The elements of the definition of terrorist offences in the Convention are coherent with the two-limb approach in Article 3 of Directive (EU) 2017/541, its paragraph 1 listing the intentional acts that may seriously damage a country or an international organisation which qualify as terrorist offences when committed with one of the terrorist aims listed in its paragraph 2.
- (12) In the case of an update to the Appendix to the Convention, with new counter-terrorism treaties, offences defined by these treaties and their scope should be compatible with the list of criminal offences in Article 3(1) of Directive (EU) 2017/541.

Regarding the functioning of the Convention, the Union should aim to achieve that:

- (13) The Convention, as revised or amended, preserves existing global and regional instruments, and ongoing international cooperation in the global fight against terrorism.
- (14) The Convention, as revised or amended, preserves its implementation mechanism and final provisions, including on the settlement of disputes, signature, ratification, acceptance, approval and accession, entry into force, amendment, suspension and denunciation.

Overall, the procedure for negotiations shall be as follows:

- (15) The Commission should endeavour to ensure that the Convention, as revised or amended, is consistent with relevant Union legislation and policies, as well as the Union's commitments under other relevant multilateral agreements.
- (16) The negotiations must be prepared for well in advance. To this end, the Commission shall inform the Council of the schedule anticipated and the issues to be negotiated and shall share the relevant information as early as possible.
- (17) The negotiating sessions shall be preceded by a meeting of the COPEN Working Party in order to identify key issues, formulate opinions and provide guidance, including formulating declarations and reservations, as appropriate.
- (18) The Commission shall report to the COPEN Working Party on the outcome of the negotiations after each negotiating session, including in writing.
- (19) The Commission shall inform the Council and consult the COPEN Working Party on any important issue that may arise during the negotiations.
