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Delegations will find attached the partially declassified version of the above-mentioned document.

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NOTE

From :	Eurojust
To :	Delegations
Subject :	Foreign Fighters in Syria – A European Perspective Eurojust's Insight into the Phenomenon and the Criminal Policy Response

Delegations will find attached the report from Eurojust on Foreign Fighters in Syria.

Foreign Fighters in Syria -

A European Perspective

Eurojust's Insight into the Phenomenon and the Criminal Policy Response

21 November 2013

Table of Contents

Executive Summary

The present report has been prepared in response to the proposal by the EU Counter-Terrorism Coordinator and the subsequent invitation by the Council to present the outcome of Eurojust's ongoing work on foreign fighters. In particular, Eurojust was requested to report on the adequacy of the legal framework in the Member States, the criminal policy response, the use of administrative sanctions and strengthening information exchange in the context of investigations and prosecutions, and to present specific recommendations. The analysis in the report is based on information shared with Eurojust in the context of operational activities, tactical and strategic meetings. The report presents experience and good practice that have been reported and brings forth possibilities for the exchange of information, cooperation and coordination that reinforce the common understanding of the problem and may contribute to finding the best solutions.

The long-lasting conflict in Syria has become an attractive battlefield for hundreds of radicalised European fighters. This phenomenon has raised concern that the skills and knowledge these fighters acquire may pose a threat to the security of Member States upon their return. As a result, national authorities have been urged to adopt policies to counter radicalisation, disrupt travel and deal with returnees from the conflict zone and seek the most effective response.

Eurojust promoted the exchange of experience and best practice at a tactical meeting held on 20 June 2013 that was attended by Member States representatives and external stakeholders (Europol, Frontex, EU CTC, Norway, Turkey, the United States). The existing legal framework in the Member States was studied as an essential element of the response to the phenomenon. The criminalisation of "passive participation" in terrorist training, as well as the possibilities for indirect criminalisation of terrorism-related travel, provide the national authorities with a number of tools and may serve as examples for addressing the issues at stake. Furthermore, the complexity and dynamics of the phenomenon and the possible effects it may have on the security of the Member States bring forth the need to adopt a comprehensive and multi-disciplinary approach and seek a reinforced effectiveness of the EU and the national criminal policy response. A substantial element of this approach is to consolidate awareness among the Member States and various national stakeholders regarding the nature and gravity of the problem, as well as to implement specific tools to prevent, detect and counter radicalisation so as to disrupt travel to Syria. Those tools should be adapted to best suit the specific target group and, where appropriate, integrate both preventive and restrictive measures.

The timing of intervention as well as the timing of the launching of investigations and prosecutions is considered crucial, as is the collection of evidence, especially in cases where authorities try to prove intent to travel and participate in terrorist training and jihad before or at the time of departure. It has also been recognised that enhanced cooperation with some key partners and countries of transit on the route to Syria is essential. Exchange of information with the United States, Turkey and the countries of the Western Balkans, for example, may be of added value to the Member States in their efforts to gain a better understanding of the phenomenon and in identifying the most efficient response. In addition to the judicial response, Member States apply administrative and other multi-disciplinary policies and measures to ensure a comprehensive approach to radicalisation, prevention and disruption of travel to Syria with the purpose of waging jihad. Often, a tailored combination of measures is needed and close cooperation between relevant agencies and bodies is indispensable.

As a result of its analysis, Eurojust has reached a number of conclusions and formulated recommendations that are presented at the end of this report. They confirm the need for a comprehensive approach to prevent and disrupt radicalisation, travel and participation in terrorist training and jihad in Syria and bring forth the added value of information exchange and cooperation.

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2.1 Adequacy of the Legal Framework in the Member States

In order to ascertain whether the Member States are sufficiently equipped to deal with the phenomenon of foreign fighters in an effective manner, it is useful to understand the substance and scope of the legal mechanisms already in place. In this respect, countries participating in the tactical meeting were invited to respond to the questions:

- Does your country have provisions that make terrorism-related crimes committed abroad punishable?
- Does your country have provisions that criminalise participation in terrorist training camps?
- Does your country have provisions that criminalise participation in terrorism-related travel?

This section describes the findings identified on the basis of compilation and analysis of the information received in response to the questions.

The aim of this section is to provide a general overview of the current national legal frameworks. **NOT DECLASSIFIED**

Are terrorism-related crimes committed abroad punishable?

All countries that participated in the Eurojust questionnaire have statutory regimes in place that allow terrorism-related crimes committed abroad to be punished.

As the legal basis for the exercising of national criminal jurisdiction over these crimes, the majority of countries (20 from a total of 30 countries)[1] have adopted special statutory provisions stipulating terrorism and related offences as offences covered by extra-territorial criminal jurisdiction.

[1] NOT DECLASSIFIED

The remaining countries (10 from a total of 30 countries),[2] for the prosecution of terrorism and related crimes committed abroad, rely on the regular law provisions governing the applicability of national criminal law to offences committed outside the territory of the state (*i.e.* the provisions establishing extra-territorial jurisdiction on the basis on the principle of active nationality, the principle of passive personality, or the protective principle).

Has participation in terrorist training camps been criminalised?

Considering the characteristics of the phenomenon of foreign fighters, the focus of the study was made on the criminalisation of the receiving of the training (*i.e.* so-called "passive participation" in training), as opposed to providing the training. The Eurojust questionnaire results show that only a small part of the countries that participated in the questionnaire (eight from a total of 30)[3] have adopted provisions that specifically mention "passive participation" in terrorist training as a criminal act. The following overview provides a closer look at the respective national legal provisions in these Member States.

Belgian law represents an interesting example of a broadly drafted provision that criminalizes participation in a terrorist training camp abroad. In the Belgian Penal Code, further to Article 140*quater*, which imposes criminal liability on any person who provides terrorist instructions or training,[4] Article 140*quinquies* explicitly stipulates the criminal liability of "any person who, in Belgium or abroad, receives instructions or training as referred to in Article 140*quarter*".[5]

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4 Article 140*quater*, Title I*ter* of the Book II of the Belgian Penal Code, reads as follows: "Notwithstanding the application of article 140, any person who gives instructions or training for the assembly or the use of explosives, fire arms, or other weapons or harmful or dangerous substances, or any other specific method or technique with the purpose of perpetrating one of the offences referred to in article 137, except those referred to in article 137, § 3, 6º, will be punished by imprisonment from five to ten years and a fine ranging from one hundred to five thousand euro".

5 Article 140*quinquies*, Title I*ter* of the Book II of the Belgian Penal Code, reads as follows: "Notwithstanding the application of article 140, any person who, in Belgium or abroad, receives instructions or training as referred to in article 140 quarter, with the purpose of perpetrating one of the offences referred to in article 137, except those referred to in article 137, § 3, 6, will be punished by imprisonment from five to ten years and a fine ranging from one hundred to five thousand euro".

In Denmark, Section 114d of the Danish Criminal Code regulates the training to commit actions included in Section 114 or 114a, which contain provisions on specific acts of terrorism and terrorism-related acts. Subsection 3 of Section 114d provides for criminal liability of those who let themselves be "trained, instructed or in any other way taught to commit actions included in Section 114 or 114a".[6] However, the Danish authorities indicated that whether or not a specific act would be punishable under Danish law would depend on the possibility to prove terror-related intent, rules on jurisdiction, etc.

German law also explicitly criminalizes "passive participation" in terrorist training, but has some reservations concerning the applicability of the provision to actions committed abroad. Section 89a of the German Criminal Code provides for criminal liability for the preparation of serious violent offences endangering the State, and subsection 2 of this Section specifically indicates that, in order to qualify as acts covered by this provision, the preparation must be committed, *inter alia*, by "instructing another person or receiving instruction".[7] The applicability of this provision to participation in training camps outside the territory of the European Union is subject to the conditions specified in subsection 3: the provision is applicable if the actions are committed by a German citizen or foreign citizen whose existence is based in Germany, or if the prepared offence is meant to be committed within the territory of Germany or against a German citizen.[8]

In Spain, Article 576 of the Penal Code provides for punishment for collaborators of terrorist activities, and section 2 of this Article specifically mentions, *inter alia*, "organisation of training practices or attending them" as one of the activities that constitutes an act of collaboration within the meaning of this Article.[9]

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6 Section 114d, subsection 3, of the Danish Criminal Code reads as follows: "Any person who lets himself/herself be trained, instructed or in any other way taught to commit actions included in Section 114 or 114a of this Act shall be liable to imprisonment for any term not exceeding six years".

7 Section 89a of the German Criminal Code (Preparation of a serious violent offence endangering the state) reads as follows: "(1) Whosoever prepares a serious offence endangering the state shall be liable to imprisonment from six months to ten years. A serious violent offence endangering the state shall mean an offence against life under sections 211 or 212 or against personal freedom under sections 239a or 239b, which under the circumstances is intended to impair and capable of impairing the existence or security of a state or of an international organisation, or to eliminate, subvert or undermine constitutional principles of the Federal Republic of Germany. (2) Subsection (1) above shall only be applicable if the perpetrator prepares a serious violent offence endangering the state by: 1. instructing another person or receiving instruction in the production or the use of firearms, explosives, explosive or incendiary devices, nuclear fission material or other radioactive substances, substances that contain or can generate poison, other substances detrimental to health, special facilities necessary for the commission of the offence or other skills that can be of use for the commission of an offence under subsection (1) above, (…)".

8 Section 89a of the German Criminal Code (Preparation of a serious violent offence endangering the state), Subsection 3, reads as follows: "(3) Subsection (1) above shall also apply if the preparation occurs abroad. If the preparation occurs outside the territory of the member states of the European Union, the aforesaid shall apply only if the preparation is performed by a German citizen or a foreign citizen whose existence is based within the territory of the Federal Republic of Germany or if the serious violent offence endangering the state so prepared is meant to be committed within the territory of the Federal Republic of Germany or against a German citizen".

9 Article 576 of the Spanish Penal Code reads as follows: "1. Punishment by imprisonment from five to ten years and a fine of eighteen to twenty-four months shall be handed down to whoever carries out, procures or facilitates any act of collaboration with the activities or purposes of a terrorist organisation or group. 2. Acts of collaboration include information on or surveillance of persons, property or installations; construction, conditioning, assignment or use of accommodation or storage facilities; concealment or transport of individuals related to 170 terrorist organisations or groups; organisation of training practices or attending them and, in general, any other equivalent form of co-operation, aid or mediation, economic or of any other kind whatsoever, with the activities of those terrorist organisations or groups. 3. The same penalties foreseen in Section 1 of this Article shall be imposed on whoever carries out any activity to recruit, indoctrinate, train or induct, (…)".

In the Netherlands, Article 134a of the Criminal Code, which makes contributing to and participating in training for terrorism punishable, specifically stipulates that, with respect to "passive participation", anyone who "gains knowledge or skills" pertaining to the preparation, facilitation or commission of a terrorist act, is punishable under this provision.[10]

Austrian law explicitly criminalizes the receiving of terrorist training, and the wording of the respective provision (§ 278e, subparagraph 2 of the Austrian Penal Code) places the emphasis on the consent of the defendant. Punishment is provided for "[w]hoever consents to be instructed" in the methods and skills specifically suitable for committing a terrorist offence, or for the purpose of committing a terrorist offence using the acquired skills.[11]

The United Kingdom has adopted elaborate legal provisions criminalizing "passive participation" in terrorist training. Section 6 subsection 2 of the Terrorism Act 2006 sets out the offence of participation in training. The offence includes the following elements: the defendant receives instruction or training, the training concerns any of the skills listed in the provision and, at the time of instruction or training, the defendant has the intention of using the skills for the commission or preparation of terrorist acts, or in assisting the commission or preparation of such acts by others.[12] In addition, Section 8 of the Terrorism Act 2006 creates the offence of attendance at a place used for terrorist training. This offence consists of the following elements: the defendant attended a place inside or outside the United Kingdom and, while at that place, terrorist training was provided; the training was provided wholly or partly for purposes connected with the preparation or commission of acts of terrorism; the defendant knew or believed, or could not reasonably have failed to understand that the training was provided for terrorist purposes.[13]

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10 Article 134a of the Dutch Criminal Code reads as follows: "Any person who intentionally lends or tries to lend himself or another opportunity, means or information to commit an act of terrorism or a crime pertaining to preparing or facilitating a terrorist act or gains knowledge or skills or teaches another such (skills and knowledge) will be punished with a maximum imprisonment of eight years or a fine of the fifth category".

11 Paragraph 278e (Training for terrorism), subparagraph 2 of the Austrian Penal Code reads as follows: "(2) Whoever consents to be instructed in the making or use of explosives, firearms or other weapons or harmful or hazardous substances, or in other similarly harmful or dangerous method specifically suitable for committing a terrorist offence under § 278 c Para. 1 Z 1 to 9 or 10 or in such a method for the purpose of committing such terrorist offence using the acquired skills, shall be punished with imprisonment from six months up to five years. The penalty, however, must not be more stringent regarding type and extent, as threatened by law for the intended offence".

12 Section 6 (Training for terrorism) subsection 2 of the Terrorism Act 2006 reads as follows: "(2) A person commits an offence if (a) he receives instruction or training in any of the skills mentioned in subsection (3); and (b) at the time of the instruction or training, he intends to use the skills in which he is being instructed or trained (i) for or in connection with the commission or preparation of acts of terrorism or Convention offences; or (ii) for assisting the commission or preparation by others of such acts or offences".

13 Section 8 (Attendance at a place used for terrorist training), subsections 1 and 2 of the Terrorism Act 2006 read as follows: "(1) A person commits an offence if (a) he attends at any place, whether in the United Kingdom or elsewhere; (b) while he is at that place, instruction or training of the type mentioned in section 6(1) of this Act or section 54(1) of the Terrorism Act 2000 (c. 11) (weapons training) is provided there; (c) that instruction or training is provided there wholly or partly for purposes connected with the commission or preparation of acts of terrorism or Convention offences; and (d) the requirements of subsection (2) are satisfied in relation to that person. (2) The requirements of this subsection are satisfied in relation to a person if (a) he knows or believes that instruction or training is being provided there wholly or partly for purposes connected with the commission or preparation of acts of terrorism or Convention offences; or (b) a person attending at that place throughout the period of that person's attendance could not reasonably have failed to understand that instruction or training was being provided there wholly or partly for such purposes".

Countries which have no specific provisions making "passive participation" in a terrorist training camp punishable indicate that prosecution may be possible on the basis of more general provisions concerning terrorism and related offences. Provisions setting out the offences of membership in a terrorist organisation, providing support to a terrorist organisation or preparing for the committing of an act of terrorism, may be applicable if, according to the circumstances of the case, "passive participation" in training can be regarded as an action constituting *corpus delicti* of these offences.

Has participation in terrorism-related travel been criminalised?

In the context of this study of the legal framework in Member States concerning the phenomenon of (aspiring) foreign fighters in Syria, the criminalisation of the travel (to conflict zones) of (aspiring) foreign fighters, rather than the criminalisation of activities of the travel organisers and recruiters, was of particular interest to the analysis.

Analysis of the responses to the questionnaire shows that none of the Member States **NOT DECLASSIFIED** [14] have legal provisions in place that directly stipulate as a criminal act travel for terrorism-related purposes. However, among the remaining countries, more than half of the countries (17 from a total of 29)[15] indicate that this activity is, under certain circumstances, criminalized indirectly through the application of legal provisions that define terrorism and terrorism-related offences broadly, so that the definitions also include the travel of (aspiring) foreign fighters. The overview below gives several examples of the legal mechanisms that provide the basis for such indirect criminalisation that exist in some Member States.

In Belgium, although criminal law does not specifically criminalize participation in terrorism-related travel itself, it criminalizes the actions that constitute "taking part in the activities of a terrorist group, (…), with the true knowledge that this participation contributes to the perpetration of a crime or an offence by the terrorist group" (Article 140, paragraph 1 of the Belgian Penal Code).[16] Under certain circumstances, this provision can be applied to punish the realization of trips where the aim is to participate in a terrorist organisation and terrorist acts.

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16 Article 140, Title I*ter* of the Book II of the Belgian Penal Code, paragraph 1, reads as follows: "§ 1. Any person taking part in an activity of a terrorist group, including by the supply of information or physical means to the terrorist group, or by any way of financing an activity of the terrorist group, with true knowledge that this participation contributes to the perpetration of a crime or an offence by the terrorist group, will be punished by five to ten years imprisonment and a fine of one hundred to five thousand euro".

In Denmark, travel to a foreign country will be punishable, e.g. as an attempted violation of the terrorism-related sections of the Danish Criminal Law, under certain circumstances, including if the purpose of the travel is to commit terrorism or terrorism-related acts.[17]

According to German law, Section 129a of the German Criminal Code criminalizes acts which can be deemed as the formation of, the participation in and support to a terrorist organisation[18] and Section 129b of the German Criminal Code extends the scope of application of these provisions to terrorist organisations abroad, subject to the conditions specified therein.[19]

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17 As mentioned above, the Danish authorities indicated that whether or not a specific act would be punishable under Danish law would depend on the possibility to prove terror-related intent, rules on jurisdiction, etc.

18 Section 129a of the German Criminal Code (Formation of terrorist organisations), subsections 1, 2 and 5 read as follows:

"(1) Whosoever forms an organisation whose aims or activities are directed at the commission of 1. murder under specific aggravating circumstances (section 211), murder (section 212) or genocide (section 6 of the Code of International Criminal Law) or a crime against humanity (section 7 of the Code of International Criminal Law) or a war crime (section 8, section 9, section 10, section 11 or section 12 of the Code of International Criminal Law); or 2. crimes against personal liberty under section 239a or section 239b, 3. (repealed), or whosoever participates in such a group as a member shall be liable to imprisonment from one to ten years.

(2) The same penalty shall be incurred by any person who forms an organisation whose aims or activities are directed at 1. causing serious physical or mental harm to another person, namely within the ambit of section 226, 2. committing offences under section 303b, section 305, section 305a or offences endangering the general public under sections 306 to 306c or section 307(1) to (3), section 308(1) to (4), section 309(1) to (5), section 313, section 314 or section 315(1), (3) or (4), section 316b(1) or (3) or section 316c (1) to (3) or section 317(1), 3. committing offences against the environment under section 330a(1) to (3), 4. committing offences under the following provisions of the Weapons of War (Control) Act: section19 (1) to (3), section 20(1) or (2), section 20a(1) to (3), section 19 (2) No 2 or (3) No 2, section 20(1) or (2), or section 20a(1) to (3), in each case also in conjunction with section 21, or under section 22a(1) to (3) or 5. committing offences under section 51(1) to (3) of the Weapons Act; or by any person who participates in such a group as a member, if one of the offences stipulated in the points 1 to 5 is intended to seriously intimidate the population, to unlawfully coerce a public authority or an international organisation through the use of force or the threat of the use of force, or to significantly impair or destroy the fundamental political, constitutional, economic or social structures of a state or an international organisation, and which, given the nature or consequences of such offences, may seriously damage a state or an international organisation.

(…)

(5) Whosoever supports a group as described in subsections (1), (2) or (3) above shall be liable to imprisonment from six months to ten years in cases under subsections (1) and (2), and to imprisonment not exceeding five years or a fine in cases under subsection (3). Whosoever recruits members or supporters for a group as described in subsection (1) or subsection (2) above shall be liable to imprisonment from six months to five years."

19 Section 129b of the German Criminal Code (Criminal and terrorist organisations abroad; extended confiscation and deprivation) reads as follows: "(1) Section 129 and section 129a shall apply to organisations abroad. If the offence relates to an organisation outside the member states of the European Union, this shall not apply unless the offence was committed by way of an activity exercised within the Federal Republic of Germany or if the perpetrator or the victim is a German or is found within Germany. In cases which fall under the 2nd sentence above the offence shall only be prosecuted on authorization by the Federal Ministry of Justice. Authorization may be granted for an individual case or in general for the prosecution of future offences relating to a specific organisation. When deciding whether to give authorization, the Federal Ministry of Justice shall take into account whether the aims of the organisation are directed against the fundamental values of a state order which respects human dignity or against the peaceful coexistence of nations and which appear reprehensible when weighing all the circumstances of the case. (2) Section 73d and section 74a shall apply to cases under section 129 and section 129a, in each case also in conjunction with subsection (1) above."

Furthermore, Section 89a of the German Criminal Code criminalizes preparation of a violent offence endangering the State.[20] Any terrorism-related travel which can be subsumed within these provisions is criminalized by virtue of these provisions.

In Estonia, § 237-2 of the Estonian Penal Code, which criminalizes preparation of acts of terrorism,[21] is the possible legal basis for the prosecution of terrorism-related travel.

Ireland has indicated that criminalisation of terrorism-related travel may be covered by Article 6 of the Criminal Justice (Terrorist Offences) Act 2005, which stipulates the offences of engaging in a terrorist or terrorist-linked activity, and the attempt to engage in such activity, and sets out the conditions of the applicability of the law to acts committed abroad.[22]

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[20] Section 89a of the German Criminal Code (Preparation of a serious violent offence endangering the state), subsections 1 and 2 read as follows:

"(1) Whosoever prepares a serious offence endangering the state shall be liable to imprisonment from six months to ten years. A serious violent offence endangering the state shall mean an offence against life under sections 211 or 212 or against personal freedom under sections 239a or 239b, which under the circumstances is intended to impair and capable of impairing the existence or security of a state or of an international organisation, or to eliminate, subvert or undermine constitutional principles of the Federal Republic of Germany.

(2) Subsection (1) above shall only be applicable if the perpetrator prepares a serious violent offence endangering the state by 1. instructing another person or receiving instruction in the production or the use of firearms, explosives, explosive or incendiary devices, nuclear fission material or other radioactive substances, substances that contain or can generate poison, other substances detrimental to health, special facilities necessary for the commission of the offence or other skills that can be of use for the commission of an offence under subsection (1) above, 2. producing, obtaining for himself or another, storing or supplying to another weapons, substances or devices and facilities mentioned under point 1 above, 3. obtaining or storing objects or substances essential for the production of weapons, substances or devices and facilities mentioned under No. (1) above, or 4. collecting, accepting or providing not unsubstantial assets for the purpose of its commission".

[21] Paragraph 237-2 of the Penal Code of Republic of Estonia (Preparation of and incitement to acts of terrorism), subparagraph 1 reads as follows: "(1) Organisation of training or recruiting persons for the commission of a criminal offence provided in § 237 of this Code, or preparation for such criminal offence in another manner as well as public incitement for the commission of such criminal offence is punishable by 2 to 10 years' imprisonment".

[22] Article 6 (Terrorist offences) of the Criminal Justice (Terrorist Offences) Act 2005, sections 1 and 2, read as follows:

"(1) Subject to subsections (2) to (4), a person is guilty of an offence if the person (a) in or outside the State (i) engages in a terrorist activity or a terrorist-linked activity, (ii) attempts to engage in a terrorist activity or a terrorist-linked activity, or (iii) makes a threat to engage in a terrorist activity, or (b) commits outside the State an act that, if committed in the State, would constitute (i) an offence under section 21 or 21A of the Act of 1939, or (ii) an offence under section 6 of the Act of 1998.

(2) Subsection (1) applies to an act committed outside the State if the act (a) is committed on board an Irish ship, (b) is committed on an aircraft registered in the State, (c) is committed by a person who is a citizen of Ireland or is resident in the State, (d) is committed for the benefit of a legal person established in the State, (e) is directed against the State or an Irish citizen, or (f) is directed against (i) an institution of the European Union that is based in the State, or (ii) a body that is based in the State and is set up in accordance with the Treaty establishing the European Community or the Treaty on European Union".

In Cyprus, Article 7 of Law 110(I)/2010 provides that any person who has knowledge of the illegal purposes or illegal activities of a terrorist organisation, or who participates in any way in the illegal acts of a terrorist organisation, is guilty of an offence. The country has indicated that this provision can serve as a possible legal basis for the prosecution of terrorism-related travel.

Slovenia has indicated that Article 108 of the Slovenian Criminal Code, which criminalizes acts of terrorism as such, and particularly Paragraph 7 of this Article, which criminalises membership in a terrorist group intending to commit criminal offences, is the possible legal basis for the prosecution of terrorism-related travel.

Under Dutch law, terrorism-related travel may be covered by Article 134a of the Dutch Criminal Code, which makes contributing to and participating in training for terrorism punishable if "the opportunity, means or information to commit an act of terrorism" with regard to travelling are obtained.[23]

Portugal has indicated that, in the absence of a specific national law rule criminalizing terrorism-related travel, Section 5 of Counter-Terrorism Law 52/2003 may be applicable. Section 5 concerns international terrorism and refers to acts committed with the intent to impair the integrity or independence of another State, prevent, alter or subvert the functioning of the institutions of that State or of a public international organisation, to force the authorities of the State to perform an act, to refrain from the practice or tolerate that practice, or intimidate certain groups of people or populations. Moreover, Section 4 of the Counter-Terrorism Law may be another provision applicable to terrorism-related travel. Paragraphs 2, 3, 4 and 5 of Section 4 refer to various situations which might be associated with the criminalisation of the reasons of travel, if travel is performed to enable the commission of a terrorist offence.

Finally, the law of the United Kingdom constitutes an interesting example of the legal mechanism that criminalizes terrorism-related travel. Accordingly to the judicial authorities of the United Kingdom, the definition of the offence of terrorism, as set out by Section 5 of the Terrorism Act 2006, includes both the facilitating of the travel of others and own travel provided the travel is carried out with the intention described in subsection 1 of this Section, i.e. with the intention of committing acts of terrorism or assisting another to commit such acts.[24]

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[23] Article 134a of the Dutch Criminal Code reads as follows: "Any person who intentionally lends or tries to lend himself or another opportunity, means or information to commit an act of terrorism or a crime pertaining to preparing or facilitating a terrorist act or gains knowledge or skills or teaches another such (skills and knowledge) will be punished with a maximum imprisonment of eight years or a fine of the fifth category".

[24] Section 5 of the Terrorism Act 2006 reads as follows: "(1) A person commits an offence if, with the intention of (a) committing acts of terrorism, or (b) assisting another to commit such acts, he engages in any conduct in preparation for giving effect to his intention. (2) It is irrelevant for the purposes of subsection (1) whether the intentions and preparations relate to one or more particular acts of terrorism, acts of terrorism of a particular description or acts of terrorism generally. (3) A person guilty of an offence under this section shall be liable, on conviction on indictment, to imprisonment for life".

Council Framework Decision 2008/919/JHA of 28 November 2008

Due to its relevance to the phenomenon of foreign fighters, Council Framework Decision 2008/919/JHA of 28 November 2008 amending Framework Decision 2002/475/JHA on combating terrorism has also been considered. An analysis of its transposition in the Member States was presented at the annual Strategic Meeting on Terrorism, held at Eurojust on 19 June 2013.

Council Framework Decision 2008/919/JHA introduced the following punishable offences linked to terrorist activities:

a) public provocation to commit terrorist offences

b) recruitment for terrorism

c) training for terrorism

Furthermore, aiding or abetting any of the aforementioned offences is made punishable and attempting to recruit or train for terrorist purposes may be made punishable by the Member States.

At the time of the tactical meeting at Eurojust, 25 Member States had implemented Council Framework Decision 2008/919/JHA or already had legal provisions in line with the Framework Decision. Three Member States reported not having yet implemented the Framework Decision, mentioning the following clarifications:

- Ireland: The Criminal Justice (Terrorist Offences) Amendment Bill 2012 will transpose the Framework Decision into Irish Law by amending the Terrorist Offences Act 2005.

- Greece: The Greek Parliament will vote on the Plan for a new Penal Code of which Article 174§4 will transpose the Framework Decision into the Penal Code.

- Lithuania: The necessary changes in legislation are currently being prepared.

Penalties:

The penalties for committing any of the above-mentioned crimes range from six months up to a maximum of 25 years imprisonment. The average penalties are imprisonment from two to ten years.

Remarks/observations:

In France, recruitment for terrorism is punishable under the provisions of participation in a terrorist association, as well as under the recently introduced provisions regarding terrorist instigators. This entails that, even if the targeted individual to be recruited did not respond to the request, the terrorist recruiter could still be punished under the latter provisions.

Public provocation to commit terrorist offences has not been taken up as an offence in the Hungarian Criminal Code, due to previous decisions of the Constitutional Court.

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Conclusions and Recommendations

The findings presented in this report reveal several important aspects of the phenomenon of (aspiring) foreign fighters in Syria and the Member States' response, selected on the basis of their relevance to the mandate and powers of Eurojust. These findings have led to the consolidation of several conclusions and recommendations which are also based on the experience gained at Eurojust in counter-terrorism matters and the general outcome of the work which Eurojust has carried out in relation to the phenomenon of foreign fighters and returning jihadists. The conclusions and recommendations can be summarised as follows:

The phenomenon of (aspiring) foreign fighters in Syria is Europe-wide and requires a coordinated and structured approach. Although not all Member States are (yet) affected by the phenomenon, its complexity and dynamics require a sustained policy at EU and national level to consolidate awareness and better understanding of the phenomenon and its implications for national and international security. Cooperation, coordination and coherence of the response are vital to successfully prevent, deter and disrupt travel and participation in jihad in Syria and to eliminate the risks and threats that may be caused by returnees from the conflict zone.

The legal frameworks in the Member States are assessed to be adequate to address the phenomenon of foreign fighters. Member States consider existing criminal law provisions to be adequate to address the phenomenon. Some Member States have introduced specific provisions criminalizing "passive participation" in terrorist training, while travelling for terrorism-related purposes is criminalized indirectly and under certain circumstances in the majority of Member States. Thus far, national experiences with investigations and prosecutions of (aspiring) foreign fighters in Syria are rather limited compared to the reported number of Europeans who have joined the armed conflict there. Therefore, further analysis of the efficiency of existing legal provisions to defy the phenomenon will only be possible once more experience has been gained and successful prosecution cases have been built. In particular, the need to criminalize the "passive participation" in terrorist training in the EU Framework Decision on Combating Terrorism may be considered and analysed.

Eurojust is the ideal forum to coordinate cross-border investigations and prosecutions. Eurojust plays a distinctive role in enhancing judicial cooperation and coordination and has built unique expertise that supports the Member States in their investigations and prosecutions effectively. Eurojust should be involved in a systematic manner in cases targeting travel and participation in jihad in Syria, as well as the recruitment, facilitation and financing of such participation. Eurojust's knowledge and experience in counter-terrorism matters and, in particular, in relation to returning jihadists, radicalisation and lone actors, may be of great advantage to investigations and prosecutions of (aspiring) radicalised travellers and returnees from Syria as well as recruiters and facilitators. Eurojust can bring particular added value by assisting national authorities in concrete cases, as well as by ensuring awareness is raised at judicial level.

Jurisprudence experience shared with Eurojust enhances the ability to collect, analyse and generate best practice and experience and thus improve investigation and prosecution cases. In the case of operational or strategic needs, or as a result of a particular interest, Eurojust provides detailed and tailored judicial analysis that focuses on relevant legal issues and definitions, problems with evidence, argumentation, etc. in relevant court decisions rendered in the Member States. This analysis is made available to the national authorities of the Member States concerned, also through the TCM. Eurojust will continue to use the TCM to further promote best practice and experience, also in relation to (aspiring) foreign fighters in Syria.

The possibility of enhanced cooperation with other JHA agencies, such as Europol and FRONTEX, needs to be further explored. The cooperation and exchange of information between the JHA agencies is particularly important, also in the context of the response to the phenomenon of (aspiring) foreign fighters in Syria. The complementarity of powers and mandates of Eurojust, Europol and Frontex contributes to the enhancement of the added value of the cooperative approach to the phenomenon. The building of further synergies between the three agencies should be encouraged by, *inter alia*, the active involvement of Eurojust in operational activities, including through association with the relevant Europol Focal Points, and the optimal use of the opportunities offered by the pending Memorandum of Understanding between Eurojust and Frontex.

Cooperation with third States and especially the United States, Turkey and the countries of the Western Balkans should be advanced to ensure a better understanding of the phenomenon and identify the most efficient response to the challenges it poses. Eurojust should step up its cooperation with the United States and the countries of the Western Balkans to bring added value to the analysis of the criminal policy response to the phenomenon from a broader perspective. Due to its positive experience in cooperating with the Turkish authorities, Eurojust may also serve as an effective platform for enhanced cooperation between the Member States and Turkey in relation to (aspiring) foreign fighters in Syria.

The phenomenon of (aspiring) foreign fighters may be successfully addressed by a tailored policy that integrates judicial, administrative and other multi-disciplinary measures. Such tailored policy ensures the implementation of a comprehensive, multi-disciplinary approach that can be adapted to every particular case. To succeed, national authorities need to engage all of the relevant government and community stakeholders whose collaboration in this process is indispensable.

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