

**10694/04**

**LIMITE**

**DROIPEN 34  
COTER 45  
CATS 31  
USA 60**

**NOTE**

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From : Presidency  
To : Working Party on Substantive Criminal Law  
Subject : Questionnaire on Prevention of Terrorism

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In the context of several formal and informal meetings with EU authorities (e.g. the New Transatlantic Agenda EU-US meeting on Justice and Home Affairs, Dublin, 23 February 2004, doc. 6862/04 JAI 60 USA 20, and the EU-US JHA High Level Meeting, Wassenaar 7 July 2004, 11325/04 JAI 265 USA 77), the US authorities have conveyed several concerns regarding States' abilities to fight terrorism.

A first concern relates to the ability of law enforcement authorities to take action against preparatory acts for terrorism at a stage where no terrorist acts had been committed. A second concern related to the ability of states to afford mutual legal assistance and extradite persons for preparatory acts. A third issue which has been raised by the US is how to share intelligence information related to terrorism for use in criminal proceeding in another country, while ensuring that the intelligence is protected.

The US wants to step up co-operation with EU Member States in this regard and has asked the Presidency to bring this issue to the attention of the Member States. The G8 has already started work on this by way of a questionnaire that had been sent out to and replied by all G8 members. This questionnaire is attached to this document.

The Presidency invites delegations to examine the questionnaire and to reflect on the following questions:

- a. How could the questionnaire be used to gather the necessary information with a view to facilitating the cooperation between the US and EU Member States?
- b. Are relevant questions missing in the questionnaire ? Do we already have relevant information available from other sources?

Delegations are invited to submit their written reactions before 1 September 2004 to the Council Secretariat (att: bent.mejborn@consilium.eu.int). The Presidency has put the issue on the agenda for the meeting of the Working Party on Substantive Criminal Law on 8 and 9 September (together with the report of the Commission on the implementation of the Framework Decision on combating terrorism) with a view to concluding on how to move forward with regard to the questionnaire.

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In responding to the following questions, please provide a brief description of the applicable legal framework, including case law requirements not readily apparent from relevant statutory provisions.

A. Questions regarding penal laws

1. To what extent is it a crime under your law to incite or recruit the commission of terrorist acts?
2. To what extent is it a crime under your law to provide, directly or indirectly, material support to terrorism in the form of training, financing, or the providing of other supplies or facilities?
3. Regarding offences described in response to the above questions, does your law impose liability only where such recruiting/inciting/supporting activities be for the purpose of committing, or knowing of the planned commission of a specific terrorist act? Can liability also arise where there is a more general mental state, such as where the recruiter/inciter/supporter intends to, or knows that his or her conduct will aid future unspecified terrorist acts?
4. Are there any other legal limitations in pursuing the offences described in response to the above questions? For example, are there any legal limitations that would arise were a religious leader or institution involved in such conduct? A charitable institution?
5. To what extent is it a crime under your law to offer compensation to suicide bombers, their families or other designated beneficiaries, before the commission of the attack? To what extent is it a crime to offer such compensation after the commission of the attack for the purpose of generally encouraging others to commit such attacks?

B. Questions regarding procedural or other pertinent laws

1. Are there limitations under your law in the employment of “special investigative techniques” in criminal investigations of offences described in response to the above questions where a religious or charitable entity may be involved? For example, can the government overtly or covertly observe conduct taking place in a house of worship or property otherwise belonging to a religious or charitable entity? Can electronic surveillance be conducted in such a location? Are there limitations to executing searches and seizures in such a location? What are the grounds or justifications that must be provided to carry out such techniques?
2. To what extent are there limitations under your law to, in a criminal investigation, the questioning of a religious figure, or the gathering of other information about such a figure? For example, are there any legal privileges that may bar gathering of such information or evidence?
3. Are there limitations under your law on your ability to detain or arrest religious figures?
4. To what extent do you have procedures under your law that permit the use in judicial proceedings of national security intelligence information in a manner that protects its source while adequately protecting rights of the defence?
5. To what extent does your law permit the offering of rewards or other incentives for information that may assist in preventing, investigating and/or prosecuting the offences described in response to the above questions, as well as attacks themselves? Is there any difference between rewards/incentives offered by the government and those offered by private persons or entities?

C. International co-operation

1. To what extent can you provide international mutual legal assistance and police co-operation with respect to the gathering of information and evidence by other countries for use in their criminal investigations or prosecutions? In particular, could you take the investigative techniques described in questions B(1) and B(2) upon request of another country?

Are the offences described in response to the questions under Section A, above extraditable offences under your law? Are there any other particular legal limitations that may apply to such terrorism-related conduct? For example, could extradition for such conduct be denied on “political offence” grounds?

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