



Council of the European Union
General Secretariat

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CM 2128/15

LIMITE

JAI
DROIPEN
COPEN
ENFOPOL
COTER
PROCED

COMMUNICATION

WRITTEN PROCEDURE

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Subject: Council decision authorising the opening of negotiations on an additional protocol supplementing the Council of Europe Convention on the Prevention of Terrorism (CETS No. 196)
– Outcome of written procedure

We are pleased to inform you that the written procedure initiated by CM 2089/15 of 30 March 2015 was successfully completed.

All relevant delegations agreed to the use of the written procedure and to the adoption of the Council decision as set out in document 7300/2/15 REV 2 JAI 181 DROIPEN 27 COPEN 77 ENFOPOL 69 COTER 51 EU RESTRICTED + COR 1.

The Council decision is therefore adopted.

The General Secretariat of the Council takes this opportunity to thank delegations for their kind cooperation.

The following statements to be entered in the minutes of the Council were made:

Statement by the Council

The Council decision authorising the opening of negotiations on an additional protocol supplementing the Council of Europe Convention on the Prevention of terrorism (CETS No. 196) does not create a precedent, neither with regard to future Council decisions authorising the opening of negotiations on behalf of the Union in international organisations, nor with regard to the participation of the United Kingdom and Ireland in such decisions, where the application of Protocol 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, would be triggered.

Statement by the Czech Republic

The Czech Republic would like to stress the political significance of the additional protocol supplementing the Council of Europe Convention on the Prevention of Terrorism (CETS No. 196) and to express herewith its full support for its conclusion.

At the same time, the Czech Republic wishes to recall the basic EU law principle encompassed in Art. 2 (2) TFEU according to which whenever *“the Treaties confer on the Union a competence shared with the Member States in a specific area (...) the Member States shall exercise their competence to the extent that the Union has not exercised its competence”*.

The Czech Republic is therefore ready to support the EU negotiator as regards the matters covered by the minimum standards set out in the Council Framework Decision 2002/475/JHA on combating terrorism, as amended by Council Framework Decision 2008/919/JHA, and ready to negotiate on behalf of the Czech Republic in a constructive way on the matters going beyond it.

Statement by the United Kingdom

The United Kingdom supports the proposal for an Additional Protocol to the Convention on the Prevention of Terrorism as an appropriate response by the Council of Europe to the tragic events in Paris and Copenhagen.

However, the United Kingdom recalls that the Commission should represent the Union externally following a mandate from the Council. Accordingly, the United Kingdom regrets the late publication of the Recommendation for a proposed Council Decision. This was published only after

the negotiations for the Additional Protocol had been commenced. This is not consistent with the duty of sincere cooperation.

The United Kingdom welcomes clarification in the recitals that 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, applies. However, the United Kingdom recalls that any proposal made pursuant to Title V of Part Three of the Treaty of the Functioning of the Union must be published in sufficient time to allow the United Kingdom to consider whether to exercise its right under Protocol 21 to participate in that proposal.

Statement by Germany

While the mandate does not specify which areas possibly covered by the supplementary protocol fall within the Union's competence, Germany takes the view that, without prejudice to other fields of competence, the criminalisation of travelling for terrorist purposes (Article 4 of the draft protocol concerning OP 6 lit a) of UN Security Council Resolution 2178 (2014)) does not fall within the European Union's competence, and that the Member States will still participate in the negotiations and will be able to present their own positions regarding the areas outside the Union competence.

Statement by the Commission

1. This Decision is based on the premise that the Union has competence to conclude the Additional Protocol, but does not express itself on the question of whether that competence is shared or exclusive.
2. Regardless of the nature of the Union's competence, it is the Commission who negotiates on behalf of the Union, in accordance with art. 17 TEU and 218 TFEU. Where the Decision refers to "participation of the Member States in the negotiations", this refers to the practical role that the Member States play in the negotiations in support of the Union, in particular as the Union does not have the right to vote in the Committee of Ministers of the Council of Europe.
3. The Commission considers itself addressee of the Decision.