



Foreign Terrorist Fighters: Eurojust's Views on the Phenomenon and the Criminal Justice Response

Fourth Eurojust Report Summary of Main Findings

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List of acronyms

CT	Counter-terrorism
EAW	European Arrest Warrant
ECRIS	European Criminal Records Information System
ECTC	European Counter Terrorism Centre
EU	European Union
EU CTC	European Union Counter-Terrorism Coordinator
FTF	Foreign terrorist fighter
ICC	International Criminal Court
IHL	International Humanitarian Law
ISIS	Islamic State in Iraq and Syria
IT	Information technology
JHA	Justice and Home Affairs
JIT	Joint investigation team
MENA	Middle East and North Africa
MLA	Mutual legal assistance
OP	Operational Paragraph
PNR	Passenger Name Record
RAN	Radicalisation Awareness Network
TCM	Terrorism Convictions Monitor
TFTP	Terrorist Finance Tracking Program
UNSCR	United Nations Security Council Resolution

1. Introduction

This paper presents a summary of the main findings of the fourth Eurojust report, *Foreign Terrorist Fighters: Eurojust's Views on the Phenomenon and the Criminal Justice Response* (the 'report') of November 2016. The objective of the report is to present Eurojust's findings on the evolution of the EU criminal justice response to FTFs. The report does not seek to offer a comprehensive analysis of all relevant issues. Rather, it highlights some remaining and newly identified challenges in FTF investigations and prosecutions across Europe. The report updates and develops further the findings and recommendations of the three previous Eurojust reports on the topic.¹ It also identifies several conclusions and recommendations and outlines possible follow-up actions.

The findings in the report are based on Eurojust's analysis of information shared by national authorities in 2016. It builds on Eurojust's experience in coordinating and facilitating the cooperation between national authorities in FTF cases. It reflects national experience in dealing with FTF cases, as shared with Eurojust in response to the follow-up Eurojust questionnaire on judicial responses to FTFs. The report also elaborates on the discussions held during the Eurojust tactical meeting on terrorism of 22-23 June 2016, *Building an effective judicial response to foreign terrorist fighters* (the '2016 tactical meeting on terrorism').

2. Criminal Justice Response: National Perspectives

2.1. Legal framework

The focus of this section is on i) national legislation dealing with special procedural law provisions applicable in terrorism proceedings, and ii) special or emergency powers for the judiciary applicable in the event of a terrorist attack.

Special procedural law provisions applying in terrorism proceedings

Several Member States have planned to adopt or have already adopted legislation related to the special procedural law provisions applying in terrorism proceedings, in all or in certain procedural stages, such as extensions of time limits or time limitations for coercive measures (e.g. house searches, provisional detention, etc.) or special powers given to prosecutors to authorise coercive measures. In some Member States, these new provisions are not limited to cases of terrorism and can also be used in investigations regarding other serious crimes.

For instance, one Member State further specified certain tools used for seizing property and assets from criminal activities to improve the fight against terrorism financing in general. In another Member State, searches and arrest warrants can now be executed anytime of a day, including the night time, if the investigation concerns terrorist offences or a criminal conspiracy to commit an attack on individuals or on property, and if evidence indicates that illegal firearms, explosives or other dangerous and harmful substances are involved. Furthermore, telephone intercepts are now permitted for offences against the law on firearms or explosive substances and against provisions on the physical protection of nuclear and other radioactive materials or the Cooperation Agreement on the Execution of the Chemical Weapons Convention. Finally, one Member State introduced an automated database of perpetrators of terrorist offences was created to help prevent new terrorist offences and identify possible perpetrators via strong social monitoring and the investigative techniques available to combat the financing of terrorism and organised crime were extended. In addition, the legal amendments reinforced gun and ammunition control and introduced new provisions with regard to witness protection.

¹ Council documents 16878/13 EU RESTRICTED, 16130/14 EU RESTRICTED and 14907/15 EU RESTRICTED.

Special and emergency powers applicable in the event of terrorist attacks

Participants at the 2016 tactical meeting on terrorism did not detect a pressing need to harmonise EU legislation in the field of special and emergency powers applicable in the event of terrorist attacks, although this matter is regulated in different ways at national level. For example, in one Member State most coercive measures must be ordered by a court. However, in cases of 'imminent danger', police officers and/or prosecutors can order the execution of some of the measures, which then must be subsequently validated by a judge. Nevertheless, these exceptional powers are not limited to cases of terrorism or terrorist attacks as such, but apply generally in criminal proceedings.

In another Member State, a special provision provides for certain officials to order coercive measures in cases involving investigations against 'armed bands' or 'terrorist elements' in a 'case of emergency'. Within certain deadlines, such measures must be reported to a competent magistrate to be either revoked or confirmed. Also, in cases relevant to national security (which may include terrorist attacks), the term of police detention may be extended to a maximum of five days instead of three. During this time, no communication to the judge in charge of the case or the defence lawyer representing the suspect is foreseen.

In one Member State, the indication that a terrorist offence is being or has been committed triggers the possibility for the investigating law enforcement officers or public prosecutors to order and/or execute certain measures without a court order and provisions also exist for extending the maximum time limit for warrants of arrest or detention for charges of terrorist offences in comparison with charges for other offences. In addition, under certain circumstances, not necessarily linked to terrorist offences, provisions are in place that allow for a number of coercive measures without the prior decision of a court. In another Member States, a terrorist attack can constitute an emergency enabling the government to enact emergency regulations that are limited in duration and can include extended powers for law enforcement, courts, and other components of the executive authorities (e.g. intelligence services).

In terrorism investigations, as in organised crime group cases, the legislation of one Member State provides the investigation tools available for investigating authorities (particularly 'preventive lawful interceptions' and new possibilities to retain information technology data, including such data collected abroad). Another Member State introduced provisions allowing for courts to impose pre-trial detention for up to five years on suspects of terrorist offences without formally stipulating the reasons therefor. Also, the time limit for detention by the police of a person suspected of terrorist offences was extended from 48 hours to 96 hours, and, in the event of terrorist threats, police officers have been given more powers to erect roadblocks and to search vehicles. Additional witness protection measures in terrorism investigations and proceedings have been introduced, and, upon court order, website operators and domain providers are obliged to shut down or prevent access to online content promoting or encouraging people to engage in terrorist acts. A measure introduced in another country is the court-ordered online surveillance of electronic devices used by suspects and the possibility of enabling police and security services to conduct online monitoring, enabling them to bypass encryption technologies used by suspects, is discussed. However, these measures are not limited to investigations regarding terrorist offences, but are allowed or foreseen in investigations of serious crimes.

2.2. Challenges and best practice in FTF investigations and prosecutions: admissibility of intelligence as evidence in criminal proceedings

The use of information collected by (national and foreign) intelligence services is generally considered of great importance for building criminal investigations in terrorism cases, particularly against FTFs. Such information is deemed crucial to gaining insights about the structures and members of terrorist organisations active in Syria and Iraq, due to the difficulty of maintaining working MLA relations in the region. In addition, the scale and widespread nature of terrorist threats require national authorities to bridge the existing gaps among the intelligence, law enforcement and prosecution authorities. Different approaches can be seen in the Member States with regard to handling information originating from

intelligence services in the context of criminal proceedings. While some legal systems do not permit the use of intelligence as evidence, several Member States use information from intelligence services as the basis for opening criminal investigations or prosecutions of terrorism cases, as well as ordering coercive and surveillance measures. Such information can be further used by the trier of fact for the adjudication of a defendant's criminal responsibility.

In general, legal systems that provide for the admissibility of intelligence in criminal proceedings subject its evidentiary use to the requirement that such intelligence be corroborated by other evidence. Some Member States may further set out specific requirements for, or limitations to, the admissibility of intelligence as evidence in criminal proceedings, including requirements for the prosecution: (i) to obtain permission from the owner of the intelligence; (ii) to conduct a prior assessment of the legality and lawfulness of the intelligence (with particular regard to the means and methods deployed to gather it); (iii) to disclose to the defendant(s) the source(s) or provider(s) of the intelligence; and (iv) to call the provider(s) to testify as witness(es) at trial.

Role of intelligence services and their relationship with judicial authorities

A number of Member States have adopted specific legislation to regulate the relationship between intelligence services and prosecution offices as well as the requirements under which the former may provide information to the latter in terrorism cases. Under such legislation, in some Member States intelligence services would make their information available to judicial authorities in the form of official affidavits or official reports routed to specialised counter-terrorism prosecutors. As reported by one Member State, its intelligence service may be directly involved in criminal proceedings, i.e. by providing the specialised evaluation of specific factual situations. In another Member State, the prosecution service may use intelligence as evidence in criminal proceedings in case it has obtained permission from the owners of the intelligence.

2.3. Jurisprudence experience: lessons learned

Definition and scope of terrorist offences: facilitation and support

While Member States have implemented a number of recent international instruments to align the definition of terrorist offences, differences still exist in the type of conduct that is punishable as participation in or support to terrorist activities. For instance, supporting activities, such as cooking or acting as a driver, are punishable in one Member State, provided that they are carried out while sharing the ideology of the terrorist group and knowing that these activities are for its benefit. In other Member States, the mere fact of travel to an operational area of a terrorist organisation for the purpose of marrying a fighter, for example, or with the intention of living there, does not generally constitute a criminal act. However, due to the evolution of the role ISIS gives to women, who are no longer confined to domestic tasks but are involved in strengthening ISIS by contributing to children's education and supporting ISIS' activities, women who went to Syria or Iraq are likely, similar to men, to be prosecuted for their participation in terrorist activities.

Furthermore, courts in the Member States have rendered guilty verdicts for offences related to providing assistance to others to commit terrorist acts, engaging in preparatory acts or failure to disclose information about acts of terrorism. The provided assistance included, for example, arranging for various items to be used for terrorist purposes, driving others to train stations or airports from where they departed to Syria, disposing of their property after departure, organising or financing the travel to the conflict zone, providing advice on how to travel and which militia group to join, etc.

Financing of terrorism

The scope of the definition of financing of terrorism continues to be addressed in the cases in which money is sent to the conflict zone for private use by FTFs. For instance, in one Member State, courts have ruled that by transferring money intended for private use by FTFs in Syria or Iraq, the accused added to the further destabilisation and lack of safety in the area. Courts have further ruled that by financially supporting FTFs,

those who send the money consciously accept the significant risk that the money would be used for terrorist purposes. In another Member State, persons who provided their bank account details to enable transfers of money to be used for the purposes of jihad have also been convicted of terrorist offences.

Terrorist offences or war crimes

In one Member State, the court deliberated whether the acts of defendants involved in the execution of prisoners in Syria could be considered a war crime. The charge of murder as a war crime was brought as an alternative to the terrorism charges, recognising that terrorism laws would not be applicable to acts of armed groups during an armed conflict that fall under IHL. The court found that the defendants should be regarded as co-perpetrators, despite the fact that the actual killing of the prisoners was done by others. The court found further that, while the defendants fought in the context of an armed conflict in Syria, the murders were committed by a group of men that came together only temporarily and bore very little resemblance to an armed group under IHL. The court concluded that the offences could not qualify as war crimes and ruled that the murders were to be considered a terrorist offence.

Procedural and other issues

'FTF questionnaires': For the first time in 2016 a court in Europe referred to a questionnaire/form used by ISIS. The form contained information on a person charged with terrorist offences upon his return from Syria. According to his statements, someone working for ISIS had filled in information about him on the form. Reference to the form was also made when questioning the accused about his role within the terrorist organisation. Based on the available evidence, the accused was found guilty, among others, of joining a terrorist organisation.

Listing of terrorist organisations by the United Nations and other international bodies: The listing of terrorist organisations is often referred to by defence counsel. As seen in several jurisdictions, courts held that the formal inclusion of an organisation in the United Nations' or any other international body's list of terrorist organisations was not a prerequisite to considering it a terrorist organisation.

Sentences *in absentia*: Courts in some Member States rendered sentences *in absentia* for persons who did not appear in court. In some cases, defence counsel claimed that the accused had died in Syria and the case should be dismissed. The courts held, however, that the cases could not be dismissed, as no death certificates were issued and the accused had not been legally declared dead.

Severity of penalties: The severity of penalties for terrorist offences varies across jurisdictions. While the severity of the penalty depends on the offence and the circumstances of each case, prosecutors and courts may face challenges in determining the appropriate penalty. Courts may consider the existence of criminal records, the offenders' personal circumstances, physical and mental health, etc. In some cases, offenders were sent to mental health institutions for treatment and not to prison. On several occasions, Eurojust has also been consulted by prosecutors on the penalties imposed for similar conduct by other jurisdictions.

2.4. De-radicalisation, disengagement and rehabilitation measures in the judicial context

On 20 November 2015, the Council and the Member States asked Eurojust (doc. 14419/15) to contribute to the further development of criminal policy with regard to FTFs by continuing to monitor trends and developments in the applicable legal framework and relevant jurisprudence in the Member States, including the use of alternatives to prosecution and detention in terrorism cases. The Eurojust's findings show:

Sentencing and diversion practices and risk assessment in FTF cases

While in some Member States alternatives to prosecution and imprisonment are not used, in several European countries, courts have used alternatives to imprisonment and/or prosecution in FTF cases or imposed additional special measures. Recent convictions further show that, when applying non-custodial sentences, in some cases the courts have attached specific conditions for the rehabilitation and/or de-

radicalisation of FTFs. In some Member States, individual risk assessments of FTFs are provided to courts, usually by probation services, to assist judges when sentencing. Convictions also show that courts in some Member States have addressed the underlying (religious) beliefs and ideologies that lead to terrorism rather than behavioural factors. These courts appear to be correcting the misinterpretation of Islamic philosophy by tackling the misunderstood aspects of Islam that are used to legitimise violence. For instance, a court in one Member State imposed a three-year prison sentence combined with five years' probation for an FTF. In addition to the general conditions provided by law, the court imposed tailor-made conditions, including an obligation for the FTF to follow 'psychological and/or religious guidance aiming at restraining the interest in radical Islam or in the jihad'. The court specified that this guidance is to be provided by a practitioner or a specialised centre selected in coordination with the probation officer for at least six months and for as long as the probation officer deems necessary.

Similarly, in another Member State, several community sentences passed by the courts in 2016 in relation to crimes committed by FTFs include general conditions, but also special ones, including the following: the convicted person should (i) have no contact with fighters in Syria and/or Iraq, or with persons placed on the terrorism sanctions list; (ii) stay away from all airports in the Member State and from the borders; (iii) remain in the Member State and join a re-integration programme and cooperate with the national Institute for Psychiatry and Psychology; and (iv) discuss Islam and his/her ideas about his/her future role in society with an expert appointed by the probation office or a theologian.

De-radicalisation and support programmes in the community

A number of Member States have started or continued to develop re-radicalisation and rehabilitation programmes to be used in FTF cases. For instance, one Member State is developing such programmes for persons under investigation for terrorist activities who are placed under court supervision. The probation service carries out an evaluation of people under judicial control, which leads to assessing their risks, needs and responsiveness, all of which are formalised in a report sent to the magistrate. The probation service also ensures that the obligations entailed by the measures are strictly respected, warning the magistrate in the event of default or incident or a suspicion that the individual placed under judicial control shows deficiency. In another Member State, the participation in rehabilitation programmes is possible on a voluntary basis, during the pre-trial stage as well as during and/or after incarceration. The court decides on pre-trial detention and conditions and the sentence to impose, taking into account certain mitigating circumstances, such as the provision of information on the organisational structure and the connections of (terrorist) organisations. The probation services play an active role in the entire process. At the request of the Public Prosecution Service, they advise on the conditions for pre-trial detention, monitor suspended sentences and supervise the conditions for parole. When a returnee is convicted, the probation services provide guidance for reintegration and disengagement. Another Member State appointed a national association (part of the RAN) to conduct measures for the prevention of violent extremism.

Managing terrorist and extremist offenders in prisons

As in previous years, Member States have also continued to focus on what works best in prisons to tackle radicalisation and to manage terrorists and extremist offenders. Different approaches have been developed. For instance, in one Member State, five prison units were dedicated to prisoners in pre-trial detention/convicted of terrorist acts and also open to people imprisoned for other crimes with respect to whom signs of violent radicalisation have been detected. The units are composed of multi-disciplinary teams that provide a special monitoring and assessment of detainees who are radicalised or may radicalise others. The main objectives are to determine: (i) the existence of a risk that the detainee will act violently; (ii) the radicalisation factors and whether the person is radicalised and may influence others; (iii) the capacity of the detainee to adhere to a rehabilitation programme; and (iv) the recommended programme (individual or group programme). The conclusions of this evaluation will determine the regime of detention and the process of disengagement. In another Member State, the focus on the de-radicalisation of FTFs in prisons and on avoiding the radicalisation of other prisoners included: (i) special care/mentoring/supervision of

prisoners by well-trained experts and imams; (ii) isolation of FTFs from other prisoners/isolation of abettors/distribution to different penal institutions; and (iii) solitary confinement in exceptional cases. In another Member State, an increasing number of de-radicalisation programmes in prisons are offered by civil society sponsors, who continue to provide support following release from prison. In addition, some prisons have imams to provide support to Muslim prisoners.

Measures regarding returnees

Member States have continued to develop specific measures regarding returnees, for instance the confiscation of personal identification cards or passports, prohibition of (further) travel abroad, registration requirements, and evaluation of measures to terminate legal residency. Distinction is made in one Member State between two sets of returnees, when applying specific measures: (i) returnees who are assumed to have had combat experience and represent a potential threat to security; and (ii) returnees without discernible combat experience. In another Member State, a special authority has been set up to prevent travel to conflict zones and to deal with returnees.

3. Criminal Justice Response: Common Approach

3.1. The EU legal framework

The Council of the EU and the European Parliament have examined in 2016 the draft Directive on combating terrorism. In April 2016, the LIBE Committee of the European Parliament invited Eurojust to attend an expert meeting during which it presented its views in relation to the draft Directive. On this occasion, Eurojust proposed considering criminalising further types of conduct, such as: (i) self-training to commit terrorist offences and preparatory acts conducted by terrorists acting alone; (ii) financing of individual terrorists even if not linked to a specific terrorist act; (iii) unlawful participation in an armed conflict outside national territory; and (iv) seeking or allowing oneself to be recruited for terrorism. Eurojust also suggested introducing a provision defining 'material support for terrorism', to both clarify the criminal nature of various types of conduct (e.g. women travelling to conflict zones and supporting FTFs in various ways) and to address problems encountered by judicial authorities in relation to the proof of the existence of a terrorist group. Finally, Eurojust suggested inserting provisions that refer not only to custodial sentences, but also to alternatives to imprisonment, risk assessments and de-radicalisation programmes.²

Other legislative measures at EU level with an impact on counter-terrorism in general, and the FTF phenomenon in particular, are: (i) the EU PNR Directive of 21 April 2014; (ii) the proposal for a directive on control of the acquisition and possession of weapons (amending Council Directive 91/477/EEC); (iii) the proposal for a directive amending Council Framework Decision 2009/315/JHA regarding third country nationals and the European Criminal Records Information System (ECRIS), and replacing Council Decision 2009/316/JHA; and (iv) the planned amendment of the fourth anti-money laundering directive (Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015).

3.2. Enhanced cooperation and information exchange

Member States have reported to Eurojust positive experiences with spontaneous exchange of information, execution of EAWs and surrenders in terrorism cases. Operational cooperation has been strengthened over the past months, enabling real-time contacts between national authorities from different countries and seeking an effective common approach towards terrorism. Also, JITs have been effectively used to reinforce national investigations of terrorism cases, including with third States.

² The Directive has been adopted on 7 March 2017 and Member States will have 18 months to transpose the new rules into national law. The new rules, in the form of a Directive, strengthen and widen the scope of the existing legislation (Framework Decision 2002/475/JHA in particular).

3.2.1. Operational cooperation and coordination by Eurojust

Increased operational support

Member States are increasingly seeking Eurojust's assistance in investigations and prosecutions of terrorism cases.³ The cases referred to Eurojust in 2015 and 2016 concerned investigations and prosecutions related to terrorist threats and attacks, alleged travel to conflict zones for the purpose of training and/or joining a terrorist group, recruitment for terrorism, financing of terrorism, etc. In some cases, alleged terrorist offences were investigated along with other types of criminal conduct, such as illicit trafficking in arms, ammunition and explosives, forgery of administrative documents, illegal immigrant smuggling, trafficking in human beings, kidnapping, murder, swindling and drug trafficking.

National authorities sought Eurojust's involvement in support of their investigations and prosecutions to facilitate the timely exchange of information and ensure efficient cooperation and coordination. In the majority of the cases, Eurojust was asked to facilitate MLA requests; some other cases concerned improving the execution of (competing) EAWs and extradition, including of suspected FTFs. In several instances, national authorities sought the assistance of Eurojust to receive a copy of judgements previously issued by courts in other Member States against persons subject to ongoing counter-terrorism investigations. Assistance was also sought with the transfer of the execution of a judgement. Jurisprudence experience exchanged via Eurojust was used to identify similarities between concluded and ongoing cases across Europe to help prosecutors build successful cases and prepare solid indictments. Eurojust provided assistance in detecting similarities in the facts and the alleged conduct and analysed the charged and convicted offences, and the severity of the imposed penalties.

Despite the increased number of terrorism cases referred to Eurojust for assistance, the opportunities Eurojust offers to enhance cooperation and coordination among national authorities could be used in a more optimal manner. Due to its mandate, powers, experience and expertise, Eurojust is uniquely positioned to support national authorities in advancing their investigations and building successful prosecution cases. Eurojust's coordination role has been crucial in a number of terrorism cases of a cross-border nature. In addition, within hours after recent terrorist attacks, Eurojust established contacts with the national correspondents for Eurojust for terrorism matters across Europe and ensured their availability to provide assistance to the authorities of the affected Member States, as needed. The facilitation of judicial cooperation and the added value in identifying links between cases, which only the unique position of Eurojust allows, are the two major advantages of referring a case to Eurojust, according to a recent report of the French Parliament.⁴ The report refers also to a complex case concerning French journalists held hostage by ISIS, which has demonstrated the added value of Eurojust's support.

Enhanced coordination

Eurojust's coordination tools – coordination meetings and coordination centres – are increasingly being used, leading to concrete operational results.⁵ The coordination meetings enabled national authorities to exchange information on the scope and progress of investigations, to facilitate and/or coordinate the execution of MLA requests, to coordinate ongoing investigations, coercive measures and transfer of proceedings, to solve *ne bis in idem*-related issues, to facilitate the prevention of conflicts of jurisdiction and to identify and solve other legal and evidential problems. In November 2015, Eurojust organised its first coordination centre on a terrorism case. Eurojust successfully coordinated coercive measures executed in several countries across Europe, which resulted in the arrest of 13 suspected leaders and members of a terrorist organisation.

³ Fourteen terrorism cases were referred to Eurojust for assistance in 2014, 41 in 2015 and 54 in 2016 (until 31 October).

⁴ *Rapport d'enquête relative aux moyens mis en œuvre par l'Etat pour lutter contre le terrorisme depuis le 7 janvier 2015 n°3922 déposé le 5 juillet 2016 (mis en ligne le 15 juillet 2016 à 18 heures 45)*, in French, available at http://www.assemblee-nationale.fr/14/dossiers/enquete_moyens_lutte_terrorisme.asp.

⁵ Eurojust held four coordination meetings on terrorism cases in 2014, 15 in 2015 and 15 in 2016 (until 31 October).

JITs: JITs constitute an essential judicial cooperation tool, which ensures swift exchange of information and evidence. Eurojust provides legal, operational and financial support in the setting up and functioning of JITs. At present, Eurojust actively supports three JITs in terrorism cases. The JITs were set up to reinforce investigations and prosecutions related to recent terrorist attacks and activities in Europe.

Cooperation with Europol: Eurojust was associated with Europol's Focal Point TRAVELLERS in April 2015 and with Focal Point HYDRA in August 2016. The association allows Eurojust to provide judicial follow-up on the basis of Europol's analysis and creates further opportunities for both agencies to build synergies in supporting the competent national authorities. Eurojust is committed to ensuring that it is fully involved in the activities of the ECTC at Europol, as envisaged by the European Agenda on Security. Eurojust and Europol have recently discussed the practical arrangements of Eurojust's involvement in the ECTC.

3.2.2. Sharing information, experience and best practice

Member States are increasingly sharing information with Eurojust on prosecutions and convictions of terrorist offences, as provided for by Council Decision 2005/671/JHA on the exchange of information and cooperation concerning terrorist offences. However, considerable differences still exist in the amount, type and scope of the information shared with Eurojust by each Member State. Due to the specifics of reporting adopted by some Member States, relevant information may be provided to Eurojust only once per year, rather than in real time or in a regular manner. Therefore, Eurojust continues to call for better compliance with the obligations under Council Decision 2005/671/JHA and transmission of information to Eurojust in a timely and systematic manner.

Furthermore, Article 13 of the Eurojust Decision⁶ provides for exchange of information with Eurojust concerning cases of serious and organised crime of a cross-border nature, setting up of JITs, conflicts of jurisdiction, controlled deliveries, and repeated difficulties or refusals regarding the execution of requests for, and decisions on, judicial cooperation. Together with information available in the framework of operational cases and information submitted to Eurojust under Council Decision 2005/671/JHA, better compliance with the obligations under Article 13 will enable Eurojust to detect possible links between terrorism cases and cases of organised crime.

Eurojust will continue to use the TCM⁷ to share its analysis of the criminal justice response to terrorism. Eurojust will ensure that analysis of judgements in the TCM focuses particularly on returning FTFs, terrorist networks and repeat offenders. In addition to the TCM, Eurojust will continue to produce specific analysis of judgements rendered in FTF cases across Europe. As in the past, the analysis will also identify and elaborate on specific legal, evidentiary and procedural issues that may help practitioners when dealing with similar issues in their own investigations and prosecutions.

Eurojust will continue to reinforce the synergies built within the informal network of national correspondents for Eurojust for terrorism matters. For more than a decade, Eurojust has been hosting the annual meetings of those national correspondents, which enable them to share experience and discuss challenges and best practice in investigations and prosecutions of terrorist offences.

Eurojust will continue to share its views and the findings of its analysis with the European Parliament, the Council and the Commission, the Consultative Forum of Prosecutors General and Directors of Public Prosecutions of the Member States of the European Union, as well as other international fora. Among others, over the past year, Eurojust was invited to contribute to policy and expert discussions on the criminal justice response to the FTF phenomenon, the Proposal for a Directive of the European Parliament and of the Council on combating terrorism and replacing Council Framework Decision 2002/475/JHA on combating terrorism, and various documents prepared by the EU CTC and the Council.

⁶ Council Decision 2009/426/JHA of 16 December 2008 on the strengthening of Eurojust and amending Council Decision 2002/187/JHA setting up Eurojust with a view to reinforcing the fight against serious crime.

⁷ The TCM is a Eurojust LIMITED report providing a regular overview of terrorism-related convictions and acquittals in the European Union, as well as analysis of jurisprudence experience. It is based on data provided to Eurojust by virtue of Council Decision 2005/671/JHA, as well as open source information.

3.3. Links between terrorism and organised crime

Overall, Member States increasingly report links between terrorism and serious and organised crime, with particular regard to illicit trafficking of firearms and explosives, illegal immigrant smuggling and document counterfeiting. Notably, the investigations into recent attacks revealed that perpetrators used forged foreign passports to enter and travel across Europe. Similarly, terrorists involved in attacks in the past couple of years had a background in organised or other serious crime, including drug trafficking and robbery. In addition, weapons and ammunition used in some terrorist attacks were discovered to have not been directly imported from warzones, but were bought in Europe through 'ordinary' illegal trade networks.

Acknowledging the close connection between terrorism and organised crime, and recognising the need to improve their ability to effectively counter those two – at times interlinked – criminal phenomena, a number of Member States have recently passed legislation to broaden the applicable investigative techniques and prosecutorial tools. For example, one Member State extended tools already used against organised crime-related offences to investigations of terrorism, such as preventive interceptions (which may apply even absent or before any criminal proceeding, but still require judicial authorisation), and expanded the range of cases in which the investigative authorities may access, collect and store IT data, even if collected abroad.

3.4. Cooperation with third States

In the period since the publication of the Eurojust report of November 2015, Eurojust has liaised on several occasions with relevant judicial authorities from third States in relation to the FTF phenomenon.

Specialised counter-terrorism prosecutors from the USA, Turkey, Montenegro, Albania, Serbia and Bosnia and Herzegovina attended the 2016 tactical meeting on terrorism. In addition, Eurojust organised a counter-terrorism meeting, gathering officials of the ICC, the national correspondents for Eurojust for terrorism matters and terrorism experts from Norway, Switzerland and the USA, in the margins of the 2016 tactical meeting on terrorism, during which the existing links between core crimes and terrorism in Libya were discussed.

Eurojust focused on strengthening its partnership with the Western Balkans. Eurojust signed a cooperation agreement with Montenegro on 3 May 2016 to facilitate the exchange of operational data and cases. Similarly, a cooperation agreement between Eurojust and Ukraine was signed on 27 June 2016. These cooperation agreements provide for the designation of contact points in Montenegro and Ukraine as national correspondents for Eurojust for terrorism matters.

Eurojust participated in the Turkey – EU Counter-Terrorism Dialogue held in Brussels on 8 June 2016 and in the 4th Joint Review of the EU-US *Agreement on the Processing and the Transfer of Financial Messaging Data from the European Union to the United States for the purposes of the Terrorist Finance Tracking Program* (TFTP Agreement⁸) held in March 2016.

Eurojust actively works towards enlarging its network of contact points in third States, particularly in the regions in which terrorism raises a serious threat to the internal security of the European Union. With respect to the MENA region, since July 2015, contact points for Eurojust have been nominated in the Palestinian Authority, Lebanon, Jordan, Algeria, Saudi Arabia and Iraq, in addition to those already appointed in Egypt, Israel and Tunisia. The Tunisian judicial authorities are currently in the process of nominating a contact point to deal exclusively with counter-terrorism matters. Finally, Eurojust was informally advised by the Libyan judicial authorities of the appointment of a Libyan prosecutor as Eurojust contact point to stimulate and improve the coordination of investigations and prosecutions of serious transnational crimes, including counter-terrorism.

⁸ Council Decision of 13 July 2010 on the conclusion of the Agreement between the European Union and the United States of America on the processing and transfer of Financial Messaging Data from the European Union to the United States for the purposes of the Terrorist Finance Tracking Program (2010/412/EU).

4. Conclusions and Recommendations

Based on the findings of this report and its experience in coordinating operational terrorism cases, Eurojust has identified several conclusions and recommendations, which are of relevance to its mandate and powers. They build on conclusions drawn from the previous Eurojust reports on the criminal justice response to FTFs and recommend some follow-up actions:

1. The Member States and the European Union should continue to seek more efficient ways to address the growing terrorist threat and tackle its changing nature in a proactive manner. A common, comprehensive and cooperative approach is needed to secure a robust and consistent criminal justice response. Renewed legal frameworks, efficient cooperation and the timely and comprehensive exchange of information are the key components of this approach and should remain a priority for the Member States and the European Union.
2. Member States are encouraged to seek Eurojust's assistance to help reinforce their counter-terrorism investigations and prosecutions. Member States should make systematic and efficient use of Eurojust's unique expertise, coordination tools and operational capabilities to enhance their cooperation in cases of a cross-border nature. Member States should submit to Eurojust information on prosecutions and convictions for terrorist offences in a timely, consistent and comprehensive manner. Eurojust will continue to provide operational support to ongoing counter-terrorism investigations and prosecutions; continue to analyse national legal frameworks and jurisprudence on terrorism; and continue to promote the exchange of best practice and lessons learned among judicial authorities to help in the building of successful prosecution cases.
3. In the absence of a uniform approach across the Member States towards the evidentiary use of intelligence, the increased involvement of judicial authorities should be encouraged, particularly when the intelligence sought to be used in terrorism proceedings was (in full or in part) gathered by or through the intervention of a foreign intelligence service. This involvement would safeguard a more consistent and uniform application of due process requirements. For example, as suggested by the participants of the 2016 tactical meeting on terrorism, Member States should be encouraged to make use of MLA requests and avail themselves of Eurojust's support, when seeking intelligence to be used in criminal proceedings from foreign jurisdictions.
4. Due to the increasingly close connections between terrorism and serious and organised crime, such as illegal trafficking of arms and document counterfeiting, Member States should apply the same legislative and operational tools in the fight against terrorism that have proven successful in bringing down ordinary criminal groups, such as drug cartels and mafia-type organisations.
5. Eurojust continues to prioritise the strengthening of cooperation with third States in counter-terrorism to support national authorities in their efforts to deal with the FTF threat. Eurojust actively works towards enlarging its network of contact points in third States, explores effective interaction possibilities with international organisations monitoring the FTF phenomenon and regularly gathers at its premises counter-terrorism experts from the Member States and from third States to exchange views on the FTF phenomenon.
6. Eurojust recommends that the Member States increase information sharing on the FTF phenomenon with third States by making use of existing EU services and platforms, ratifying relevant international legal instruments, exploring new interaction possibilities with international organisations working in the field of counter-terrorism and concluding bilateral or multilateral agreements between Member States and third States.
7. Eurojust will continue to monitor convictions and facilitate the exchange of views, legislation and best practice among prosecutors to find the best ways to tackle radicalisation. In this fashion, Eurojust will be able to contribute to the evaluation of the impact of different measures taken.