

Brussels, 5 February 2015
(OR. en)

5917/15

LIMITE

CATS 20
DROIPEN 12
COPEN 31
ENFOPOL 31
COTER 25

NOTE

From: Presidency
To: CATS
Subject: Judicial response to terrorism
= State of play and next steps

1. Introduction

1. Since June 2013 the terrorism related issues and the challenges presented by the phenomenon of foreign fighters in particular were treated as a matter of highest political priority at EU level. A number of measures have been already identified and are presently implemented.
2. In the aftermath of the terrorist attacks in Paris and the anti-terrorist operation in Belgium that took place in the beginning of January this year, there is a renewed call for accelerated action to counter terrorism at the national and EU level.
3. Building on the Paris Declaration of 11 January 2015, the ministers of Justice and Home Affairs adopted a Joint statement at their informal meeting in Riga on 29 and 30 January 2015 ¹. The statement is intended as an input of Justice and Home affairs ministers for the discussions at the Informal meeting of the Heads of State or Government on 12 February 2015, where orientations to guide the work at EU level over the coming months will be adopted.

¹ doc. 5855/15

Providing effective judicial response to terrorism is an integral part of a comprehensive framework to counteract terrorism and the phenomenon of foreign fighters in particular. A number of judicial aspects were therefore integrated in the Riga Joint statement and would need an appropriate and timely follow-up.

2. Judicial response

5. The issue was specifically addressed on several occasions and lately during the informal meeting of Justice Ministers in Riga and at the lunch of the Justice Ministers in December 2014 where it was concluded that work on that matter should continue further to the discussions that took place in CATS on 21 October and 11 November 2014 under the Italian Presidency. In this respect, the Report "Foreign Fighters: Eurojust's views on the phenomenon and the criminal justice response" adopted by the College of Eurojust in November 2014² was referred as a valuable tool providing useful findings and analysis of the recurring challenges related to the effective prosecution of terrorism related offences.
6. Having regard to the Riga Joint Statement and building on the discussions held thus far in the Council and its preparatory bodies regarding the judicial aspects of an effective response to terrorism, as well as the paper of the EU Counter-Terrorism Coordinator DS 1035/15 to the extraordinary COSI meeting of 20 January 2015, the Presidency would like to hold an exchange of views at CATS on those issues with a view to contributing to the process of streamlining and consolidating further the efforts to counter terrorism effectively across the EU, while ensuring a proper balance between security and fundamental rights.
7. Five main areas relating to the judicial dimension of counter-terrorism action could be examined in order to provide guidance on the aspects that could be addressed in the context of a comprehensive policy framework:
 - (i) criminalisation,
 - (ii) conducting effective criminal proceedings,
 - (iii) exchange of information and cooperation of judicial authorities,
 - (iv) disengagement, rehabilitation, and de/anti-radicalisation measures in the judicial context,
 - (v) cooperation with third countries.

² doc. 16130/14 RESTREINT UE

Criminalisation

8. Further to the request of the Italian Presidency set out in CM 5005/14, 21 delegations submitted contributions about the existing or planned measures at national level implementing the operative paragraph 6 of the UN Security Council Resolution 2178(2014), which requires the criminalisation of travel abroad for terrorist purposes and financing and facilitation of such travel. A compilation of the replies received by delegations has been distributed³. The majority of delegations informed that an analysis of the compliance of their national legislation with the UNSC Resolution is underway and that it might result in the need to adjust the national legal framework.
9. It should be noted that on 21 January 2015 the Council of Europe established the Committee on Foreign Terrorist Fighters and Related Issues, which is tasked to draft an Additional Protocol to the CoE Convention on the Prevention of Terrorism (CETS No. 196), with a view to adoption at the next session of the Committee of Ministers in May. The Committee will have its first meeting on 23 February 2015.
10. In view of the above, the feasibility of further legislative initiatives at EU level, in particular in the light of the UNSC Resolution should be assessed. In this context it should be recalled that the Commission was already invited by the Council to look into a possible review of the Framework Decision 2002/475/JHA on combating terrorism.

Conducting effective criminal proceedings

11. Although new investigations on cases involving foreign fighters' activities were opened over the past year and some of them already resulted in convictions of over ten persons, this is yet an insufficient record of effective investigations and prosecutions given the scale of the problem. The reason for this may be manifold, and the underlying reason for this must be studied more in order to ensure effective prosecution where needed.

³ doc. 5206/1/15 REV 1

12. The collection of evidence admissible to national courts proves to be particularly challenging in this respect. The use of multiple social media and of Internet communication channels for terrorist purposes presents an additional challenge for the conducting effective investigations and prosecutions (e-evidence). The latter requires specific expertise and awareness about the particularities of the virtual space, where the preservation of data and obtaining of electronic evidence in accordance with the existing legal framework are involved. Challenges of international cooperation arise as well in this context.
13. It seems appropriate to reflect on possible actions to address the challenges arising in relation to gathering and the admissibility of evidence in terrorism cases, where Eurojust could facilitate the exchange of best practices, identify recurring legal challenges and continue analysing relevant case law in its Terrorism Convictions Monitor (TCM) to consolidate a common understanding of terrorist phenomena. This could be the basis for the European Judicial Training Network to introduce dedicated training for judiciary. The creation of a platform of cyber-terrorism prosecutors within the future cybercrime judicial network could be also considered. It should be explored how more efficient judicial cooperation could be achieved with regard to IP addresses. Procedures for international mutual legal assistance in criminal matters might need to be streamlined with regard to the use of Internet for terrorist purposes.

Exchange of information and judicial cooperation

14. As indicated in the Riga Joint statement, major progress has been made in recent years in improving information exchange and cooperation between judicial authorities. As noted, it is now of fundamental importance to harness the full potential of existing instruments and to consider further developments when addressing the matter, including enhancing the sharing of best practices and information and the use of Eurojust, in particular the exchange of information on prosecutions and convictions with Eurojust in conformity with the Council decision 2005/671/JHA.
15. A maximum use should be made in terrorism cases of the coordination tools offered and supported by Eurojust, namely coordination meetings, coordination centres and setting Joint Investigation Teams (JITs).

16. Effective use of the criminal records information system (ECRIS) should be enhanced and its further development and strengthening could be considered, in particular regarding third country nationals.

Disengagement, rehabilitation and de/anti-radicalisation measures in the judicial context

17. As indicated at the Council in December, an additional challenge faced by the judicial authorities of the Member States with regard to foreign fighters is the need for setting up rehabilitation and disengagement programmes, either as an alternative to criminal proceedings, as a condition to release from pre-trial detention, or as an alternative to a prison sentence (for example as a condition for a suspended sentence, thus avoiding the risk of further radicalization in prison or in the case of early release from prison). A number of Member States have already started to develop such measures in the judicial context.
18. The facilitation and sharing of best practices, as well as the development and support of specific projects to this effect building on the expertise of the future Radicalisation Awareness Network (RAN Centre of excellence) should be explored. Exchange of practices among prison administrations to address radicalization in prison should be facilitated. At the same time, efforts should be intensified to counter marginalisation and promote tolerance, including by stepping up the fight against hate crime and hate speech.
19. While detention issues fall mainly under the competence of Member States, considering a concerted EU actions might be of added value, bearing in mind the high risk of radicalisation and recruitment of potential terrorists in detention facilities.

Cooperation with third countries

20. Reinforced cooperation with third countries is indispensable to amplifying the response to terrorism across the EU. This is of particular importance for the identification of the alleged perpetrators and the collection of evidence based in foreign jurisdictions or the collection of e-evidence.

21. Further to the Foreign Affairs Council of 19 January 2015, the cooperation with the countries in North Africa and the Middle East (the MENA region) is treated as a matter of priority. Capacity building projects will be launched in due time to support the efforts of those countries to deal with the foreign fighters threat
22. In this respect, projecting better the JHA agencies externally, and in particular Eurojust, to step up the cooperation and building up communication channels with countries, which are strategic partners in the fight against terrorism should be considered. This could include posting liaison magistrates, designation of Eurojust contact points by MENA countries, cooperation agreements where appropriate, study visits and association of some MENA to Eurojust meetings.
23. It could be explored how information exchange channels could be developed. A phased approach would be necessary. As a first step, it would be useful to establish an overview of existing bilateral agreements of EU Member States with MENA countries.
24. In addition, a coordinated European approach could facilitate the cooperation with third countries which have inefficient anti-money laundering and counter terrorist financing regimes securing against a risk of misuse of financial transactions entering in the European Union.

Member States are invited to present their views on the elements outlined within the five workstreams of judicial response to terrorism listed above, which could be integrated in the process of streamlining and consolidating the efforts to counter terrorism which is currently underway across the EU.