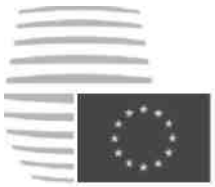

Council of the European Union

Brussels, 2 December 2015
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COVER NOTE

From: To:	Eurojust Delegations
No. prev. doc.:	16130/14
Subject:	Foreign Terrorist Fighters: Eurojust's Views on the Phenomenon and the Criminal Justice Response - Third Eurojust Report (November 2015)

Delegations will find attached the third Eurojust Report Views on the Phenomenon of Foreign Terrorist Fighters and the Criminal Justice Response.

3/R/2015

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

Third Eurojust Report

November 2015

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Table of Contents

List of abbreviations

4WD	Four-wheel drive
AQAP	Al Qaida in the Arabian Peninsula
CJEU	Court of Justice of the European Union
COSI	Standing Committee on Operational Cooperation on Internal Security
CSP	Communication Service Provider
CT MORSE	Counter-Terrorism Monitoring, Reporting and Support Mechanism Project
DRIPA	Data Retention and Investigatory Powers Act (in the UK)
ECRIS	European Criminal Records Information System
EJN	European Judicial Network
EJTN	European Judicial Training Network
ENCS	Eurojust National Coordination System
EU	European Union
EU CTC	European Union Counter-Terrorism Coordinator
EU IRU	European Union Internet Referral Unit
FATF	Financial Action Task Force
FIU	Financial Intelligence Unit
FTF	Foreign terrorist fighter
FRA	Fundamental Rights Agency
GENVAL	Council Working Party on General Matters and Evaluations
IberRed	Ibero-American Network of International Legal Cooperation
ICCT	International Centre for Counter-Terrorism
IHL	International Humanitarian Law
IP	Internet Protocol
IS	Islamic State
ISIL	Islamic State in Iraq and the Levant
JHA	Justice and Home Affairs
JIT	Joint investigation team
MENA	Middle East and North Africa
MMS	Multimedia Messaging Service
NGO	Non-governmental organisation
NIAC	Non-international armed conflict
NTFIU	National Terrorist Financial Investigation Unit (in the UK)
OCC	On-Call Coordination
OP	Operational paragraph
RAN	Radicalisation Awareness Network
SD card	Secure Digital card
SIM	Subscriber Identity Module
SIS	Schengen Information System
TCM	Terrorism Convictions Monitor
TCN	Third country national(s)
UNSCR	United Nations Security Council Resolution
VoIP	Voice over Internet Protocol

The terms used throughout this report to refer to the terrorist organisations Islamic State, Al Qaida and Jabhat al-Nusrah are purposely notconsistent, reflecting the exact terminology used in national laws, court decisions, and practitioners' replies to the 2015 Eurojust questionnaire (*i.e.* Islamic State, IS, ISIL, Al Qaida, Al Qaïda, AQAP, Jabhat al-Nusrah or al-Nusrah Front).

Executive summary

As the phenomenon of foreign terrorist fighters continues to evolve and the number of relevant investigations continues to increase, national authorities are more frequently faced with complex legal and practical issues. Some Member States have identified the need to review national criminal policy strategies to ensure that all aspects of the phenomenon are addressed in a comprehensive and efficient manner. Further legislative developments are taking place in a number of Member States to ensure that foreign terrorist fighters are prosecuted and efficiently brought to justice.

These developments include the criminalisation of terrorism-related offences, required by operational paragraph 6 of United Nations Security Council Resolution 2178 (2014), as well as other types of conduct, such as passive training or acts of terrorism committed by individuals acting independently.

The decision to prosecute suspected foreign terrorist fighters and/or apply other measures, such as enrolment in disengagement, de-radicalisation and rehabilitation programmes, is very complex and should be based on objective and clear criteria and on an individual risk assessment.

Challenges remain in securing strong evidence and building solid prosecution cases.

The number of judicial cases is still relatively small in comparison with the estimated number of foreign terrorist fighters. The analysis of relevant judgements in the past two years has revealed that courts may sometimes be confronted with a wide diversity of criminal acts that the defendants have (allegedly) committed while in the conflict zone or while preparing to leave.

Depending on national laws, the scope of acts constituting a terrorist offence may vary.

Major challenges due to restrictions on data retention continue to be faced by judicial authorities and also in light of the legal uncertainty created by the invalidation of the Data Retention Directive by the Court of Justice of the European Union on 8 April 2014.

Eurojust started analysing these challenges and, so far, the analysis reveals that the fragmented data retention schemes in place undermine criminal investigations and proceedings.

Information exchange between Member States and with the relevant EU agencies plays a key role in the efforts to address the evolving foreign terrorist fighters' phenomenon. To ensure efficient law enforcement and judicial responses, Member States need to make optimal use of existing EU platforms and services to share information and thus build synergies, coordinate and cooperate successfully.

Ensuring that information shared can be used as evidence to reach convictions is equally important, as is easy and speedy access by judicial authorities to information on convictions of both EU and third country nationals. All these elements are essential for investigations and prosecutions of foreign terrorist fighters.

Therefore, a fully and efficiently working European Criminal Records Information System and its developments are much needed.

Strategic and operational judicial cooperation with key third States, particularly in the Middle East and North Africa (MENA) region, but also in the Western Balkans, remains a priority.

Building on national experiences shared with Eurojust and Eurojust's analysis of the evolution of the phenomenon of foreign terrorist fighters and the criminal justice response, several conclusions and recommendations have been identified. They confirm conclusions drawn in the previous Eurojust reports on foreign terrorist fighters and further elaborate on possible follow-up actions in several priority areas.

1. Introduction

The third Eurojust report, 'Foreign Terrorist Fighters: Eurojust's Views on the Phenomenon and the Criminal Justice Response' ('this report'), has been produced upon the request of the EU Counter-Terrorism Coordinator (EU CTC) to present, as in the past years, 'a report to the December Council on the criminal justice response to foreign fighters and make recommendations for the way ahead'.1

The goal of this report is to highlight some remaining or newly identified challenges in foreign terrorist fighter (FTF) investigations and prosecutions. It also seeks to identify relevant best practice established across Europe. The findings of this report are based on insights into FTF investigations, prosecutions and jurisprudence experience shared by the competent national authorities or analysed by Eurojust since the previous report. This report is divided into four chapters: Chapter 1, *Introduction*, Chapter 2, *Criminal justice response: national perspectives*, Chapter 3, *Criminal justice response: a common approach* and Chapter 4, *Conclusions and recommendations.*

This report integrates contributions from practitioners received in response to a follow-up Eurojust questionnaire on the judicial response to FTFs (the '2015 Eurojust questionnaire') sent to all national correspondents for Eurojust for terrorism matters and to the Eurojust Liaison Magistrates from Norway, Switzerland and the USA in March 2015. The questionnaire focused on legislative developments at national level, experience in investigating and prosecuting FTFs, as well as on the role played by the judiciary in disengagement, rehabilitation and de-radicalisation.

This report refers also to challenges and best practice discussed during the tactical meeting on terrorism, *Towards a Common Judicial Response to Foreign Fighters*, organised by Eurojust on 24-25 June 2015 (the '2015 tactical meeting on terrorism').2 Topics on the 2015 tactical meeting on terrorism's agenda included the criminal justice response to FTFs in the EU, enhanced judicial cooperation with third States and challenges and lessons learned from prosecutions of FTFs.

This report builds on the experience Eurojust has gained in its operational and strategic work over the past three years. It reflects the evolution of the FTF phenomenon and the policies and strategies adopted at national and EU level to address it in a more efficient manner. This report develops further the findings and recommendations contained in the two previous Eurojust reports: 'Foreign Fighters in Syria – A European perspective: Eurojust's Insight into the Phenomenon and the Criminal Policy Response'3 (the 'Eurojust Report of November 2013') and the second report, 'Foreign Fighters: Eurojust's Views on the Phenomenon and the Criminal Justice Response'4 (the 'Eurojust Report of November 2014').

This report integrates also the proposals on the better use of existing platforms and services for information exchange, which Eurojust submitted to the Standing Committee on Operational Cooperation on Internal Security (COSI) in March 2015, following the proposal made by the Latvian Presidency of the European Council and endorsed by the EU JHA Ministers.5

1 Council document 12139/15 LIMITE.
2 The meeting, which is the third tactical meeting on FTFs hosted by Eurojust since 2013, brought together the national correspondents for Eurojust for terrorism matters, representatives from the national judicial and law enforcement authorities of the Member States and third States, as well as representatives from the Council of the EU, Europol, INTERPOL and Frontex.
3 Council document 16878/13 EU RESTRICTED.
4 Council document 16130/14 EU RESTRICTED.
5 Council document 7445/15 LIMITE.

2. Criminal justice response: national perspectives

Eurojust has been analysing national criminal justice responses to the FTF phenomenon over the past three years. Without being exhaustive, this chapter highlights some recent developments in the national legal frameworks across Europe. It also presents some examples of challenges national authorities face in their FTF investigations and prosecutions, as well as policies and practices adopted to address the FTF phenomenon in a more efficient manner. Based on the analysis of jurisprudence experience, some issues of interest have been identified and approaches of national courts described. A particular focus is also given to national policies to address the complex issue of de-radicalisation and disengagement of FTFs in the judicial context.

2.1. Legal framework

In its previous reports on FTFs issued in 2013 and 2014, Eurojust included information on relevant national laws adopted, or in the process of being adopted, in the Member States as well as in Norway and the USA, to counter the FTF phenomenon. The goal of this section is to present updates and planned updates[6] of relevant national legislation as received at Eurojust by June 2015 in response to the 2015 Eurojust questionnaire. The extracts of relevant national laws that are contained in this section are unofficial translations into English[7].

This section is divided into four subsections according to the main findings from the responses to the first question of the 2015 Eurojust questionnaire received from 28 respondents (25 Member States8, Norway, Switzerland and the USA). It also includes, where appropriate, references to the adequacy and the impact of national legal frameworks on investigations and prosecutions of FTFs as discussed during the 2015 tactical meeting on terrorism.

2.1.1. Criminalisation of terrorism-related offences as required by OP 6 UNSCR 2178 (2014) and Council Framework Decision 2008/919/JHA

Question 1(a) of the 2015 Eurojust questionnaire concerned planned or adopted legislation related to the criminalisation of terrorism-related offences, as required by operational paragraph (OP) 6 of United Nations Security Council Resolution (UNSCR) 2178 (2014) and Council Framework Decision 2008/919/JHA9.

This question was triggered in particular by the Riga Joint Statement of 29-30 January 2015, which underlined the importance of considering further legislative developments with regard to the common understanding of criminal activities related to terrorism in light of UNSCR 2178 (2014). UNSCR 2178 (2014) **calls for the criminalisation of travel or the attempt to travel for terrorist purposes, as well as the financing and the organisation of such travel.** Question 1(a) was also triggered by the fact that, according to the information shared with Eurojust in 2014, not all Member States have (fully) transposed the provisions of Council Framework Decision 2008/919/JHA.

6 Updates since the Eurojust questionnaire on FTFs of July 2014.
7 With the exception of the laws and draft laws of the Member States that use English as their official language.
8 BE, BG, CZ, DE, EE, IE, EL, ES, FR, HR, IT, LV, LT, LU, HU, MT, NL, AT, PL, PT, SI, SK, FI, SE and UK.
9 Council Framework Decision 2008/919/JHA of 28 November 2008 amending Framework Decision 2002/475/JHA on combating terrorism.

The 28 responses to question 1(a) show that five countries10 adopted, four countries11 are in the process of adopting and 19 countries[12] have not yet adopted or have not yet planned further legislation to implement OP 6 UNSCR 2178 (2014) and/or Council Framework Decision 2008/919/JHA, it being specified that some countries like France have already a legislation that is consistent with the above mentioned provisions.

For example, concerning the transposition of Council Framework Decision 2008/919/JHA, Croatia13 introduced provisions in its Criminal Code criminalising **public instigation of terrorism, recruitment for terrorism and training for terrorism. Recruitment for terrorism and incitement to commit terrorist offences have also been criminalised by Lithuania14.**

Concerning the implementation of OP 6 UNSCR 2178 (2014), Germany adopted legislation15 that entered into force on 20 June 2015, introducing **provisions criminalising the act of travelling for terrorist purposes and amending the provisions regarding the financing of terrorist activities to, amongst others, also cover the financing of such travel.** In Italy, new legislation16 was adopted on 17 April 2015 criminalising the organisation, financing, promoting or advertising of travel to foreign countries for terrorist purposes. **Belgium and Luxembourg17 are in the process of adopting draft legislation incriminating travel for terrorist purposes and ensuring the implementation of OP 6 UNSCR 2178** (2014). The draft legislation in Luxembourg addresses also other types of conduct18, relevant particularly for the implementation of Council Framework Decision 2008/919/JHA. In the Czech Republic, experts from different ministries are discussing possible amendments of the Criminal Code in connection to FTFs. Bulgaria is preparing amendments to its Criminal Code, particularly for criminalising training for terrorism and the travel of Bulgarian nationals (and of foreign nationals entering or illegally staying in Bulgaria) with the purpose of committing terrorism-related crimes.

HR, DE, IT, MT and UK.

BG, BE, LU and PT.

12 AT, CZ, EE, FI, FR, EL, HU, IE, LT, LV, NL, PL, SI, SK, ES, SE, NO, CH and USA.

13 Articles 99 to 101 of the Croatian Criminal Code read as follows:

Article 99

Whoever publicly expresses or promotes ideas directly or indirectly instigating the commission of a criminal offence referred to in Articles 97 through 98, Article 137, Article 216, paragraphs 1 through 3, Article 219, Articles 223 through 224, Articles 352 through 355 of this Act shall be sentenced to imprisonment for a term of between one and ten years. Article 100

Whoever solicits another person to join a terrorist association for the purpose of contributing to the commission of a criminal offence referred to in Articles 97, 102, 137, Article 216, paragraphs 1 through 3, Articles 219, 223, 224, Articles 352 through 355 of this Act shall be sentenced to imprisonment for a term of between one and ten years. Article 101

Whoever provides instructions in the making or use of explosive devices, firearms or other weapons or noxious or hazardous substances, or in other specific methods or techniques, knowing that the skills provided are intended to be used for the purpose of committing any of the criminal offences referred to in Articles 97, 98, 137, Article 216, paragraphs 1 through 3, Article 219, Articles 223 through 224, Articles 352 through 355 of this Act shall be sentenced to imprisonment for a term of between one and ten years.

14 See Articles 250.1 and 250.2 of the Lithuanian Criminal Code.

15 A new subsection (2a) was added to section 89a of the German Criminal Code. The objective of this new provision is to ensure not only the criminalisation of travel but also the possibility to stop and arrest suspects before they leave Germany. Another new provision in section 89c criminalises the financing of terrorist travel.

16 Law n. 43/2015 converting Law Decree n. 7/ 2015 and Article 270 quater.1 of the Italian Criminal Code.

17 Article 135-15 of the draft legislation seeks to criminalise the travel or the preparation to travel to another country for terrorist purposes.

18 The draft legislation also covers instigation, recruitment and training for terrorist purposes and certain preparatory acts for the same purpose, and includes possibilities to impose travel bans and revoke passports of individuals suspected of terrorist offences.

Lithuania indicated that it has not implemented OP 6 UNSCR 2178 (2014), but is considering the issue of conformity of its legislation with this Resolution. However, it also pointed out that the FTF phenomenon is not regulated, and no definition of FTFs appears in its national laws. This situation can pose a challenge in aligning its national laws with the provisions of OP 6 UNSCR 2178 (2014), as the Criminal Code criminalises 'internationally accepted terrorist acts', while 'terrorist acts as such' are governed by other laws. Therefore, the implementation of OP 6 UNSCR 2178 (2014) may require expanding the provisions of the Lithuanian Criminal Code on criminalisation of the acts of terrorism to include new terrorism-related conduct. Slovenia, alternatively, has made efforts to develop administrative measures to address the FTF phenomenon. To this end, it focuses on restricting freedom of movement in specific situations (outside the national territory, the European Union and the Schengen area) by extending the possibilities to seize passports and on reducing the threshold for police measures, such as discreet surveillance and specific checks.

Finally, while the national legal frameworks are headed in the direction of criminalising travel or the attempt to travel for terrorist purposes, as well as the financing and organisation of such travel, the participants at the 2015 tactical meeting on terrorism underlined that **prosecution of such crimes would be very difficult due to challenges in proving terrorist intent. Some participants indicated that such challenges exist even when national laws allow the use of all special investigative measures available in terrorism cases.**

2.1.2. Criminalisation of other types of conduct linked to terrorism

Question 1(b) of the 2015 Eurojust questionnaire concerned any further planned or adopted legislation related to the criminalisation of other types of conduct, such as**: receiving training for terrorism, seeking or allowing oneself to be recruited for terrorism, incitement to train or be trained for terrorism, and acts of terrorism committed by individuals acting independently of cells and groups.**
The 28 responses received to this question show **that ten countries19 went further in their responses to the FTF threat by criminalising or planning to criminalise even more types of conduct than those required under OP 6 UNSCR 2178 (2014) and Council Framework Decision 2008/919/JHA**. For example, on 1 January 2015, **Finland20 criminalised the receiving of training for terrorism. Latvia21**

19 BG, FR, FI, IT, LV, LT, ES, SE, UK and CH.
20 Chapter 34 a, Section 4 b of the Finnish Criminal Code.
21 Articles 77.1-77.3 read as follows:
Article 77.1 Unlawful participation in an armed conflict:
For a person who unlawfully participates in an armed conflict, respectively - actively participates in an armed conflict outside the territory of the Republic of Latvia, which is against a national territorial integrity or political independence of state, or is otherwise contrary [to] the rules of international law binding to the Republic of Latvia; contrary to regulations of Republic of Latvia or binding international agreements, the applicable punishment is imprisonment for a term up to ten years and probation supervision for up to three years. Article 77.2 The financing of an armed conflict: For a person who commits direct or indirect collection of financial resources or other property by any means, or transfers to the parties of armed conflict located outside the territory of the Republic of Latvia, activities of which is clearly directed against the national territorial integrity or political independence of state, or otherwise contrary to the international law binding to the Republic of Latvia, as well for recruitment, training or sending the person to unlawfully participate outside the territory of the Republic of Latvia in the armed conflict the applicable punishment is imprisonment for a term up to ten years and probation supervision for up to three years. Article 77.3 Recruitment, training and sending to the armed conflict:
For a person who commits recruitment, training or sending of the person to unlawfully participate in an armed conflict outside the territory of the Republic of Latvia the applicable punishment is imprisonment for a term up to eight years and probation supervision for up to three years.

amended its Criminal Law on 19 February 2015, introducing three new provisions to criminalise, respectively, unlawful participation in an armed conflict outside the national territory, the collection and transfer of funds to the parties of such an armed conflict, as well as the recruitment, training or sending of persons to unlawfully participate in such an armed conflict.

In France22, provisions were introduced criminalising the individual preparation of a terrorist act.

Italy adopted provisions similar to the French provisions23, together with the criminalisation of 'passive' and 'active' training for terrorist purposes and self-training to commit terrorist offences.

Lithuania24 supplemented its Criminal Code by criminalising the active recruitment of persons and providing active training for the purposes of committing terrorist activities, as well as incitement to commit terrorist crimes.

In Spain25, a new provision establishes as an offence any type of indoctrination or training for combat or military purposes with the objective of preparing to commit any terrorism-related crime. Moreover, access to communication services with terrorist content constitutes a terrorism offence in Spain. The provision applies to those preparing to commit a terrorist-related crime by accessing on a regular basis, acquiring or accessing content available online for the purpose of, or suitable for, the promotion of membership in a terrorist group or for cooperation with any of such groups or with their goals. A link to national jurisdiction is established whenever such content is accessed from Spanish soil.

In Sweden, the Department of Justice is currently preparing relevant legislative amendments on terrorism-related conduct. As indicated during the 2015 tactical meeting on terrorism, Sweden may pass amendments in autumn of 2015, including, among others, the criminalisation of passive training.

ISIL was proscribed in the UK as a terrorist organisation with effect from 20 June 2014, making proscription offences an additional important tool in the UK's responses to those who demonstrate support for this group.

Switzerland adopted a similar response when it passed legislation26 proscribing both Islamic State and Al Qaida as terrorist organisations, criminalising the acts of: (i) participating in these organisations; (ii) providing personnel and material support to these organisations; (iii) organising propaganda for

22 See Article 421-2-6 of the French Criminal Code.

23 See Law n. 43/2015 of 17 April 2015 and Article 270 quarter par. 2 and Article 270 quinquies par. 1 of the Italian Criminal Code. For all existing terrorist offences, the use of IT technology is now considered an aggravating circumstance.

24 Articles 250.1, 250.2 and 250.5 of the Criminal Code of Lithuania. Article 575.2 of the Spanish Criminal Code reads as follows:

25 *2. The same penalty shall be imposed on those who, with the same purpose of preparing to commit any of the crimes established under this Chapter, carry out by themselves any of the activities foreseen in the previous section. Those who, with such purpose, carry out on a regular basis one or several communication services that are accessible on-line to the public or contents accessible through the net or through an electronic communication service whose contents are aimed at or are suitable for the promotion of membership of a terrorist group or for the cooperation with any of them or with their aims shall be considered to be committing such offence. The facts shall be considered to have been committed in Spain when the contents are accessed from Spanish soil. Likewise, those who, with the same purpose, acquire or possess any document that is aimed at or is suitable, due to its content, for the promotion of membership in a terrorist organisation or group or for the cooperation with any of them or with their aims shall be considered to be committing such offence.*

Bundesgesetz über das Verbot der Gruppierungen Al Qaïda und Islamischer Staat sowie verwandter Organisationen of 12 December 2014.

these organisations or their goals; (iv) recruiting for these organisations; and (v) in any other way supporting the activities of these organisations. The law establishes jurisdiction for these crimes on the territory of Switzerland, including for persons who commit these offences abroad, if they are arrested in Switzerland and are not extradited.

Finally, the discussions during the 2015 tactical meeting on terrorism showed that practitioners see a need to address gaps in legislation and differences in judicial approaches, which result in uncertainties as to the criminal nature and gravity of various types of conduct. These gaps and different approaches also lead to the inability to prosecute certain conduct.

In this context, participants discussed the issue of women and girls travelling to conflict zones and supporting the FTFs in various ways. Member States encounter difficulties in determining whether this conduct is a crime. As will be mentioned below in Section 2.3.2, the nature of the conduct of women and girls in the context of an armed conflict has been interpreted differently by the courts of two Member States, leading to a conviction in one Member State and to an acquittal in the other.

Some participants underlined the need to criminalise specific conduct in their countries, such as self-radicalisation and passive training, as these offences are not treated as such in some Member States.

Some participants referred to difficulties in converting intelligence into evidence, as well as to the considerable challenge encountered in dealing with criminal proceedings against persons declared deceased.

The discussions also revealed that in Portugal, a broader definition of terrorism was adopted and new measures were envisaged, including financial measures, changes in the visa regime and the possible cancellation of resident permits if national security is at risk.

The participant from Hungary referred to the possibility of prosecuting FTFs under the international law for war crimes and other international crimes, such as crimes against humanity.

One main conclusion of the discussions was the need for a common approach. To this end, a review of the EU Framework Decision on combating terrorism was proposed by the participants to particularly address problems in prosecuting certain conduct linked to terrorism and in proving terrorist intent.

2.1.3. Criminalisation of the financing of individual terrorists

Question 1(c) of the 2015 Eurojust questionnaire concerned further planned or adopted legislation related to the criminalisation of the financing of individual terrorists, in addition to the criminalisation of financing terrorist organisations, even when not linked to a specific terrorist act.

The 28 responses to question 1(c) show that national provisions regarding the financing of terrorism were amended in eight countries27, although not all amendments specifically refer to the criminalisation of financing of individual terrorists and/or to the link to a specific terrorist act.

27 HR, FI, LT, IT, MT, NL, PL and DE.

Article 98 of the Croatian Criminal Code28 criminalises the direct or indirect financing of terrorists or terrorist associations. An amendment to the Finnish Criminal Code29 and Italian law30 have simplified the provisions concerning the financing of terrorism in Finland and Italy, respectively, making proof that the financing was connected to a specific terrorist act no longer necessary.

In Germany, the new section 89c of the Criminal Code makes the financing of terrorism a separate offence and no longer includes a threshold of 'substantial' assets. Consequently, any collection and provision of funds with the intention to be used for terrorist acts, or with the knowledge that they are to be used for terrorist acts, is criminalised. Furthermore, Section 89c contains a catalogue of provisions that define these terrorist acts to cover offences falling within the scope of Article 2 (1) of the International Convention for the Suppression of the Financing of Terrorism and defined in one of the treaties listed in the annex to the Convention.

Lithuania31 went further in its response to the FTF threat and amended its Criminal Code to criminalise the act of providing financial or other type of support to persons engaging in terrorist activities, regardless of whether terrorist activities have taken place.

Malta32 and the Netherlands33 also criminalise the financing of any person involved in terrorist activities.

In Poland, the financing of terrorist activities is criminalised under Article 165a of the Criminal Code34.

28 Article 98 of the Croatian Criminal Code reads as follows:

Article 98

(1) *Whoever directly or indirectly provides or collects funds with the intention that they be used or in the knowledge that they will be used, in full or in part, in order to carry out one or more of the criminal offences referred to in Article 97, Articles 99 through 101, Article 137, Article 216, paragraphs 1 through 3, Article 219, Article 223, Article 224, Articles 352 through 355 of this Act or any other criminal offence intended to cause death or serious bodily injury to a civilian or to any other person not taking an active part in an armed conflict, when the purpose of such an act is to intimidate a population or to compel a government or an international organisation to do or to abstain from doing an act shall be sentenced to imprisonment for a term of between one and ten years.*

(2) The sentence referred to in paragraph 1 of this Article shall be imposed on whoever directly or indirectly provides or collects funds with the intention that they be used or in the knowledge that they will be used, in full or in part, by terrorists or terrorist associations.

(3) The funds referred to in paragraphs 1 and 2 of this Article shall be confiscated.

29 Amendment to Chapter 34 a, Section 5 a of the Finnish Criminal Code.

30 Law n. 43/2015 of 17 April 2015 converting Law Decree n. 7/ 2015.

31 Article 250.4 of the Lithuanian Criminal Code.

32 Article 328F of the Criminal Code of Malta provides:

*(1) Whosoever by any means, directly or indirectly, collects, receives, provides or invites another person to provide, money or other property or otherwise provides finance intending it to be used, or which he has reasonable cause to suspect that it may be used, in full or in part, for the purposes of terrorist activities or knowing that it will contribute towards the activities, whether criminal or otherwise, of any person involved in terrorist activities shall, on conviction, and unless the fact constitutes a more serious offence under any other provision of this Code or of any other law, be liable to the punishment of imprisonment for a term not exceeding four years or to a fine (*multa*) not exceeding eleven thousand and six hundred and forty-six euro and eighty-seven cents (€11,646.87) or to both such fine and imprisonment.*

(2) In this article a reference to the provision of money or other property is a reference to its being given, lent or otherwise made available, whether for consideration or not.

33 According to the Netherlands comprehensive action programme to combat jihadism.

34 Article 165a provides: *Whoever gathers, conveys or offers legal tenders, financial instruments, securities, foreign currencies, property rights or other movable or unmovable property for the purpose of financing a crime of a terrorist nature, shall be subject to the deprivation of liberty for a term of between 2 to 12 years.*

2.1.4. Other relevant legislation

Question 1(d) of the 2015 Eurojust questionnaire concerned other planned or adopted legislation of relevance to the FTF phenomenon, such as legislation on the lawful interception of Voice-over-Internet Protocol (VoIP) communications, hosting and administration of a website with terrorist content, removal of terrorist or violent extremist content online, data retention, etc.

The 28 responses to question 1(d) show that five countries[35] have adopted or planned such laws.

Italy[36] amended its legislation by taking into consideration the specific circumstances and characteristics of the FTF phenomenon, particularly the amendments concerning the illegal possession or diffusion of identity documents that can be used to leave the country, the illegal possession of explosives precursors and the reporting of theft or disappearance of substances and mixtures that can be misused for the illicit manufacture of explosives. Investigation tools already in use for investigations against organised crime groups can now be used for investigations of terrorism offences, including the possibilities to set up preventive lawful interceptions and to retain IT data, even when collected abroad. A legal basis was created for the creation of computer programs to obtain data stored remotely on a targeted computer system and for conducting preventive interceptions in investigations of terrorist offences committed via computer or electronic technology.

Italy has also adopted new measures in the field of the terrorism prevention. The police can monitor and gather information on websites used for incitement to commit terrorism, and subsequently conduct covert investigations, including updating a blacklist of the relevant websites. In addition, upon request of the competent authorities, internet providers are obliged to block websites and remove illegal content linked to crimes of terrorism that were published on the internet. Furthermore, the measures include travel bans, monitoring of the financial assets of suspects, blocking or withdrawing of passports and expulsion and prevention of re-entry into Italy.

In Lithuania, the Law on Cybersecurity[37], amongst others, tasks the police with the prevention, monitoring and investigation of crimes in cyberspace, including terrorist offences, and provides for the possibility of limiting access to public communications networks and/or electronic public services that provide information or communication equipment for criminal activities. The Law on Cybersecurity also provides an extensive range of legal measures to retain different types of information, such as traffic data and subscriber details. Other important measures are provided in the Lithuanian Law on Criminal Intelligence[38], which permits the possibility to obtain criminal intelligence if information is available that shows that someone is suspected of committing a ‘serious’ or ‘grave’ offence[39], including a terrorist offence. The Lithuanian Law on Criminal Intelligence also specifies certain methods that can be used to obtain intelligence without the need for authorisation by a prosecutor or a court. Lawful interception of VoIP communications are also possible under the national legal framework.

35 BE, IT, LT, ES and UK.

36 Law n. 43/2015 of 17 April 2015 and Articles 497, 678 bis and 679 bis of the Italian Criminal Code.

37 The Law on Cybersecurity No. XII-1428.

38 Articles 6 (2), 8 and 10 of the Lithuanian Law on Criminal Intelligence.

39 Lithuania replied to the 2015 Eurojust questionnaire and informed Eurojust about their three categories of crimes: ‘medium’, ‘serious’ and ‘grave’, in which grave offences are the most serious.

A new provision in the Spanish Criminal Code40 introduced the possibility for judges to order the destruction, erasure or invalidation of books, files, documents, items or any other support used to commit terrorist offences, including the possibility to order the removal of the content accessible through the Internet or electronic services.

In Belgium, a working group has been set up to revise legislation on special investigative techniques, including techniques related to Internet and telecommunications.

In the UK, a Counter-Terrorism and Security Act41 was adopted in February 2015 to provide, amongst others, powers for law enforcement to search for and retain a passport or a travel document at a port for a period of time, when an individual is suspected to be travelling for the purpose of involvement in terrorism-related activity outside of the UK, and the possibility to issue a temporary exclusion order to control the return to the UK of an individual suspected of involvement in terrorist activities abroad. The Counter-Terrorism and Security Act treats as an offence the return to the UK in breach of such an order. In addition, it enables 'measures' (conditions) to be imposed on individuals to regulate their movements, as well as their right to bear firearms, offensive weapons or explosives, and requires them to attend appointments with specified persons or persons of specified descriptions. The Counter-Terrorism and Security Act also contains provisions about border and transport security that extend the scope to 'no-fly' schemes and allows regulations to be made about passenger, crew, service information and security measures for aviation, shipping and rail transport operating to the UK, including powers to make regulations that impose (civil) penalties for failure to comply with the requirements of a 'no-fly' scheme or to provide information or screening requirements required for aircraft. Another section of the Counter-Terrorism and Security Act provides that an insurer commits an offence if it makes a payment under an insurance contract for money or property that has been or is to be handed over in response to a demand made wholly or partly for the purposes of terrorism, when the insurer knows or has reasonable cause to suspect that the money has been handed over for that purpose. In addition, the Serious Crime Act 201542, introduced on 3 March 2015, provides extra-territorial jurisdiction for specific offences, making it possible for the UK to prosecute the preparation of terrorist acts or training abroad for terrorism in a UK court.

40 Article 578.4 of the Spanish Criminal Code reads as follows:

4. A judge or court shall order the destruction, erasure or invalidation of books, files, documents, items or any other support through which the crime has been committed. When a crime is committed through information technologies, the removal of the content will be ordered. If the facts are committed through services or contents accessible through the net or through electronic services, the judge or court may order the removal of the unlawful content or services. It may jointly order hosting providers to remove unlawful contents, search engines to delete links to them and electronic service providers to prevent access to unlawful contents or services as long as one of the following cases occur: a) when the measure is proportional to the seriousness of the facts and to the relevance of the information and necessary to avoid its disclosure; b) when the contents mentioned in the previous sections are exclusively or predominantly disclosed.

5. The measures foreseen in the previous section may also be ordered by the examining magistrate on a precautionary basis during the investigation stage of the case.

41 http://www.legislation.gov.uk/ukpga/2015/6/contents/enacted/data.htm. *See, specifically,* Part 1 (Chapter 1 (s.1) and Chapter 2 (ss. 2-15)), Part 2 (ss. 16-20), Part 3 (s. 21), Part 4 (ss. 21-25), Part 5 (ss. 26-41) and Part 6 (s. 42).

42 See, specifically, Section 81 of the Serious Crime Act at http://www.legislation.gov.uk/ukpga/2015/9/contents/enacted.

2.2. Lessons learned from FTF investigations and prosecutions

As the FTF phenomenon continues to evolve and the number of relevant investigations continues to increase, national authorities are more frequently faced with complex legal and practical issues. The 'traditional' profile of FTFs has changed, with a growing number of families, minors and young females reported to have left for the conflict zone. As already pointed out by Eurojust, the Syrian/Iraqi battlefield has also attracted FTFs, who joined terrorist camps or terrorist groups in other conflict zones in the past, or persons with previous convictions for terrorist or other criminal offences.

The decision to prosecute is very complex and should be based on objective and clear criteria and on an individual risk assessment. Some Member States identified the need to review national criminal policy strategies to ensure that all aspects of the FTF phenomenon are addressed in a comprehensive and efficient manner. Securing strong evidence and building solid prosecution cases are challenges, regardless of whether investigations and prosecutions concern individual travellers who (attempt) to leave for the conflict zone to participate in terrorist training and jihad, or terrorist groups, including recruitment, facilitation and logistic networks.

Building on the challenges and best practice identified in the Eurojust Report of November 2014, the present section focuses on three areas: gathering, sharing and admissibility of electronic evidence; financial investigations; and the judicial approach to returnees. Without being exhaustive, it highlights some outstanding issues and includes examples of national criminal policy strategies and approaches applied in FTF investigations and prosecutions that have been shared with Eurojust.

2.2.1. Gathering, sharing and admissibility of electronic evidence

Issues related to electronic evidence create challenges in the fight against many crime types. Terrorist organisations and (aspiring) FTFs rely heavily upon various electronic devices, the Internet and social media to communicate, promote and incite terrorist acts, to recruit potential fighters, to collect funds, or to arrange for other support for their activities. The terrorist organisation ISIL, for example, has a huge media apparatus and very sophisticated and professional propaganda strategy in many languages, including the production of audio and video content, the publication of a digital magazine called 'Dabiq', the management of a radio network, etc.

Securing solid electronic evidence plays a central role in FTF investigations and prosecutions. As demonstrated in some cases, the adoption of a holistic approach and the application of complementary techniques may prove efficient in dealing with problems in the gathering, sharing and admissibility of electronic evidence.

Challenges

Investigations and prosecutions involving electronic evidence are often reported to be complex and sophisticated, evolving quickly in time and requiring specific knowledge and expertise. FTF prosecutions so far have used data from an unprecedented variety of communication tools. The data comes from telephone calls (including voicemail), telephone data (from SIM, SD card or internal memory, including pictures, videos, MMS, SMS, etc.), e-mail, social media (e.g. Facebook, Twitter, Instagram, Snapchat, Pinterest, etc.), video chat and VoIP (e.g. Facetime, Viber, Skype, Tango, etc.), websites and blogs, cell site analysis, etc.

Identification and assessment of electronic evidence

National authorities are sometimes confronted with huge amounts of data recovered in FTF investigations. For example, one case in the UK involved 48 digital media exhibits, gathered from removable storage devices, mobile telephones and desktop computers, comprising 8.8 terabytes of data. In addition to the amount of data to be processed, the identification of evidentiary material may also be hindered due to the use of foreign languages (e.g. approximately 45 600 tweets in Arabic were posted by a suspect in one case). Both the volume of the recovered material and the requirement to translate it for initial assessment result in a costly and time-consuming procedure. Similarly, the growing sophistication of devices, particularly smart telephones and tablets, which are widely used for communication and online activities, require technical expertise that law enforcement authorities need to build and sustain.

In some cases, suspects were reported to have communicated across several different social media and digital communication platforms, often at the same time. Capturing relevant communications may also be quite challenging. At times, establishing whether the suspects have actual control of their accounts and whether they are in fact those posting specific messages can be difficult. To overcome this challenge, physically attributing devices to suspects at the times of posting may be necessary. In such cases, the cooperation of social media platforms is sought to provide the necessary information (e.g. subscriber/account information, account creation date, e-mail addresses associated with the account, Internet Protocol (IP) address and IP log-in data for the accounts, etc.).

The identification and assessment of electronic evidence is further hindered by the use of slang terminology, coding and encryption. As suggested by counter-terrorism practitioners, the use of encrypted software is likely to increase and encryption tools may become more sophisticated.

The Eurojust Report of November 2014 noted that the growing sophistication and wider use of anonymizers, proxy servers, Tor network, satellite links and foreign 3G networks create additional challenges to the gathering and analysis of electronic evidence. In addition, practitioners from the Member States have recently reported other practices and tools used to evade detection of electronic communication, including, for example, commercial products enabling the immediate deletion of messages and the storing of information in the ‘Drafts’ folder of an e-mail account that is accessed by several users, who use the same log-in credentials.

Particular difficulty in the electronic evidence gathering process is created by cloud storage of data. Suspects may use mobile device apps for their communication, the content of which is not stored on their devices but is held on the servers of the app provider. While account details may be known to the police, the material can only be accessed if recovered from the app provider. This process may turn out to be quite cumbersome, as in some cases the provider and its servers cannot be located.

Use of intelligence

Practitioners from the Member States have reported to Eurojust that cooperation between prosecution services and intelligence services can generally be considered functional. Nonetheless, prosecutions may still be confronted with some issues rooted in the powers of intelligence services to collect information and the possibilities of law enforcement or judicial authorities to use this information. Furthermore, challenges related to gathering or using information provided by foreign intelligence services have also been reported.

In some jurisdictions, the intelligence services are tasked with conducting investigations, while in others information provided by the intelligence services can be used to open criminal investigations. As pointed out by Slovenia, for example, information collected by the Security Agency cannot be used in pre-trial procedures as a basis for issuing court orders to launch police covert investigative measures, nor can information provided by the Security Agency be used as evidence in later stages of criminal proceedings.
Germany reported a growing tendency for departing individuals to evade law enforcement surveillance by communicating over the Internet. The number of individuals who publicise their involvement in the Syrian conflict via social networks has decreased, possibly due, *inter alia*, to instructions given from within the respective organisations.

Data retention and the role of communication service providers (CSPs)

Due to restrictions on data retention, national authorities need to process the collected information and secure evidence swiftly.43 As pointed out by the UK, time constraints may also be imposed by the policies and practices of CSPs that delete transactional records from their servers, usually between 21 days and six months after the communication was sent. In some cases, deleted e-mails may be destroyed by the CSP within 48 hours. In general, deleted messages cannot be retrieved. Therefore, requests for electronic communications records older than six months will rarely produce positive results. If a CSP is located in another country, a significant delay, sometimes between six to nine months, may be experienced in the response to a mutual legal assistance request for electronic evidence.

43 For further information regarding data retention, please see Section 3.3 of this report.

In addition, investigations may be jeopardised by the possibility that the account holder becomes aware of an ongoing inquiry when a data preservation request is submitted to a CSP. Such a possibility may exist due to the CSP's technical design or as a result of a notification made by the CSP. Additional challenges may also be posed by the limited regulation of the CSP industry and the fact that some countries, such as the USA, do not have licensing requirements for CSPs. As mentioned by the UK, CSPs may actually be run by criminal enterprises; therefore, a preservation request sent by the authorities to such a CSP may alert the suspect.

National practices

The swift advance of technology and the diverse methods and techniques used by (aspiring) FTFs to evade detection and surveillance challenge national authorities to make optimal use of all lawfully available tools. Some experiences of the Member States have been highlighted below in an attempt to present examples of successful practices and efficient preventive measures.

Complementarity of investigative techniques

As pointed out by some Member States, national authorities seek to make use of all legally possible investigative techniques and procedures in a complementary and efficient manner in their FTF investigations. Investigative techniques applied include, for example, infiltration of undercover police officers and the use of informants, as well as interceptions of computer and electronic communications. As to the latter, special software could be used to remotely obtain data from a computer system. Preventive interceptions may also be authorised.

In Italy, for example, the authorising prosecutor is permitted to save obtained traffic data for a period of 24 months. Additionally, securing of metadata, logs of access to websites, remote sensing, freezing of accounts (e.g. by Microsoft) prior to receiving an official request based on a mutual legal assistance treaty, are among the tools and techniques to gather electronic evidence in FTF investigations.

Cooperation with social media operators and CSPs and removal of unlawful content

The heavy use of Internet and social media platforms by FTFs and terrorist groups active in Syria and Iraq has prompted national authorities to seek more intense cooperation with social media operators and CSPs. Some examples of established best practice have been mentioned in the Eurojust Report of November 2014, including the cooperation agreements concluded by the Belgian authorities with Facebook and Twitter. These agreements enable the Federal Computer Crime Unit to upload warrants directly to their servers to allow for direct execution. In cases of terrorism and in the event of an imminent threat, warrants may be processed within several hours.

As mentioned in Section 2.1, recent amendments in the Criminal Code of Spain give a judge or a court powers to order the removal of unlawful content or services, including as a precautionary basis during the investigation stage.

In Italy, the Postal and Communications Police maintains a blacklist of terrorism-related Internet sites. Upon request from the judicial authorities and the Postal and Communications Police, CSPs must block websites and remove illegal content linked to terrorist crimes.
In Lithuania, the Cybercrime Board of the Criminal Police Bureau is responsible for the removal of terrorist or violent extremist content online; such removal is based on agreements with national CSPs.
A European Union Internet Referral Unit (EU IRU) was established last July at Europol with the aim of reducing the level and impact of terrorist and violent extremist propaganda on the internet. EU IRU identifies and refers relevant online content towards concerned Internet service providers and support Member States with operational and strategic analysis.44

Case preparation and court presentation

To build a successful prosecution case, presenting the vast amount of electronic evidence in a format and manner that is understandable to the court is essential. A best practice mentioned by the UK entails the production of a chronological timeline of communications on various platforms and a social media timeline of every relevant upload/post, also containing images and links between recipients, devices used, etc. The presence of an expert to explain to the court certain functionalities and operations of the devices used by the defendants may also be beneficial. To identify and understand potential issues, prosecutors must possess an understanding of the essence of forensic analysis of digital material.

2.2.2. Financial investigations

As underlined in the Eurojust Report of November 2014, financial investigations assume a growing significance in FTF cases. The benefits of conducting a financial investigation have also become evident in a number of cases concluded over the past year. They include cases of self-funded travel, as well as cases of organised recruitment and facilitation, collection and transportation of funds intended for FTFs.

Financial investigations conducted so far provided evidence revealing important aspects of the preparation and travel to the conflict zone, as well as the support provided to FTFs on the ground. The evidence included, for example, flight details, money transfers, the use of couriers to transport cash, purchase of outdoor clothing and equipment, sending goods to FTFs, etc. The evidence was gathered from bank accounts, telephones and computers, cell sites, social media websites, Skype and WhatsApp chats, as well as from other sources showing financial transactions, misuse of funds or suspicious movements of goods.

44 See also Section 3.2.1 of this report.

Challenges

With regard to FTFs, terrorist financing needs to be considered from various perspectives – ranging from self-financing to donorship, bank looting and extortion, ransom, etc.45 The diverse forms and aspects of terrorist financing demonstrate the complexity of the problem and create substantial challenges that need to be addressed by the national authorities in their efforts to disrupt the money flows to terrorist groups and activities.

Money transfers

Investigations show that FTFs often finance their travel to Syria by their own means. Once in Syria, some of them receive funds from relatives and friends to cover their living expenses. Transfers are sometimes sent via money and value transfer systems to agencies located in Turkey, close to the border with Syria. The value of those transfers could vary between several hundred and several thousand euro per transaction. In other cases, intermediaries may be used to transport cash to Syria or to the Turkish-Syrian border area. In addition, while en route or at the Turkish-Syrian border, FTFs may draw cash from bank accounts in their home country using debit cards.

The tendency to use small amounts of money was confirmed in several investigations. In France, transfers of funds to Syria and Iraq made by French nationals have been detected. The amounts, however, remain modest. Similarly, UK-based terrorist financing often involves small amounts of money raised through low-level criminality to fund activities, such as dissemination of extremist material and travel to Syria to join terrorist groups.

Misuse of charity funds and other types of fraud

Reports of alleged misuse of charity funds have increased over the past year. Possible abuse of humanitarian aid channels with the intention to finance or otherwise facilitate travel for terrorist purposes or other terrorist activities has raised concerns and triggered law enforcement action. Some Member States, such as France and the UK, have launched criminal proceedings against charitable organisations suspected of having raised funds for jihadist groups in Syria. Tracing both the money flow and its final destination remain challenges.

In addition to the abuse of charity efforts, other types of fraudulent activities have also been used to raise money for FTFs, including, for example, setting up a system of consumer credit fraud, insurance fraud, or abuse and defrauding of national social benefits systems, as already mentioned in the two previous Eurojust Reports of November 2013 and 2014. In addition, as revealed in recent cases dealt with by Belgian courts, funds to finance travel to the conflict zone may be collected via dedicated organisations set up with the objective of radicalising young Muslim girls, or via the so-called ‘*ghanima’* (tax collected on the spoils of war or war booty looted or confiscated for the benefit of the Islamist cause).

[45] In the report *Financing of the Terrorist Organisation Islamic State in Iraq and the Levant (ISIL),* published in February 2015, the Financial Action Task Force (FATF) identified the terrorist organisation’s primary sources of revenue, which include bank looting and extortion, control of oil fields and refineries, robbery of economic assets, donors who abuse non-profit organisations, kidnapping for ransom, cash smuggling, fundraising through the Internet, etc.

National practices

In an effort to reduce fundraising for terrorist purposes, Member States have put in place various policies, mechanisms and tools to identify and dismantle financial flows and facilitators. They include the adoption of laws and strategies to tackle terrorist financing, the establishment of special task forces, building (cross-sector) partnerships among various bodies concerned, etc.

Solid legal framework

As mentioned in Section 2.1, a number of Member States have taken steps to amend their national legislation on financing of terrorism, including by implementing UNSCR 2178 (2014) and its requirements concerning the criminalisation of the collection or provision of funds to FTFs.46 UNSCR 2178 (2014) was adopted a few months after the Security Council passed Resolution 2161 (2014), which obliges Member States to ensure that

> *no funds, other financial assets or economic resources are made available, directly or indirectly, by their nationals or by persons within their territory for the benefit of Islamic State in Iraq and the Levant, al-Nusrah Front, and other individuals, groups, undertakings and entities associated with Al Qaida.*

Further obligations to align the legal framework concerning FTFs are set out in the Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism, adopted by the Committee of Ministers on 19 May 2015 (the 'Additional Protocol'). Article 5 of the Additional Protocol provides for adoption of the necessary measures to establish 'funding of travelling abroad for the purpose of terrorism', when committed unlawfully and intentionally, as a criminal offence under the domestic law of the States parties to the Convention.

Systematic financial investigations

Financial investigations may be instrumental in uncovering FTF facilitation and support networks and schemes. The *modus operandi* used to collect or provide funds to FTFs, for example the use of bank cards linked to bank accounts in the Member States, transfer of funds via money and value transfer systems, etc., may enable the competent authorities to identify FTFs and their financiers and to disrupt money flows. Financial investigations may be very productive, particularly when tax and customs authorities, financial intelligence units (FIUs) and other relevant authorities are involved at an early stage of the investigation. As also mentioned in the Eurojust Report of November 2014, some Member States do conduct financial investigations in all terrorism cases. In Belgium, the BELFI project, run under the

46 In Resolution 2178 (2014), the Security Council decides, *inter alia*, that all States shall ensure that their domestic laws and regulations establish serious criminal offences sufficient to provide the ability to prosecute and to penalise in a due manner certain acts, including the

> *wilful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to finance the travel of individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training.*

jurisdiction of the Court of Appeal of Brussels, continues to be implemented. It entails the systematic generation of police reports concerning social fraud and non-compliance with the Law on Non-Profit Organisations. As of June 2015, 75 inquiries have been initiated concerning suspicion of social fraud related to FTFs. In other Member States, for example Malta, the FIU is always involved in relevant cases. When needed, information is also requested from other countries.

Establishment of specialised units and cross-sector cooperation to detect suspicious financial transactions

In an effort to ensure a more efficient and coordinated approach, some Member States have established specialised units at national level to deal with terrorist financial investigations in general and FTFs in particular. Such centralisation of expertise may have considerable added value and contribute substantially to securing successful prosecutions.

In the Netherlands, investigations focusing on the financing of terrorism are carried out by the Financial Public Prosecution Service. In Italy, in accordance with Law No. 43 of 17 April 2015, the National Antimafia and Counter-Terrorism Directorate has been appointed to be the central national judicial authority for coordinating investigations of terrorist offences. The National Antimafia and Counter-Terrorism Directorate must be informed of reports of the FIU of the Bank of Italy that concern suspected money laundering or terrorist financing operations. Such information is also sent to the Antimafia Intelligence Investigation Division and to the Special Currency Unit of the Italian Fiscal Police. In Belgium, the BELFI project mentioned above is a good example of a well-functioning multi-disciplinary partnership.

In the UK, the National Terrorist Financial Investigation Unit (NTFIU) is the body that conducts investigations to support prosecutions for terrorist financing offences. It uses financial investigations and intelligence, as well as other financial tools, such as asset freezing, to identify opportunities to disrupt suspects. The NTFIU hosts the Terrorist Finance Contact Group, to which representatives of 95 per cent of the UK banks and the British Bankers' Association have been invited. The group is set up to develop and share generic indicators of suspicious activity. The National Crime Agency is responsible for the suspicious activity reporting regime, which covers money laundering and terrorist financing activity. The Foreign and Commonwealth Office is responsible for international sanctions and preventing payment of ransom to terrorist organisations. A cross-government ISIL Task Force was set up in September 2014 to develop and coordinate the national anti-ISIL strategy. The strategy concerns, *inter alia*, ISIL financing.

Asset freezing

Information gathered in the course of financial investigations may be useful when deciding on the listing of FTFs in accordance with UNSCR 1373 (2001).47 The national authorities may proceed with the freezing of assets of individuals and groups thought to be involved in terrorism and deprive them of access to financial resources. As pointed out by the UK, for example, this power operates

47 UNSCR 1373 (2001) obliges the Member States, *inter alia*, to ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice. It also obliges them to freeze without delay funds and other financial assets or economic resources of persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts; of entities owned or controlled directly or indirectly by such persons; and of persons and entities acting on behalf of, or at the direction of such persons and entities, including funds derived or generated from property owned or controlled directly or indirectly by such persons and associated persons and entities.

independently of the criminal justice system and can be used whether or not a designated individual has been charged with or convicted of a criminal offence.
Further obligations to freeze assets, or impose a travel ban or an arms embargo, also stem from UNSCR 2199 (2015), adopted in February. It obliges Member States to take steps to prevent terrorist groups in Iraq and Syria from receiving donations and from benefiting from trade in oil, antiquities, and hostages. It condemns any engagement in direct or indirect trade with these groups and states that such engagement may lead to further listings by the Committee pursuant to Resolutions 1267 (1999) and 1989 (2011) concerning Al Qaida and associated individuals and entities.48

2.2.3. Judicial approach to returnees

As the FTF phenomenon has rapidly grown in both scale and intensity, Member States more frequently encounter issues related to the return to Europe of those who travelled to the conflict zone to join the groups fighting there. Member States' experience has shown that prosecution may be pursued in some cases, while in others disengagement, de-radicalisation and rehabilitation programmes may be more effective.49 Regardless of the strategy the authorities choose to follow, the need for clear principles and criteria for assessment and decision-making has become more evident.

Challenges

To date, prosecutions of suspected returning FTFs have been launched in several European countries; some of them have resulted in convictions, for example in Austria, Belgium, France, Germany, the Netherlands, Norway and the UK. Some of the issues identified in those prosecutions were reported to Eurojust and have been highlighted below.

Various profiles of returnees

When designing their strategy towards returnees, national authorities need to take into consideration the different profiles and motivation of FTFs. The conflict in Syria and Iraq has attracted vast numbers of youngsters, who were self-radicalised or recruited by terrorist networks. The conflict has also attracted 'veteran' FTFs, who have previously travelled to join terrorist camps or terrorist groups in other conflict zones, or persons who have already been convicted of terrorist or other criminal offences. As mentioned by Spain and recently reported in the Netherlands, FTFs are also recruited while serving as military personnel of the Member States' armed forces.

48 The Resolutions concern the sanctions regime applicable to designated individuals and entities associated with Al Qaida. They require Member States to take measures in connection with any individual or entity designated by the Committee to freeze their funds and other financial assets or economic resources, prevent the entry into or transit through their territories by designated individuals, and prevent the direct or indirect supply, sale and transfer from their territories or by their nationals of arms and related materiel, spare parts, and technical advice, assistance, or training related to military activities, to designated individuals and entities.

49 Relevant disengagement and rehabilitation strategies and programmes are described in Section 2.4 of this report.

Some FTFs, particularly the young travellers, may return to Europe discouraged by the hardships or traumatised and disillusioned by the reality of the conflict zone. Others may return with a 'mission' – to recruit new FTFs, to instigate or to commit terrorist acts, or with the intention to go back to Syria. Possible international links between terrorist cells and networks, or between returnees in different European countries, may be established.

Evidence of acts committed in the conflict zone

As mentioned in the Eurojust Report of November 2014, a major challenge to national authorities is posed by the need to secure solid evidence in cases of suspected travel for the purpose of participation in terrorist training and jihad. National authorities face difficulties related to the gathering of evidence on the intent to commit terrorist offences when travelling to the conflict zone and on activities that have taken place there. In addition, investigations in 2015 continue to be challenged by the lack of recourse to mutual legal assistance mechanisms, particularly with regard to Syria. As a result, verification, with a sufficient degree of certainty, of alleged acts committed in Syria or Iraq may be very difficult.

Information about the goals of the organisation and the particular role of each individual is crucial. As pointed out by Germany, domestic investigations may struggle to compensate for the lack of intelligence and evidence, particularly in the cases of suspected membership and participation in a terrorist organisation.

National practices

In addressing possible risks to national security, Member States have adopted different policies and strategies towards returning FTFs. To tackle the evolving FTF phenomenon, some of those policies and strategies have been adapted or are currently being reconsidered in an attempt to identify and implement the most efficient response.

Case-by-case assessment

The complexity of the decision to prosecute suspected FTFs, place them under surveillance, enrol them in disengagement, de-radicalisation and rehabilitation programmes and/or apply other measures has been widely recognised. Practitioners from some Member States have reported to Eurojust that the predominant goal of their national policy is to arrest returnees as a first measure. In other Member States, the returnees may be divided in different categories of risk (high, moderate and low) and decisions to arrest will be made on a case-by-case basis.

In general, the availability of sufficient evidence of criminal offences is central in deciding on a strategy to pursue. The legal framework applicable in the Member States and in some third States towards FTFs was described in detail in the Eurojust Reports of November 2013 and 2014. The reports established that statutory regimes are in place that allow terrorism-related crimes committed abroad to be punished.50 Some examples of national policies and practices were also highlighted.

> Punishment of terrorism-related crimes committed abroad is possible, either on the basis of special statutory provisions stipulating terrorism and related offences as offences covered by extra-territorial criminal jurisdiction, or on the basis of regular legal provisions governing the applicability of national criminal law to offences committed abroad.

Generally, an assessment in each individual case is essential. Such an assessment should be based on clear and objective guidelines, criteria, risk indicators, etc. In addition to the assessment, a follow-up on every returnee is also necessary. Especially with regard to youngsters, practitioners from some Member States have pointed out that a focus should be placed on rehabilitation and reintegration as part of the de-radicalisation process and, in the event of convictions, reduced penalties should be considered.

Comprehensive approach to address radicalisation

During the 2015 tactical meeting on terrorism, participants stressed that a comprehensive action plan is needed to address radicalisation, particularly in relation to the FTF phenomenon and more specifically in relation to the returnees from the conflict zone. Such a comprehensive action plan forms an integral part of the strategic solution at national and EU level that is necessary to tackle the FTF phenomenon in an effective and efficient manner. Recognising the complexity of the evolving FTF phenomenon and the growing challenges Member States face in relation to returnees, in the Eurojust Report of November 2014, Eurojust recommended consideration of a common EU approach. Policies and practices adopted with regard to prosecution and rehabilitation are essential elements of the strategic discussion on such common approach. The practical experience of the Member States in this field is indispensable.

2.3. Jurisprudence experience

Over the past year, Member States have reported to Eurojust an increase in FTF prosecutions and convictions. However, the number of judicial cases is still relatively small in comparison with the estimated number of FTFs.

Prosecutions and convictions concern individual and group travellers, as well as recruitment and facilitation activities and networks. In some cases, individuals were arrested prior to departure and prosecuted for planning to attend terrorist camps and/or join terrorist groups. Other cases involved returnees or FTFs who are still believed to be fighting in Syria/Iraq or who may have died in battle. On one occasion, the death of an FTF was announced by an insurgent group, in an attempt to allow him to return to the UK without being detected. In another case in Belgium, one person appeared in court both as defendant and victim – he was charged with participation in an activity of a terrorist group, while some of his co-defendants, who belonged to the same terrorist group, were tried for taking him hostage while he was in Syria.

The FTF prosecutions and concluded trials concerned offences such as leadership/membership of, or participation in, an activity of a terrorist group, illegal restraint, conspiracy to attend a terrorist camp, conspiracy to participate in armed conflicts, illegal possession of ammunition, incitement to terrorism, disseminating a terrorist publication, terrorist funding, material support to a terrorist organisation, preparation for terrorism, preparation to commit murder, etc. The penalties include imprisonment,

pecuniary penalties, including paying into a fund for victims, unpaid work, or treatment in a psychiatric institution. On several occasions, the penalty was suspended for a certain period of time. In some cases, the court considered the defendants to be dangerous and ordered extended sentences, including a custodial element and a licence period (e.g. in the UK). Notification orders and supervision were also among the measures ordered for some of the convicted persons following the completion of their prison term.

Over the past two years, Eurojust has been analysing judgements on FTFs rendered by courts across Europe. The present section highlights some issues identified as a result of Eurojust's analysis of these judgements. It is not intended to provide a complete overview; it rather focuses on certain arguments of the courts regarding issues, such as the terrorist nature of the groups FTFs join in Syria/Iraq, the acts committed by FTFs, the applicability of international humanitarian law (IHL), as well as some procedural issues, including those related to rendering judgements *in absentia*.

2.3.1. Terrorist nature of the groups

Often, when rendering their judgements, courts deliberated on the situation in Syria in the period under indictment. On some occasions, for example in Germany and the Netherlands, the court also heard testimonies of (counter-)terrorism experts.

In several cases in the Netherlands, the courts held that the fighting in Syria is of terrorist nature. The civil war in Syria is viewed as more and more 'jihadised' ('*gejihadiseerd*'). Jihadist groups seek to overthrow the regime of the Syrian president, but also, and primarily, to establish a strong Islamic state in the Middle East. According to Dutch courts, these groups have been involved in acts in serious violation of human rights, in which 'non-believers' have become the victims of extreme violence.

The United Nations' listing of groups, such as ISIL and Jabhat al-Nusrah, has been used by courts in the cases in which FTFs joined any of them. In Belgium, alternatively, the Court of First Instance of Antwerp needed to establish the terrorist nature of the group Sharia4Belgium, to which the defendants belonged. In its ruling, the court considered the origin of the group and the degree to which it met the criteria defining a terrorist group, as set out by national law.51 The evidence showed that Sharia4Belgium has a hierarchical structure and that its objective is to forcefully overthrow existing political regimes, based on the ideology of violent jihadist Salafism, and to replace these regimes by a totalitarian Islamic state (a caliphate), in which only 'sharia' would be applicable. The court held that the goal of Sharia4Belgium is to engage in armed combat and thus to commit terrorist offences. The court based its opinion on ideological texts and videos spread via the website of Sharia4Belgium and its YouTube channel, the international contacts of Sharia4Belgium, including influential jihadist Salafist ideologues in Europe and the Middle East, and terrorist organisations, such as Al Qaida in the Arabian Peninsula (AQAP) in Yemen. The court also took into account activities, such as the organised indoctrination and recruitment of young people to engage in armed combat, as well as the organised violent actions in Belgium, to be clear expressions of the terrorist objectives of Sharia4Belgium. Therefore, the court concluded that Sharia4Belgium was a terrorist group, as defined by Belgian law.

51 The criteria are defined in Article 139 of the Criminal Code, which reads: '*A terrorist group is any structured association of more than two persons, which exists for some time and which acts in concert to commit terrorist offences…*'. (unofficial translation)

2.3.2. Terrorist offences

The analysis of judgements in relation to FTFs in the past two years has revealed that courts may sometimes be confronted with a wide diversity of criminal acts that the defendants have (allegedly) committed while in the conflict zone or while preparing to leave. Depending on national laws, the scope of acts constituting a terrorist offence may vary. Several examples below illustrate the approaches endorsed by national courts.

Preparatory acts

In cases of aspiring FTFs, the courts reviewed the activities undertaken in preparation for travel for the purpose of receiving terrorist training and/or joining the jihad. Such activities include visiting websites with information about jihad, martyrdom and/or military training; possessing documents or data carriers containing information on jihadist ideology, making of explosives and martyrdom; expressing intention to travel to Syria and join the armed jihad upon arrival; meeting with others or discussing online details regarding the trip to Syria and the purchase of equipment (e.g. outdoor clothing and gear, jungle boots, tactical vests, etc.); termination of rental contracts; collecting information and obtaining travel visa for countries neighbouring Syria (e.g. Saudi Arabia); booking tickets to Turkey; renting a vehicle to travel to Turkey and/or Syria, etc.

In December 2014, the District Court of The Hague established that a returnee had carried out preparatory acts for the purpose of committing murder and manslaughter for the armed jihad in Syria. The court held that jihadist groups in Syria seek to destroy the fundamental political system in the country and to establish an Islamic state. The violence used by those groups instils grave fear in large parts of the population. Therefore, the court ruled that the preparatory acts were committed with a terrorist objective.52 Even though the travel to Syria was not punishable as such, the combination of all acts and the ideology of the defendant showed the intention of preparing for murder and manslaughter. The Appeals Court confirmed in January 2015 that the travel to Syria to participate in fighting against the regime of the Syrian president or to establish an Islamic state should be considered terrorist by nature.

A French court held in March 2014 that preparatory acts, such as the purchase of a 4WD vehicle and other functional equipment and logistic planning, as well as fascination with the jihad, provided sufficient grounds to convict three defendants of criminal association for the purpose of preparing terrorist acts. In this case, the prosecution presented evidence that the defendants had prepared a journey to destinations close to the Syrian border, with the intention to establish contacts with groups or individuals associated with Al Qaida, and to receive military training, acquire weapons and take part in the armed jihad.

52 As set out in Article 83a of the Dutch Criminal Code, a terrorist objective is understood to mean *the objective to cause serious fear in (part) of the population in a country and/or to unlawfully force a government or international organisation to do something, not to do something, or to tolerate certain actions and/or to seriously disrupt or destroy the fundamental political, constitutional, economic or social structures of a country or an international organisation*. (unofficial translation)

Training for terrorism

The scope of training for terrorism has been considered by several courts in the Member States. In the Netherlands, the Appeals Court held in January 2015 that participation in training for terrorism includes not only attendance at a terrorist training camp, as part of the participation in a terrorist organisation or of a conspiracy to commit a terrorist offence, but also the undertaking of terrorist training by an individual intending to commit a terrorist attack. Training for terrorism may also include enrolling in shooting or flying lessons or training in combat sports, in case the knowledge and skills are acquired with the intention to be used for the commission of a terrorist offence. Depending on the type of documents and the frequency of reference, self-study, including consulting the Internet or other teaching material, could also be considered training for terrorism.

In the UK, a judge at the Woolwich Crown Court held in February 2015 that the physical training undertaken by an FTF prior to his departure for Syria should not be considered as part of his preparation for terrorism, as it pre-dated his interest in jihad. The judge, however, established that the defendant received terrorist training in Syria, including weapons training, as visible in photographs in which he handled guns. Similar evidence, as well as photographs showing a camp, a training timetable and various training activities, have also been used in other cases dealt with by UK courts.

Membership in a terrorist group and participation in an activity of a terrorist group

Membership in a terrorist group and participation in an activity of a terrorist group have been among the charges repeatedly used in FTF cases. In several recent judgements, Belgian courts held that mere membership in a terrorist organisation is not punishable; what is punishable, however, is a person knowingly carrying out an activity for a terrorist group. In May 2015, the Court of First Instance of Antwerp heard the case of seven female defendants, some of whom had already left for Syria. The court ruled that the definition of 'participation in an activity of a terrorist group', as set by law, did not require that the defendants commit terrorist offences themselves. In fact, the court held that participation in supporting activities, such as, for example, cooking or acting as a driver, while knowing that these activities are for the benefit of a terrorist group, is also punishable.

A different approach has been adopted in the Netherlands, where, in December 2014, the District Court of The Hague acquitted a returnee who had tried to recruit two women to go to Syria and marry jihadist fighters. The court ruled that a woman who marries a jihadist fighter and travels to Syria to take care of him does not directly participate in the armed conflict. The court held that in addition to participating in actual fighting, other activities, such as carrying out body searches, controlling vehicles and assisting in the commission of an attack, were to be considered participation in the armed conflict. By contrast, providing only moral, ideological or financial support to the fighting or the fighters, marrying a fighter and/or taking care of his belongings, household and children were not to be considered as contributions in aid of actual participation in the armed conflict. Therefore, recruitment of the so-called 'jihadist brides' cannot be considered as recruitment of individuals for the armed conflict.

Financial, logistic and other support to FTFs

National courts in several European countries have heard cases of financial, logistic and other support to FTFs or terrorist organisations, some of which have resulted in convictions for terrorist offences. In the UK, several guilty verdicts for terrorist funding have been handed down to family members who provided money or material goods to FTFs. This approach differs from the one adopted by the Dutch court in the example given above, in which providing, *inter alia*, financial support to a fighter was not considered contribution in aid of actual participation in the armed conflict.

The meaning and scope of material support supplied or attempted to be provided to a terrorist organisation was also considered by the Norwegian court in a case adjudicated in May 2015. Two of the defendants had prepared a box with clothing and other items, with the intention to send it to their brother, who had joined ISIL. As the preparatory legislative work in relation to the relevant Article 147 of the Norwegian Criminal Code provided little guidance on the meaning of 'other material support', the court made reference to the Council Framework Decision of 13 June 2002 on combating terrorism (2002/475/JHA). The court concluded that the attempt of the two defendants to send the box to their brother constituted 'other material support', as provided for by Article 147d of the Criminal Code. The court held that the Criminal Code did not require that the support should consist only of weapons or other kinds of military supplies.

In Spain, the court in October 2015 convicted 11 members of a terrorist network that had been recruiting and indoctrinating potential FTFs. Members of the network had also financed and facilitated travel to Syria and Iraq and the subsequent integration of their recruits into ISIL and Jabhat al-Nusrah. The court heard that at least six FTFs recruited by the network had died in suicide attacks. All members of the network were found guilty of membership in a terrorist organisation.

2.3.3. International humanitarian law

The Eurojust Report of November 2014 mentioned that Member States may encounter difficulties when prosecuting FTFs, and returnees in particular, due to the complex issue of qualifying and proving their participation in the activities of certain groups involved in the armed conflict in Syria as terrorist activities. In fact, reference to IHL has been made in several FTF cases brought to court in the Member States. Defence counsel have argued that national provisions that criminalise terrorist offences are not applicable. The fact that a non-international armed conflict (NIAC) is occurring in Syria has been used to justify the defence claim that defendants should enjoy the protection provided for in the Geneva Conventions of 12 August 1949 and could only be prosecuted for war crimes.

Despite the fact that IHL has often been used by the defence to question the jurisdiction of the court or the applicability of national criminal law provisions, the analysis of judgements shows that courts in the Member States do not appear to be facing major challenges in addressing that issue.

On several occasions, national courts referred to a judgement of the Court of Justice of the EU (CJEU)53, in which, *inter alia*, the CJEU ruled that '[…] the applicability of international humanitarian law to a situation of armed conflict and to acts committed in that context does not imply that legislation on terrorism does not apply to those acts.' Further, the CJEU stated that '[…] the existence of an armed conflict within the meaning of international humanitarian law does not exclude the application of provisions of EU law concerning terrorism to any acts of terrorism committed in that context.' The CJEU concluded that to claim that '[…] in international law, the notions of armed conflict and of terrorism are incompatible' was wrong. According to the CJEU,

> *[…] the fact that terrorist acts emanate from 'freedom fighters' or liberation movements engaged in an armed conflict against an 'oppressive government' is irrelevant. Such an exception to the prohibition of terrorist acts in armed conflicts has no basis in European law or even in international law. In their condemnation of terrorist acts, European law and international law do not distinguish between the status of the author of the act and the objectives he pursues.*

Several examples below illustrate the ways courts in some Member States addressed claims of the defence referring to the applicability of IHL. For example, in October 2013, the District Court of Rotterdam pronounced a guilty verdict for preparation to commit murder. It held that the defendant did not commit the preparatory acts in the framework of IHL. The court emphasized the seriousness of the offence and pointed out that the offence should be considered in a terrorist framework, namely that of participation in the armed jihad in Syria.

In another case from December 2014, a returnee from Syria stood trial on suspicion of preparing to wage jihad while in the Netherlands, joining a jihadist group in Syria and, upon return, spreading material that incited the commission of terrorist offences. The court held that IHL was not exclusively applicable in a NIAC and participation in the armed conflict in Syria (and Iraq) was punishable under Dutch law, and not only for those who join jihadist groups.

Also in the Netherlands, in a case of attempted travel to Syria, in February 2015 the court ruled that travelling to Syria with the goal of participating in a conflict should in principle be considered of terrorist nature, both under national and international law, regardless of whether the fight was directed against the regime of the Syrian president or directed at the establishment of an Islamic state. The court took into consideration the fact that, when implementing international terrorism provisions into Dutch law, the legislator recognised that simply fostering an ideology should not be criminalised. Accordingly, under Dutch law, terrorist intent must be proven on the basis of objective evidence. At the same time, the court may take intentions and ideology into account when interpreting the objective circumstances of the offences.

In Belgium, at the largest trial against FTFs so far, concluded in February 2015, the defence argued that the defendants could not be convicted of terrorist offences, as IHL was applicable to the NIAC in Syria and the exception, envisaged in Article 141bis of the Criminal Code, should be applied. The defence further claimed that possible violations of IHL (e.g. attacks on civilians) may be considered war crimes, rendering the court incompetent to adjudicate. In its ruling, the Court of First Instance of Antwerp held

53 Judgement of the General Court (Sixth Chamber, extended composition) of 16 October 2014. Liberation Tigers of Tamil Eelam (LTTE) v Council of the European Union. Joined cases T-208/11 and T-508/11.

that Article 141bis of the Criminal Code referred to armed forces during an armed conflict. As no such conflict was occurring in Belgium during the period under indictment, the court was competent to adjudicate acts of a terrorist group in Belgium. The court ruled that Common Article 3 of the Geneva Conventions of 12 August 1949 was applicable to the situation in Syria, and did not consider Additional Protocol II to the Geneva Conventions, which is in principle also applicable to NIAC, as Syria was not a party to this Protocol.
The court considered that, under IHL, armed forces are described as organised forces, groups and units that are under a 'military' chain of command, which is responsible for the actions of its subordinates. A set of rules must guarantee that these 'armed forces' comply with IHL. The troops should be recognisable from a distance, openly carry their weapons and respect the laws and customs of war. The court concluded that the exception envisaged in Article 141bis of the Criminal Code was not applicable for the following reasons:

(1) The groups the defendants joined (Jabhat al-Nusrah and Majlis Shura Al-Mujahidin) did not have an organisational structure with a clear chain of command and an identifiable and responsible leadership; therefore, the defendants could not be considered as armed forces within the meaning of Article 141bis of the Criminal Code.

(2) The groups Jabhat al-Nusrah and Majlis Shura Al-Mujahidin and their members were not capable of complying with IHL; they explicitly rejected the concept of IHL.

The examples presented above demonstrate the strong message sent by national courts with regard to their competence to adjudicate FTF cases and the applicability of national criminal law provisions. However, due to the importance of the matter, Eurojust will continue to analyse the available case law and monitor any relevant developments in relation to IHL.

2.3.4. Procedural and other issues

Rendering judgements in absentia

Some legal systems do not provide for rendering judgements *in absentia*, either at all or unless the proceedings concern minor offences and certain procedural requirements are met. In other legal systems, the court may pronounce judgements *in absentia*, including against those who evade criminal justice by hiding or staying abroad.

Several judgements *in absentia* against FTFs have been rendered in 2015 in Belgium. In the trial against 46 suspected members and supporters of Sharia4Belgium, 36 of the defendants did not appear in court. The defence counsel representing five of them claimed that their clients had died in Syria and the criminal proceedings for them should be declared void. According to the prosecution, in some cases death in Syria was staged to allow FTFs to live under a new identity, or to mislead the

authorities. The court ruled that the deaths of any of the defendants could not be claimed with certainty, and, therefore, did not declare the proceedings void. All those tried *in absentia* were found guilty as charged and their immediate detention was ordered by the court. One of the defendants challenged the decision of the court. His case was retried in June 2015, this time with his presence in court. Other trials in March and May 2015 also included defendants who were believed to still be present in Syria or to have passed away there. In all those cases, the court pronounced guilty verdicts and ordered the immediate detention of those not present in court.

Criminal liability

In several cases, the courts have decided to place aspiring FTFs in psychiatric institutions. In October 2013, the District Court of Rotterdam took into consideration reports and statements from both a psychologist and a psychiatrist. According to these experts, at the time of commission of the acts charged, the defendant suffered from a psychotic disorder, which affected his behavioural choices and conduct. The defendant was assessed to be chronically psychotic, with a significant chance of recidivism in the lack of treatment, and was therefore declared not liable. In view of the seriousness of the acts, the circumstances under which they were committed, the personality and personal circumstances of the defendant and his established mental disorder, as well as the danger he presented to others, the court ruled that he should be placed in a psychiatric clinic for a period of one year.

In a recent case in Belgium, the Court of First Instance of Antwerp decided to place one person in a psychiatric institution after it ruled that he was not capable of controlling his acts. He was stopped by the Turkish authorities on his way to Syria and was charged with attempted participation in the activity of a terrorist group.

Youth penalty

As a growing number of those who leave for Syria and Iraq with the intention of joining terrorist groups are minors, national authorities will increasingly face the need to decide on the most efficient strategy. If prosecution is pursued, juveniles or minors may be tried according to the national juvenile code and/or be brought to a specialised court for minors.

In a recent case, the Higher Regional Court of Frankfurt am Main found one defendant guilty of membership in a foreign terrorist organisation and ordered him to serve a juvenile sentence of three years and nine months. The defendant had committed the acts from the time he was 19 years and two months old until he was 19 years and seven months old. He was considered a ‘young adult’ according to German law. The court ruled that an overall assessment of the defendant’s personality demonstrated that at the time of the act he was still equivalent to a youth in terms of his moral and intellectual development. Therefore, the court applied juvenile law.

2.4. Countering radicalisation in the judicial context

In September 2014, UNSCR 2178 called upon the States Parties to enhance their Counter Violent Extremism approaches. The Riga Joint Statement of 29-30 January 2015 reiterated that terrorism, radicalisation, recruitment and financing related to terrorism are main common threats to internal security of the EU. In April 2015, the European Agenda on Security called for strong responses to radicalisation leading to acts of terrorism. Such responses must include de-radicalisation, disengagement and rehabilitation programmes in the judicial context, including in prisons and as alternatives to prison, as already underlined in December 2014 by the JHA Council.

Eurojust' experience and its important role in facilitating the exchange of experience in this field has been acknowledged on several occasions by the EU CTC and the JHA Council. In this respect, Eurojust has been invited and has actively participated in various meetings addressing the judicial dimension of de-radicalisation, including the Justice Ministers lunch discussion on the judicial dimension of disengagement, rehabilitation and de-radicalisation of FTFs (13 March 2015); the expert meeting organised by the Commission and the International Centre for Counter-Terrorism (ICCT) with judicial and prison authorities and radicalisation experts (18 May 2015); and the informal consultation meeting on strategies and programmes to reduce radicalisation in prisons, organised by the Commission and the consortium partners of the Counter-Terrorism Monitoring, Reporting and Support Mechanism (CT MORSE)54 Project (10 July 2015).

On 19 October 2015, the President of Eurojust participated in the panel discussion among Ministers of Justice and the EU CTC during the high-level ministerial meeting on the criminal justice response to radicalisation, and chaired one workshop that addressed the role and challenges for criminal justice practitioners when dealing with radicalised violent extremists.

Moreover, due to the prioritisation of the actions against radicalisation at EU and international level, in 2015, Eurojust continued to gather information from the Member States on their efforts to prevent and combat radicalisation and expanded its questionnaire on FTFs to also clarify the role of the judiciary in imposing and monitoring disengagement, rehabilitation and de-radicalisation programmes. In addition, the importance of addressing radicalisation in the judicial context was discussed in the three workshops of the 2015 tactical meeting on terrorism.

Section 2.4 and its recommendations were prepared on the basis of the main findings of the 2015 Eurojust questionnaire on de-radicalisation, the discussions during the 2015 tactical meeting on terrorism, and the outcomes of the dialogues and meetings on de-radicalisation attended by Eurojust in the past year and mentioned above. This section discusses the challenges encountered by the national authorities in finding the most suitable responses in the criminal justice sector when addressing the complex issue of radicalisation, and seeks to facilitate the sharing of best practice and help criminal justice practitioners and policymakers to overcome these challenges.

54 CT MORSE is a project funded by the EU to strengthen global delivery, coordination and coherence among the various counter-terrorism projects financed by the EU, as well as to reinforce the EU's engagement with the Global Counterterrorism Forum framework.

2.4.1. Findings of the 2015 Eurojust questionnaire

The 2015 Eurojust questionnaire contained two specific questions on de-radicalisation addressed to the national correspondents for Eurojust for terrorism matters in the EU Member States and in Norway, Switzerland and the USA. The objective of *the first question* was to gather updates on measures, programmes and/or legislation for the purpose of disengagement, rehabilitation and de-radicalisation of FTFs, such as: programmes imposed as an alternative to criminal proceedings or as an alternative to imprisonment, the classification of returnees based on their threat level, isolation of FTFs from other prisoners, training for prison and probation staff, etc. The objective of *the second question* was to clarify the role of judicial authorities in disengagement, rehabilitation and de-radicalisation programmes in the Member States and, specifically, whether judicial authorities are provided with risk assessments of terrorist offence suspects and advised, when taking decisions during different stages of the criminal proceedings, to impose such programmes.

The 28 responses to the first question indicate that 13 countries[55] do have updates or are considering updating or adopting measures or programmes designed for de-radicalisation of FTFs. Germany explained that such programmes are mainly imposed in parallel with other criminal sanctions and not as alternatives to criminal sanctions. The programmes and measures include: (i) (updated) national action plans and strategies in six Member States[56]; (ii) de-radicalisation programmes in prisons in five Member States[57] (sometimes involving non-governmental organisations (NGOs) and/or imams), such as the 2015 Spanish National Strategic Plan of Fight against Violent Radicalisation, which includes a 'Program of Intervention on Islamist Detainees in Prisons' (based on lessons learned after years of work in the management of ETA detainees), and is applied to a large number of detainees that are monitored and classified in various risk groups, from radicalising agents to subjects possibly subject to radicalisation; (iii) training of prison, police and probation staff (including in detecting early signs of radicalisation) in five Member States[58]; (iv) recruitment of multi-cultural and multi-lingual staff for probation and prison services in Austria; (v) risk assessment of suspects and convicts in Germany; (vi) dispersal of low risk prisoners and grouping of radical prisoners (those likely to influence and radicalise other prisoners) in dedicated areas of prisons, as well as temporary solitary confinement in exceptional cases for high-risk individuals[59]; (vii) advice centres run by NGOs in Germany; (viii) hotline for the relatives of extremists in Germany; (ix) a national campaign focusing on supporting women who are concerned about their relatives travelling abroad and encouraging them to seek help from authorities in the UK; (x) administrative measures (e.g. prohibition to own nationals to leave the country[60], and, for returnees in the Netherlands, periodic duties to report as well as contact bans); (xi) support measures for disillusioned or traumatised jihadists, including the planning of a new 'exit facility' in the Netherlands where ex-jihadists will be counselled, guided and closely supervised as a step towards rehabilitation; (xii) the setting up of a national Radicalisation Awareness Network (RAN) within the European Union's RAN to ensure a multi-sectoral approach and cooperation with a wide

55 AT, BE, BG, DE, ES, FR, LV, NL, PT, SE, SI, UK and NO.
56 BE, BG, DE, ES, NL and UK.
57 AT, BE, DE, ES and NL.
58 AT, BE, DE, NL and SI.
59 BE, NL and FR.
60 FR and NL.

circle of stakeholders at national level in Slovenia; (xiii) indicators developed for detecting terrorist activities in Slovenia; (xiv) appointment of a national coordinator against violence promoting extremism in Sweden; (xv) the adoption of a 'neighbourhood policy' (involving cooperation between the local government and local police) in Norway; and (xvi) cooperation between police and prison staff against radicalisation in Norway. Italy indicated that although it has not adopted de-radicalisation measures, it introduced amendments to the national laws regulating cooperating witnesses. These amendments empower the National Anti-Mafia and Anti-Terrorism Prosecutor to make a proposal and give an opinion on the granting of protection measures to cooperating witnesses in cases related to terrorist offences, as well as special prison benefits because of their cooperation.

The second question, to which 23 resposes were received, referred to the role of judicial authorities in imposing and/or in monitoring programmes to de-radicalise in pre-trial, trial and post-trial stages, and also sought to establish whether judicial authorities are provided with risk assessments of suspects of terrorist offences when taking decisions.

In the pre-trial stage, in three Member States61, a suspect may be diverted from the criminal justice system under certain conditions. Instead of prosecuting, the competent authorities may order his/her enrolment in a programme of disengagement, rehabilitation and de-radicalisation. The Netherlands is examining whether possibilities exist to impose conditional dismissals in criminal cases and to subsequently attach conditions to the dismissal, such as taking part in existing counselling procedures or rehabilitation projects.

In the trial stage, in seven Member States62, judicial authorities may impose de-radicalisation programmes when sentencing, based on a pre-sentence report that may include an assessment of the risk posed by the defendant. For example, when taking a decision, the judicial authorities in Germany usually seek an expert opinion or a professional report that may include a risk assessment. Such decisions include diversion from prosecution with conditions, suspension of a sentence with conditions, and supervision orders with conditions.

To address the problem of violent radicalisation, France is developing a community programme to be attached by the judicial authorities to probation orders.

In Lithuania, 'grave' terrorist offences are given custodial sentences, while offences of 'medium' or 'serious' gravity may, in principle, receive a suspended sentence with conditions, involving, for example, participation in therapy or rehabilitation programmes.

In the post-trial stage, in five countries[63], in addition to the custodial sentence, judicial authorities must or may impose, after the (partial) execution of the sentence, a period of supervision combined in some countries with monitoring programmes to help manage the risks posed by convicted FTFs and assist in their rehabilitation. For example, the Criminal Code of Latvia provides that the execution of a custodial sentence for terrorist-related offences must be followed by mandatory probation supervision from one to three years.

61 DE, PT and UK.
62 AT, DE, FR, LT, NL, PT and SK.
63 AT, LV, NL, PT and SK.

2.4.2. Findings of the 2015 tactical meeting on terrorism

The discussion in the workshops of the 2015 tactical meeting on terrorism dealt with, among others, the experiences of the national judicial authorities in dealing with violent radicalisation and the rehabilitation of FTFs. The workshop discussions revealed that differences exist in the legislation and/or approaches of the Member States in relation to the role of judicial authorities in dealing with radicalisation. The workshops confirmed the diversity of approaches and different laws applicable in the Member State in this area. The discussions at the tactical meeting also pointed out that when imprisonment is imposed, careful consideration must be given to avoiding the radicalisation of other offenders inside the prisons, although no hard rules can be applied to whether to segregate or group radicalised offenders in prisons; this issue requires further discussion.

Some participants mentioned that imposing repressive measures, such as imprisonment or administrative sanctions, is not always the best option, either because of the considerable evidentiary requirements needed to prosecute or because not all aspiring and returning FTFs pose a threat or because repressive measures might prove counter-productive. A risk assessment and follow-up of each individual is needed and requested by judicial authorities in a number of Member States to decide on the most suitable decision and intervention. Some participants indicated that the approach depends on issues such as the age of the perpetrators, their level of risk, the group they have joined, the seriousness of the crime committed, cooperation with authorities, whether they returned voluntarily after becoming disillusioned with IS, etc. The discussions also revealed that alternative sanctions, such as community-based programmes and counselling in view of de-radicalisation and/or disengagement, may be applied by judicial authorities in some situations. However, some participants expressed concerns about the efficiency and risks involved in forced community-based programmes and counselling in view of de-radicalisation and/or disengagement.

Participants emphasized that, in relation to the judicial approach to returnees, the radicalisation process of the FTFs must always be considered when imposing measures upon their return. For those who return from Syria disillusioned and expressing their remorse and willingness to assist the authorities, consideration could be given to using such individuals in de-radicalisation and disengagement programmes, to discourage others from taking part in violent extremism.

Eurojust's analysis of case law disclosed that, in some cases64, courts imposed alternative sanctions (for instance, the suspension for five years of the execution of a prison sentence of three years) and remained silent as to what will happen (monitoring, supervision, de-radicalisation, etc.) in the long period when the convicted person is awaiting the execution of the prison sentence.

64 See, e.g., the analysis of the decision of 11 February 2015 of the Court of First Instance of Antwerp in the Sharia4Belgium case.

2.4.3. Eurojust's points for consideration

Diverse judicial responses to disengagement and de-radicalisation that could serve as inspiration

Practitioners recognise in principle that repressive measures (criminal and administrative) towards FTFs have limitations and are not sufficient. Under these circumstances, an increasing number of Member States have developed or are in the process of developing other measures in the judicial context to counter radicalisation, prevent individuals from becoming FTFs or from engaging in violent extremism, or assist in the reintegration of returnees. The national approaches and the extent of the involvement of the judiciary in the Member States in imposing and monitoring disengagement and de-radicalisation programmes vary due to a combination of factors, including legislation, rules on eligibility, different local contexts, etc.

> Eurojust recommends a continuous exchange of experience, legislation and strategies in the Member States to assist policymakers and practitioners in finding innovative judicial responses to the threat posed by FTFs. At the same time, Eurojust recommends that consideration be given to a reflection on the need for a common EU approach to the role of judicial authorities in imposing and monitoring disengagement and de-radicalisation programmes with a view to countering violent extremism.

The development of efficient risk assessment tools and procedures

Practitioners agree that the level of risk of each FTF should be assessed individually, although this task is challenging. An assessment of the level of risk of every terrorist offender is essential when deciding upon the most suitable intervention and/or criminal sanction at all stages of criminal proceedings. A number of Member States have developed or are in the process of developing risk assessment tools and procedures in relation to terrorist offences that could serve as a source of inspiration for others.

> Eurojust recommends the sharing of best practice, tools and procedures in assessing the risk posed by terrorist offenders at pre-trial, trial and post-trial stages to facilitate the development in the Member States of efficient risk assessments and, subsequently, informed judicial decisions. The reflection may include the need for a common definition of dangerous FTFs and classification levels.

The availability and use of diversionary measures and alternatives to detention in terrorism cases

Differences exist in the legislation and practice in the Member States with regard to the availability and use of alternative (community) sanctions that can be applied in terrorism cases, together with specific conditions for the purpose of disengagement or de-radicalisation. Although a number of FTFs might be suitably placed in community-run programmes to counter their extremist beliefs, not all Member States have legislation and practice that allow judicial authorities to impose enrolment of a

terrorist offender in a de-radicalisation programme as a condition to alternatives to detention (in pretrial, trial and post-trial stages). Practice shows that, in some cases, courts imposed suspended prison sentences on FTFs without conditions for their enrolment in disengagement or de-radicalisation programmes. Furthermore, avoidance of prosecution with conditions *(i.e.* diversion) is possible only in some Member States and its application is not always possible in terrorism cases, being in principle limited to less serious offences.

> Eurojust recommends reflection on whether the justice systems of the Member States allow sufficient flexibility in dealing with terrorist offenders that do not pose a high risk (such as placement into de-radicalisation programmes instead of prosecution, alternatives to imprisonment, etc.). At the same time, consideration could be given to the need to (commonly) define the legal concepts of disengagement programmes and de-radicalisation programmes in the laws of the Member States to allow judicial authorities to impose such programmes in parallel or as alternatives to criminal sanctions.

The development of community-based programmes to be imposed by judicial authorities

Not all Member States have developed or are in the process of developing specific community-based programmes for de-radicalisation, disengagement and rehabilitation of terrorist offenders that can be imposed by judicial authorities in different stages of criminal proceedings. The exchange of best practice and assessments of the efficiency of such programmes in the Member States would be beneficial, particularly for the countries that have not started developing them.

> Eurojust recommends the sharing of community-based programmes for disengagement, rehabilitation and de-radicalisation of FTFs, including specific programmes for women and young offenders, or for self-radicalised individuals, if available. At the same time, it recommends the continuous exchange of experience in the implementation of such programmes, including results, evaluations, expectations, advantages, disadvantages and risks involved by the application of different measures and programmes.

Diverse practices in preventing and countering radicalisation in prisons

There is a variety of practices in the Member States to address the issue of radicalisation in prisons, including grouping vs. dispersal of radicalised prisoners and de-radicalisation programmes run by prison staff vs de-radicalisation programmes run by civil society organisations or by imams. No clear evidence of best practice exists, and, most probably, one solution cannot fit all situations. The exchange of best practice and assessments of the efficiency of such programmes in prisons in the Member States would be beneficial. In addition, training prison and probation staff in detecting signs of radicalisation and in implementing de-radicalisation programmes are ongoing in some Member States and may serve as inspiration for other countries.

> Eurojust recommends a continuous sharing of national practice in dealing with radicalisation inside the prisons, including specialised training programmes for prison and probation staff. the same time, it recommends an evaluation of the efficiency of such initiatives and practices that could eventually lead to a common approach in dealing with radicalisation inside the prisons in the Member States. At

If requested, Eurojust expresses its readiness to assist in further exchanges of best practice and in possible reflections related to the criminal justice responses to de-radicalisation.

3. Criminal justice response: a common approach

As emphasized in the Eurojust Reports of November 2013 and November 2014, a common approach is essential for an effective criminal justice response to the FTF phenomenon. The objectives of Chapter 3 are to underline once again the importance of working towards achieving a common understanding of the phenomenon and the need to harmonise legislation, to fully use the existing networks, platforms and mechanisms to increase the exchange of information and cooperation, to share experience and best practice and strengthen cooperation with third States. This chapter also presents an update of the initiatives of the Member States and EU institutions, agencies and bodies, including Eurojust, in this context.

3.1. The EU legal framework on combating terrorism

In the past three years, as indicated in Section 2.1, Eurojust's activities have included a regular gathering, update and sharing of information on the legal framework of the Member States in the field of terrorism and, particularly, in addressing the FTF phenomenon.

In 2014, Eurojust also consulted its national correspondents for terrorism matters on possible shortcomings of the EU legal framework in effectively addressing the evolving threat posed by FTFs. Subsequently, in the Eurojust Report of November 2014, Eurojust recommended that consideration be given to the revision of the 2008 Framework Decision on Terrorism65.

Moreover, the European Parliament underlined in its Resolution of 11 February 201566 the need to harmonise criminalisation of FTF-related offences and avoid prosecution gaps by updating the EU legal framework on terrorism. In addition, in April 2015, the Commission announced in the European Agenda on Security the launch of an impact assessment in 2015 with a view to updating the 2008 Framework Decision on Terrorism in 2016.

On the occasion of the 2015 tactical meeting on terrorism, the Office of the EU CTC referred to this important development in EU legislation on terrorism matters and to the added value of involving Eurojust, allowing it to play an active role in this context, based on its work and its experience, particularly in selecting and defining the crimes that need to be included in the revised EU legal framework. Eurojust reiterates its readiness to assist in the process and expresses its interest in contributing to the Commission's proposal to update the 2008 Framework Decision on Terrorism. Initial reflections in this respect were already presented in the Eurojust Report of November 2014. These reflections were based on Eurojust's work and experience and referred both to the expansion of the list of terrorist-related offences and to addressing problems related to the proof of existence of a terrorist group, as well as cases of self-motivated FTFs who travel to conflict zones.

65 Council Framework Decision 2008/919/JHA of 28 November 2008 amending Framework Decision 2002/475/JHA on combating terrorism.

66 European Parliament Resolution of 11 February 2015 on anti-terrorism measures (2015/2530(RSP)), point 26.

3.2. Enhanced information exchange

Information exchange between Member States and with the relevant EU agencies plays a key role in the efforts to address the evolving FTF phenomenon. To ensure an efficient law enforcement and judicial response, Member States need to make optimal use of existing EU platforms and services to share information and thus build synergies, coordinate and cooperate successfully. At the same time, ensuring that information shared can be used as evidence to reach convictions is important.

3.2.1. Operational cooperation and coordination

Due to the cross-border nature of the FTF phenomenon, the importance of efficient international cooperation and coordination has been widely acknowledged. Various tools and mechanisms existing at EU level have been reinforced and some new initiatives have been launched to enhance the information exchange channels and platforms and facilitate cooperation and coordination.

The competent national authorities have informed Eurojust that judicial cooperation between Member States in FTF cases is functioning well.67 Practitioners from several Member States have reported swift execution of requests for mutual legal assistance and European Arrest Warrants. In some cases, direct contacts between the requesting and requested prosecution offices, or the assistance of Eurojust, have successfully facilitated cooperation between national authorities.

The number of cases concerning investigations related to FTFs referred to Eurojust for assistance has increased from three cases in 2014 to 14 cases so far in 2015. Experience has demonstrated that involving Eurojust at an early stage of investigations and prosecutions is particularly beneficial. Eurojust has established itself as a centre of legal and judicial expertise. Eurojust's main operational tools – coordination meetings and coordination centres – serve as a platform to determine investigation and prosecution strategies and to provide real-time support during joint action days. Eurojust has prioritised the use of coordination meetings in FTF cases. Five such meetings have been held in the past year, leading to concrete operational results.

The discussions during one of those coordination meetings allowed to underline all possible judicial and practical issues in a complex trans-border case and to agree on the setting up of Eurojust's first coordination centre on a terrorism case in November 2015. The case concerned suspected leaders and members of a terrorist organisation, with a structure active in Germany, Switzerland, the UK, Finland, Italy, Greece, Sweden, Norway, Iraq, Iran and Syria and with cells communicating and operating via the Internet. The organisation provided logistical and financial support to recruiting FTFs to be sent to Syria and Iraq, also with the intent of training them for the future conflict in Kurdistan. The coordination centre was set up at Eurojust to manage international cooperation among the authorities involved in this joint operation during the common action day. As a result, 13 persons were arrested in Italy, Norway and the UK and charged with international terrorism. In addition, the Italian, German, Finnish, Norwegian, Swiss and UK authorities conducted searches of 26 premises and seized several items, including electronic devices and documents. Some suspects could not be located, as they are believed to have travelled to the Middle East (Syria and Iraq) to join jihadist organisations as FTFs.

67 Priorities identified by Eurojust in strategic and operational cooperation with third States are highlighted in Section 3.5 of this report.

Since 2014, Member States have reported an increase in the number of joint investigation teams (JITs) set up in FTF cases. As of June 2015, seven JITs were signed between Belgium and France and three between France and Spain. JITs are valuable tools that enable the involved parties to share information and request investigative measures without the need for formal requests. Eurojust will continue to promote the added value of establishing a JIT in FTF investigations, including JITs with the participation of third States. Eurojust also encourages national authorities to make full use of Eurojust's legal, operational and financial support in the setting up and functioning of such JITs.

On-Call Coordination (OCC) is another tool that Eurojust offers to national authorities. It enables Eurojust to receive and process at all times requests referred to it and intervene in urgent cases. OCC is contactable, through a single OCC contact point, on a 24 hour/7 day basis.

In addition, Eurojust provides feedback to national authorities, including links with terrorism cases and detection of criminal networks, by means of information exchange, in conformity with Council Decision 2005/671/JHA on the exchange of information on terrorist offences and Articles 13 and 13a of the Eurojust Decision.68 Eurojust will continue to use the *Terrorism Convictions Monitor* (TCM) to follow up on information on relevant convictions and acquittals that have been shared with Eurojust.69

Eurojust may assist in solving legal and judicial issues related, for example, to electronic evidence, as well as in financial investigations in FTF cases. Eurojust may also issue, in cases referred to it, opinions on conflicts of jurisdiction as regards the undertaking of investigations or prosecution.

Eurojust has been associated with Europol's Focal Point Travellers since April 2015 and has already sent contributions to the Europol database and invited representatives of the Focal Point to several coordination meetings. Eurojust's association with all Europol Focal Points on terrorism is essential to ensure both judicial follow-up on information exchanged within the Focal Point and timely and efficient support to investigations and prosecutions in the Member States.70

Eurojust welcomes the setting up of an IRU at Europol as a development of the 'Check the web' project.71 As mentioned above, ensuring proper judicial follow-up is indispensable, also in view of the tasks of the IRU, particularly when intelligence and administrative actions would require subsequent investigation and prosecution, or when taking down websites would require judicial involvement. Eurojust can facilitate the necessary judicial follow-up.

Eurojust considers the cooperation with Europol fundamental. Therefore, Eurojust will analyse the possibilities to increase the sharing of information. The possibilities to enlarge the legal basis for an extended exchange of information between the two agencies could also be explored.

68 Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime as amended by Council Decision 2003/659/JHA and by Council Decision 2009/426/JHA of 16 December 2008 on the strengthening of Eurojust.

69 The *Terrorism Convictions Monitor* (TCM) is a Eurojust LIMITED report, which provides a regular overview of terrorism-related convictions and acquittals throughout the EU, legal updates, as well as judicial analysis of relevant judgements. The TCM is based on open source information and information provided by the national authorities in the implementation of Council Decision 2005/671/JHA. The report has been produced since 2008 and is published three times a year.

70 Eurojust is associated with Focal Points TFTP, Travellers and Maritime Piracy. Feasibility studies for association with Focal Points Hydra and Dolphin were submitted in February 2013, with as yet no positive outcome.

71 See also Section 2.2.1 of this report.

Practitioners attending the 2015 tactical meeting on terrorism also acknowledged the importance of using the Schengen Information System (SIS). Systematic and thorough information-sharing via the SIS would enable the different services in the Member States to intervene effectively. Some counter-terrorism prosecutors have also stressed the importance of storing data on identification documents, such as passport numbers, in the SIS. The storing of document-related data should also be maintained, even after a person is presumed dead, since the documents may be re-used by other FTFs to travel into and outside Europe.

3.2.2. Sharing experience and best practice

In addition to operational cooperation, sharing experience and best practice across the EU and beyond may provide substantial added value in reinforcing national FTF investigations and prosecutions. To promote networking opportunities and foster cooperation, Eurojust organises annual strategic meetings of the national correspondents for Eurojust for terrorism matters, appointed in all Member States, Norway and Switzerland. During those meetings, the national correspondents discuss emerging terrorist phenomena and issues of common interest. Eurojust will continue to use these meetings to raise awareness about various aspects of the fight against terrorism and provide a platform to exchange views, experience and best practice.
Eurojust will further prioritise the targeted discussions on the criminal justice response to the FTF phenomenon during its regular tactical meetings on terrorism. These meetings bring together counter-terrorism experts from the judiciary and law enforcement from the Member States and some third States, JHA agencies and the Office of the EU CTC. The tactical meetings provide a forum for the exchange of information and insight into specific phenomena, terrorist organisations, *modus operandi*, etc. They are important tools to foster dialogue and promote the sharing of lessons learned and prosecution successes.

Eurojust will continue to analyse the criminal justice response to the FTF phenomenon. The added value of Eurojust's analysis has been confirmed by practitioners on many occasions, including during the 2015 tactical meeting on terrorism, during which a Member State representative referred to a recent Eurojust analysis as being very useful to identify similarities with a case that was under trial at a national court at the time.
The analysis of judgements rendered in the Member States and in some third States reveals important aspects of the *modus operandi* used by (aspiring) FTFs, such as travel and routes to the conflict zone, facilitating factors, possible structured recruitment, facilitation and/or financing, receiving combat training, participation in the fighting, return to Europe, etc. Judgements may also be used to draw lessons learned regarding early indicators of radicalisation.

Eurojust will focus in particular on the analysis of judgements regarding FTFs, recruiters and facilitators who have in the past been convicted of terrorist offences. The analysis will be shared with the Member States via the TCM or other dedicated reports. As more jurisprudential experience is acquired across Europe, Eurojust will be able to extend its comparative analysis of national approaches to legal qualifications of the alleged acts, charging and sentencing.

Eurojust will reinforce the exchange of experience and best practice by making optimal use of other existing networks, such as the Consultative Forum of Prosecutors General and Directors of Public Prosecutions of the Member States of the EU, the Eurojust Contact Points in third States and the European Judicial Training Network (EJTN). Eurojust will also continue its commitment to and active involvement in strategic dialogue and exchange of experience within other *fora* and initiatives under the auspices of the EU, the Council of Europe and the United Nations.

3.2.3. Eurojust National Coordination System (ENCS) and other platforms

The Eurojust National Coordination System (ENCS) is set up to ensure the coordination of the work of the various Eurojust national correspondents and contact points. One of its major objectives is to enhance information sharing with Eurojust. To facilitate the process, Eurojust is adapting its Case Management System to enable future access by ENCS users. Secure network connections have been set up with a number of Member States, ensuring the safe exchange of information between Eurojust and the Member States.
The added value of a well-functioning ENCS has become particularly evident in the field of counter-terrorism. The national correspondents for Eurojust for terrorism matters, who are part of the ENCS, have been instrumental in ensuring timely and efficient exchange of information with Eurojust. Via the national correspondents for terrorism matters, Eurojust receives information on prosecutions and convictions for terrorist offences in conformity with Council Decision 2005/671/JHA on the exchange of information on terrorist offences. The information provided to Eurojust is to include also links to other relevant cases, requests for judicial assistance, including letters rogatory, addressed to or by another Member State, and the relevant responses. The annual strategic meetings on terrorism, mentioned in Section 3.2.2, form an integral part of the broader efforts to enable the ENCS to reach its full potential and effectiveness.

Eurojust will continue to encourage the sharing of information on specific cases, current developments and best practice, for this crime type as well as other priority crime types. As requested by practitioners during the strategic meeting on cybercrime hosted by Eurojust on 19-20 November 2014, Eurojust is working on ways to support the setting up of a judicial cybercrime network.72 The network would enable prosecutors and judges to share expertise and knowledge, as well as to exchange best practice through case examples of court decisions. It would help to overcome legal differences and obstacles. The possibility to set up a cyber-terrorism platform within the network could also be explored. Similar networks or platforms concerning other types of crime may also be considered, as criminal phenomena continue to evolve and the need for enhanced information sharing becomes more evident.

72 On 25 November 2015, together with the Dutch authorities, Eurojust will host a meeting to discuss further steps in the setting up of the judicial cybercrime network and the possible assistance of Eurojust.

3.2.4. Access to information on convictions

Council Framework Decision 2008/675/JHA on taking account of convictions in the Member States of the European Union in the course of new criminal proceedings establishes an obligation for Member States to consider all convictions handed down in other Member States, irrespective of the nationality of the convicted person.

Access to information on convictions in the Member States is vital for investigations, prosecutions and judicial cooperation, particularly in terrorism and organised crime cases. In FTF cases, information on convictions is necessary and helpful for various reasons: (i) for the purpose of determining the type and length of sanction and the arrangements for its enforcement in concrete cases; (ii) for revealing to law enforcement and judicial authorities possible links between, on the one hand, the terrorism investigation or trial under consideration and, on the other hand, previous convictions for crimes such as drug trafficking, trafficking in weapons, murder or terrorism itself; and (iii) subsequently, for assisting the national authorities, Eurojust and Europol in the possible detection and dismantling of networks that could prove to be multi-criminal, multi-national and/or multi-ethnic, and in identifying and addressing trends and patterns in the field of terrorism and its financing. Having regard to the importance of access for national authorities to information on convictions, the European Criminal Records Information System (ECRIS)73 was set up in the majority of Member States in April 2012. ECRIS establishes an electronic interconnection of Member States' criminal records databases to facilitate an easy and speedy computer transfer of convictions on EU nationals upon request. ECRIS does not yet operate in all Member States at the time of the publication of this report; three have not implemented it at all. According to the Commission74, ECRIS works efficiently with regard to EU nationals' convictions, which are stored and centralised in the Member State of nationality of a convicted person.

However, ECRIS does not support information on convictions of third country nationals (TCN), even when they reside in the EU. Therefore, when information on convictions of TCN is needed to comply with the provisions of Council Framework Decision 2008/675/JHA, judicial authorities will not be able to determine whether a TCN was previously convicted in other Member States without consulting all of them. The consultation may require a mutual legal assistance request.

To overcome the burden caused by the lack of access to information on convictions of TCN, the creation of a system designed to supplement ECRIS has been under consideration for a number of years. The Riga Joint Statement of 29-30 January 2015 underlined once again the importance of the effective use and, if necessary, the further development of ECRIS considering the importance of the judicial aspect of the fight against terrorism in general, and the FTF phenomenon in particular.

[73] Council Framework Decision 2009/315/JHA of 26 February 2009 on the organisation and content of the exchange of information extracted from the criminal record between Member States and Council Decision 2009/316/JHA of 6 April 2009 on the establishment of the European Criminal Records Information System (ECRIS) in application of Article 11 of Framework Decision 2009/315/JHA. http://ec.europa.eu/justice/criminal/european-e-justice/ecris/index_en.htm.

[74] 14907/15 GD/ec

Currently, a fully and efficiently working ECRIS and its enhancements are even more necessary, considering the increasing number of cases of FTFs being investigated and prosecuted in the EU, as well as the increasing number of migrants who continue to arrive in the EU, including through smuggling, and the possible infiltration of serious offenders, such as smugglers or terrorists, among the migrants75.

Under these circumstances, efforts are needed as a matter of urgency to ensure that the judicial authorities in all Member States have easy and fast access to information on the criminal records of all persons subjected to criminal proceedings, regardless of whether they are EU nationals or TCN.

The 2015 tactical meeting on terrorism also discussed the importance of easy access to information on convictions and the need to develop ECRIS to effectively address the increased threat of FTFs involving TCN.

Eurojust has often expressed its interest, support and readiness to contribute to the development of a mechanism for the exchange of criminal records in relation to TCN convicted in the Member States. For example, in the context of Eurojust's proposals to enhance information sharing and operational cooperation in the fight against terrorism sent in March 2015 to COSI76, Eurojust advanced its 'support[s] [to] the further development of […] ECRIS to assist the Member States in accessing information on convictions of third-country nationals.' In addition, Eurojust expressed its readiness 'to take part in a discussion regarding a European index of convicted third-country nationals' and its availability to 'already structure information it receives on convictions of third-country nationals in relation to terrorist offences by virtue of Council Decision 2005/671/JHA.'

3.3. Data retention

In the Eurojust reports of November 2013 and November 2014, Eurojust indicated that Member States encounter major challenges due to restrictions on data retention. In 2015, as mentioned in Chapter 2 of this report, some Member States identified solutions to address these challenges. Nevertheless, difficulties in this area continue to be faced by national authorities, together with challenges that have arisen, particularly due to the legal uncertainty created by the invalidity of the Data Retention Directive77 by the CJEU78 on 8 April 2014.

In this respect, *see also* the Conclusions of the meeting of the Consultative Forum of Prosecutors General and Directors of Public Prosecutions of the Member States of the EU held at Eurojust on 12 December 2014, and, in particular, conclusion no. 7 on *THB & illegal immigrant smuggling involving migration flows through the sea.* Council document 7445/15.

Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC. Judgement in Joined Cases C-293/12 and C-594/12.

This situation is currently being assessed and addressed by the Member States. For example, Eurojust was informed that a Data Retention and Investigatory Powers Act (DRIPA)79 was adopted in July 2014 in the UK as emergency legislation introduced in response to the judgement of the CJEU. DRIPA provides a legal basis on which domestic communications companies can continue to retain certain types of communications data. DRIPA obliges communications service providers (including those providing internet and cloud-based services) in the UK to comply with their obligation to undertake interception or provide communications data in response to lawful requests, regardless of the location of those companies. In February 2015, DRIPA was amended by the Counter-Terrorism and Security Act to oblige communications service providers to retain data that would enable investigators to identify an individual or a device using an IP address.

Eurojust is aware of the importance of data retention in the fight against serious crime in general, and of the possible far-reaching implications of the annulment of the Data Retention Directive for criminal proceedings and judicial cooperation in particular. In April 2015, Eurojust began analysing the legal framework in the Member States and the current challenges faced by practitioners, primarily via a questionnaire circulated to the 28 National Desks of Eurojust and a thematic discussion held in the College on 22 September 2015. Eurojust's analysis focused on the following issues: (i) the legal and practical impact of the Data Retention Directive judgement on national data retention laws; (ii) the admissibility and reliability of evidence collected through data retention schemes that essentially replicate the annulled Data Retention Directive; and (iii) the effect of the current complex and diversified framework on data retention on judicial cooperation in criminal proceedings.

The analysis carried out by Eurojust so far reveals that the fragmented data retention schemes in place undermine criminal investigations and proceedings. Of particular concern are the significant number of challenges to the admissibility of evidence and the current absence in several Member States of a defined legal data retention framework upon which law enforcement and judicial authorities may efficiently and rapidly operate. The current fragmented legal framework may pose additional difficulties in judicial cooperation, due, for example, to the different data retention periods applicable in the Member States involved. Moreover, some Member States are concerned that – while not yet judicially challenged – their national laws on data retention may not comply with the requirements enshrined in the Data Retention Directive judgement.

Eurojust is currently cooperating and sharing the outcome of its analysis on data retention with a number of interested EU actors, such as the Council Working Party on General Matters and Evaluations (GENVAL) and the Fundamental Rights Agency (FRA).

79 http://www.legislation.gov.uk/ukpga/2014/27/crossheading/retention-of-relevant-communications-data/enacted.

Considering the importance of data retention schemes in the fight against serious crime, the Luxembourg Presidency of the European Union and Eurojust have decided to arrange for a thorough discussion during the workshop devoted to this matter on 10 December 2015 and at the meeting of the Consultative Forum of Prosecutors General and Directors of Public Prosecutions of the Member States of the EU on the following day.

3.4. Links between terrorism and organised crime

Links between terrorism and organised crime have been extensively researched over the past years. Various reports published recently examine the link between FTFs or terrorist groups active in Syria/Iraq and organised crime groups both in Europe and beyond.

Practitioners from some Member States have reported to Eurojust that they do not generally see the link between terrorism and organised crime in their criminal investigations. In the case of religiously inspired terrorism and FTFs in particular, the lack of such link may be due to the rigid religious views of FTFs, which are deemed incompatible with other criminal lifestyles.

Practitioners from other Member States have observed occasional links between terrorism and organised crime. These links are established for practical purposes and may not necessarily involve long-term interaction. As mentioned in Section 3.3 and as also discussed during the 2015 tactical meeting on terrorism, the possible use of migrant smuggling channels and networks by FTFs to return to Europe causes concern, especially in view of the unprecedented flow of migrants to the Member States over the past year. Terrorists may also seek contact with criminals to gain access to firearms. Some instances have been reported of deactivated firearms sold and then made operational by criminals, who later trade them on the black market.

Some terrorism cases referred to Eurojust for assistance reveal a *modus operandi* in which terrorists make use of organised crime to facilitate or finance their activities. In 2010, for example, Eurojust coordinated an operation conducted in several Member States against an organised crime group involved in migrant smuggling and drug trafficking for the purpose of financing religiously inspired terrorism. In a more recent case, members of a separatist terrorist organisation have been investigated for suspected collection of funds from real estate investments and financial transactions in another Member State. In another case, an anarchist group has allegedly used violent robberies to finance its activities. FTF cases supported by Eurojust over the past two years also show possible links with trafficking in human beings towards Syria, or forgery of documents used to allow travel to Europe.

The European Agenda on Security80, published on 28 April 2015, states that terrorism, organised crime and cybercrime are 'clearly interlinked and cross-border threats, and their multi-faceted and international dimension shows the need for an effective and coordinated response at EU level'. As mentioned in Chapter 2 of this report, the Internet is often used for terrorist propaganda, recruitment and financing. The Dark Web enables anonymous interactions between terrorists and criminals who may use it to trade in goods and services. These challenges need to be addressed by a common, coordinated effort. As pointed out by counter-terrorism prosecutors during recent meetings at Eurojust, common efforts should also seek to disrupt illicit financial flows to terrorist networks and harmonise rules on decommissioned arms.

3.5. Cooperation with third States

As underlined in the Council Conclusions on counter-terrorism of 9 February 2015 and in the Statement of the EU Heads of State and Government of 12 February 2015, cooperation with key third States constitutes one main area of action in counter-terrorism, particularly in the Middle East and North Africa (MENA) region and in the Sahel, and also in the Western Balkans. This section provides an update on Eurojust's work and main activities to improve strategic and operational judicial cooperation with third States in fighting terrorism.

The enhancement of judicial cooperation with third States in cases of FTFs is essential. Difficulties continue to be encountered by national authorities in this area. Eurojust plays an important role in addressing them, as reported by a number of national correspondents for Eurojust for terrorism matters81 in the responses to the 2015 Eurojust questionnaire.

Eurojust has continued to prioritise the strengthening of cooperation with third States in counter-terrorism to increase its assistance to national competent authorities in rendering their investigations and prosecutions in cases involving third States. Since the beginning of 2015, the number of terrorism cases involving third States referred to Eurojust for assistance has increased to eight, compared to three such cases in 2014. Representatives from third States participated in five coordination meetings and in one coordination centre on terrorism cases supported by Eurojust in 2015.

In March 2015, a Swiss Liaison Prosecutor was posted at Eurojust to enhance well-established operational cooperation with Switzerland. This posting was followed in September 2015 by the appointment of a Swiss national correspondent for Eurojust for terrorism matters based in Switzerland.

Within the framework of operational cooperation with third States, the 2015 tactical meeting on terrorism facilitated exchanges of experience and best practice among practitioners investigating and prosecuting FTF cases within and outside Europe. This meeting gathered specialised prosecutors and investigators not only from the Member States, but also from Albania, Bosnia and Herzegovina, Montenegro, Norway, Serbia, Switzerland, Turkey and the USA, as well as a French liaison magistrate posted in Tunisia.

80 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, COM (2015) 185 final.

81 Including from BE, DE, IE, NL and SI.

In 2015, Eurojust continued to negotiate cooperation agreements with a number of third States. A cooperation agreement between Eurojust and Ukraine, allowing for the exchange of operational personal data, was approved by the College of Eurojust on 10 March 2015 and is pending approval of the Council of the EU. In addition, a delegation from the Ukrainian Security Service visited Eurojust in September 2015 to discuss ways to increase the flow of information and cooperation in counter-terrorism cases, including the appointment of a contact point for Eurojust at the Ukrainian Security Service.

A cooperation agreement between Eurojust and Montenegro, also allowing for the exchange of operational personal data, was approved by the College of Eurojust on 9 June 2015 and is pending the approval of the Council of the EU.

Eurojust is actively working towards enhanced cooperation with MENA countries. On 21 July 2015, Eurojust sent letters to the MENA countries, inviting them to appoint Eurojust contact points (if not yet designated), including a specific Eurojust contact point for counter-terrorism matters. Following these letters, contact points for Eurojust have now been nominated in Algeria, Iraq, Jordan, Lebanon, the Palestinian Authority and Saudi Arabia in addition to those already appointed in Egypt, Israel and Tunisia. In addition, Eurojust is discussing different other possibilities to step up judicial co-operation with the MENA countries. Eurojust has continued in 2015 to discuss the posting of Eurojust liaison magistrates in third States, as well as discussing the role of a liaison magistrate and the criteria for selecting countries (e.g. the need to address the phenomena related to the travel of FTFs). Eurojust will finalise the technical work by adopting, in consultation with the Commission, the specific legal framework implementing the Eurojust Decision in this respect.

The posting of Eurojust liaison magistrates to third States is subject to an agreement with a third State that may or may not provide a legal basis for the exchange of personal data. In this respect, an agreement that does not provide for the possibility to exchange personal data could be concluded rather quickly. However, posting a Eurojust liaison magistrate in a third State who would not be entitled to exchange operational personal data might not bring sufficient added value. On the other hand, the conclusion of an agreement that would allow the exchange of personal data would require considerably more time due to the legal requirements in relation to the need for the third State concerned to comply with EU data protection standards.

A meeting[82] with Eurojust Contact Points and Liaison Magistrates appointed by Member States, organised by and hosted at Eurojust, was held on 16-17 October 2014. The objectives of the meeting were to discuss complementarity, synergies and cooperation by exchanging views on case examples, raising awareness of the role of Eurojust, including the exchange of information with third States, identifying possible ways to improve working methodologies, and following up on the previous meeting, which took place in 2007. A total of 18 third States were represented, together with representatives of the Ibero-American Network of International Legal Cooperation (IberRed), the Commission and the EJN Secretariat. One of the main outcomes of the meeting was the *Guide on Cooperation between Eurojust and Eurojust Contact Points*.

[82] The outcome report of the meeting was published as Council document 6417/15.

On 8-9 October 2015, Eurojust hosted a seminar on the application of the Mutual Legal Assistance and Extradition Agreements between the European Union and the United States of America. In addition to the review of the state of play of the agreements, participants explored ways to increase success in preserving, obtaining and admissibility of electronic evidence, in working with JITs, in confiscation, asset recovery and sharing of assets, as well as main challenges in executing extradition requests.

4. Conclusions and recommendations

Building on national experiences shared with Eurojust and Eurojust's analysis of the evolution of the FTF phenomenon and the criminal justice response, several conclusions and recommendations have been identified. They confirm conclusions drawn in the previous Eurojust reports on FTFs and further elaborate on possible follow-up actions in priority areas selected on the basis of their relevance to the mandate and powers of Eurojust:

1) The complexity and dynamics of the FTF phenomenon require a common, coordinated and comprehensive approach at national, EU and international level.

To tackle the FTF phenomenon in an efficient manner, a sustained policy needs to be pursued to address the root causes of radicalisation, prevent and disrupt travel for terrorist purposes, and successfully deal with returnees. This policy needs to be proactive and resilient. It requires the coherent and complementary action of all relevant government and non-government actors at national level, as well as the consolidated efforts of national authorities from different disciplines (e.g. law enforcement, customs and judiciary), EU and other bodies at international level.

2) Counter-terrorism legislation and other relevant national laws have been further developed or are under review, also in light of the EU and international legal frameworks. However, due to the fragmentation of national legal frameworks regarding certain types of conduct that are criminalised differently or not at all in some Member States, challenges persist in prosecutions of FTFs and in the execution of MLA requests. These factors hamper the effort to achieve a common approach towards the FTF phenomenon.

Eurojust recommends that the update of the EU Framework Decision on combating terrorism consider carefully all concerns of the judiciary with regard to the adequacy and impact of legislation on their investigations and prosecutions of FTFs. To this end, Eurojust expresses its interest and availability to contribute to the revision of the EU legal framework on combating terrorism based on its work and experience, helping to identify practitioners' needs.

3) Efforts to ensure a solid criminal justice response to the FTF phenomenon, particularly with regard to returnees from conflict zones, have resulted in an increased number of prosecutions across Europe; however, national authorities still face difficulties, especially in proving terrorist intent and collecting evidence on acts committed in the conflict zone.

In cases in which national authorities decide to prosecute suspected FTFs, securing strong evidence and building solid prosecution cases remain challenges, regardless of whether investigations and prosecutions concern individual FTFs or terrorist groups. Based on its mandate and powers and building on its valuable experience in supporting terrorism cases, Eurojust will continue to facilitate the coordination of cross-border investigations and prosecutions and provide legal and judicial expertise to render investigations and prosecutions successful. Strategic and operational cooperation with third States in countering terrorism will remain a Eurojust priority. Eurojust will also continue to promote exchange of experience, best practice and lessons learned from FTF investigations and prosecutions. Through its TCM, Eurojust will further analyse relevant jurisprudence experience across Europe, particularly with regard to returnees, and will continue to contribute to awareness raising and building a better understanding of the FTF phenomenon at judicial level.

4) **Gathering, sharing and admissibility of electronic evidence remain challenges. Exchange of experience among national authorities may have significant added value and may also benefit from a targeted coordination at EU level.**
The adoption of a holistic approach and the application of complementary techniques may be beneficial for national authorities when dealing with difficulties related to the growing sophistication of technology and electronic means of communication used by FTFs and terrorist groups. As the number of FTF investigations and prosecutions increases, the sharing of best practice in using electronic evidence in court becomes crucial. Therefore, Eurojust will continue to encourage and facilitate the exchange of experience and best practice with regard to the gathering, sharing and admissibility of electronic evidence, including in the framework of the setting up of a judicial cybercrime network supported by Eurojust. Moreover, Eurojust will further analyse the challenges faced by legal practitioners due to restrictions on data retention, including the legal and practical impact of the Data Retention Directive judgement on national data retention laws and the effect of the current complex and diversified framework on data retention on judicial cooperation in criminal proceedings.

5) **Member States need to make optimal use of existing EU platforms and services to share information and step up cooperation, including with key third States.**
To ensure an efficient law enforcement and judicial response to the FTF phenomenon, Member States need to intensify their cooperation and coordination. Exchange of information plays a crucial role in addressing challenges in FTF investigations and prosecutions and needs to be enhanced. Eurojust shall continue to closely work with relevant JHA agencies to enhance information exchange and cooperation based on complementarity of tasks and mandates. Effective criminal justice responses to the FTF phenomenon call for easier and speedier access to information on convictions of both EU and third country nationals, including by way of a legislative instrument extending ECRIS to third country nationals. Efforts are needed as a matter of urgency to ensure the full implementation, efficient functioning and development in all Member States of ECRIS to facilitate access to information on convictions of third country nationals. Eurojust reiterates its readiness to contribute to these important developments, which are crucial for efficient FTF investigations and prosecutions, as well as for the identification of and follow up to possible links between terrorism and other serious crimes.

6) **Efforts are being made by the Member States to identify innovative judicial responses to the threats posed by FTFs, including various measures to tackle the sensitive and complex problem of radicalisation inside and outside prisons.**
Experience is still limited with regard to the development of de-radicalisation and disengagement programmes in the Member States and the imposition of such programmes by judicial authorities in pre-trial, trial and post-trial stages. Differences exist in the legislation and/or practice of the Member States with regard to the possibility to differentiate between different types of terrorist offenders and to apply alternative sanctions or diversion from prosecution for certain categories of FTFs. Eurojust encourages reflection on whether national justice systems allow sufficient flexibility in dealing with different types of conduct and levels of threat posed by FTFs. Consideration could be

also given to whether a legal definition of the concepts of ‘disengagement’ and ‘de-radicalisation’ would be needed at national or EU level. Eurojust recommends the sharing of best practice and tools used to assess the risk posed by FTFs to inform judicial decisions, as well as national experience in developing, running and evaluating community and prison-based programmes for disengagement and de-radicalisation of FTFs.

Addendum

This addendum contains information on relevant developments, in particular of legislative nature, that have taken place or were announced after Eurojust has finalised the drafting of this report. It also underlines Eurojust’s commitment to continue prioritising its assistance to the Member States in fighting the FTF phenomenon, in particular after the major terrorist attacks in Paris.

In this respect, Eurojust welcomes the signing on 22 October 2015 by the EU and by a number of Member States of the additional Protocol to the Council of Europe's Convention on the Prevention of Terrorism. Once ratified, this instrument would further assist the Member States in fighting the FTF phenomenon, by addressing the early preparations of terrorist acts, preventing and curbing the travel of FTF to armed conflict zones.

Furthermore, Eurojust welcomes the Conclusions of the Council on Counter-Terrorism adopted on 20 November 2015 and calling for urgent measures, including:

- Before the end of 2015, a Commission’s proposal for a directive updating the EU Framework Decision on Combating Terrorism to implement into EU law both the UNSCR 2178 (2014) and the additional Protocol to the Council of Europe's Convention on the Prevention of Terrorism. As mentioned in this report and its conclusions, Eurojust is ready to assist in the process and expresses its interest in contributing to the Commission’s proposal. Initial reflections, based on Eurojust’s work and experience, were already presented in the Eurojust Report of November 2014.
- Before January 2016, a Commission’s proposal to extend ECRIS to third country nationals. As mentioned in this report and its conclusions, it is very important to ensure that the judicial authorities in all Member States have easy and fast access to information on the criminal records of all persons subjected to criminal proceedings, regardless of whether they are EU nationals or TCN. Eurojust may contribute to the development of ECRIS to extend it to TCN. In this context, the possibility to include fingerprints in ECRIS in supporting criminal record exchange should also be explored.
- On 1 January 2016, the launch of the European Counter-Terrorism Centre at Europol with participation from Eurojust. In this context, Eurojust expresses its commitment to be fully involved in the setting up and functioning of this Centre to improve coordination of investigations and prosecutions in terrorism cases.

Moreover, Eurojust welcomes the Council Conclusions on enhancing the criminal justice response to radicalisation leading to terrorism and violent extremism adopted on 20 November 2015. Eurojust took note that it is called to continue monitoring trends and developments, by use of its TCM, of the applicable legislative framework and relevant jurisprudence in the Member States as regards terrorism and violent radicalisation, including the use of alternatives to prosecution and detention, and thus contribute to the further development of criminal policy with regard to FTFs.

Last but not least, the dreadful attacks in Paris that took place on 13 November 2015 have demonstrated once more the importance of information exchange, cooperation and coordination to address the threat posed by FTFs. To this end, Eurojust calls for full compliance of the Member States with the obligations to exchange with Eurojust information concerning prosecutions and convictions for terrorist offences, stemming from Council Decision 2005/671/JHA of 20 September 2005 on the exchange of information and cooperation concerning terrorist offences. It also calls for the Member States' competent authorities to make optimal use of its coordination and facilitation tools in order to address the challenges they face in complex, trans-border cases in an efficient manner.

Eurojust expresses its commitment to pursue more vigorously a common approach and joint action against terrorism. Eurojust will continue to prioritise its operational, tactical and strategic support to the Member States' authorities in their efforts to prevent acts of terrorism, prosecute and successfully bring FTFs to justice. At the same time, Eurojust would like to highlight the importance of being allocated sufficient resources, including financial resources, to adequately support the judicial cooperation and coordination in the fight against terrorism.