

Combating terrorism: criminalisation of offences linked to terrorist activities. Framework Decision

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The Commission presented a report on the implementation of Council Framework Decision 2008/919/JHA of 28 November 2008 amending Framework Decision 2002/475/JHA on combating terrorism.

In response to evolving threats of radicalisation, recruitment and terrorism, **three new offences** of public provocation, recruitment and training for terrorism were introduced by Framework Decision 2008/919/JHA (2008 Framework Decision).

This report focuses on the measures Member States have taken so far to implement the new offences, including the related ancillary offences and the respective penalties.

Member States were obliged to adopt and notify implementing measures by 9 December 2010. The Council should then have assessed, by 9 December 2011, whether Member States had taken the necessary measures to comply with 2008 Framework Decision. As of 1st December 2014, the Commission will have the competence to appraise Member States' compliance and to initiate infringement proceedings if necessary.

The main findings of the report are as follows:

Transposition: most Member States have **criminalised public provocation, recruitment and training for terrorism**, even if in some cases the scope of the provisions is more limited than intended by 2008 Framework Decision. Most Member States had to adopt specific provisions since the preparatory or inchoate behaviour had not been explicitly criminalised and did not fall under the general provisions relating to participation and attempt. The Commission notes that two Member States (**IE** and **EL**) have not yet implemented the Framework Decision and urges them to adopt the necessary legislative measures without further delay.

While most Member States are broadly in compliance with FD 2008, there are a **number of potential concerns in particular in relation to the criminalisation under national provisions of 'indirect provocation' and recruitment of 'lone actors'**. Member States are invited to provide the Commission with additional explanations and information to allow it to complete its assessment.

The **level of penalties vary significantly between Member States**. The minimum term for imprisonment ranges from below one year to up to 20 years. Similarly, the maximum term varies between two and 25 years or life imprisonment. Fines can be an alternative (DK, DE, IE, LU, NL, UK) or an additional penalty to imprisonment (BE, IE, FR, LU, UK).

Over half of Member States impose the same penalty for all three new offences (BE, BG, CZ, EE, IE, HR, LU, HU, MT, PL, SI, SK, SE). In Member States with different penalties for the three new offences, the penalties for public provocation are in general lower than for the other two offences (DK, DE, ES, IT, CY, LV, LT, PT, RO, FI, UK).

Fundamental rights: discussions on the impact of counter terrorism legislation on fundamental rights had taken place mostly in relation to the adoption of measures implementing 2002 Framework Decision and to

a lesser extent in relation to the new offences. Discussions related to inter alia issues of legal certainty, the respect of the principle of proportionality of sanctions for offences of a preparatory nature and the potential tension between freedom of speech and the offence of public provocation.

While fundamental rights concerns may play a role in the interpretation and application of the national provisions establishing the three new offences, **they do not appear to have made it necessary to limit the scope of the relevant legal provisions under national law.**

In their notifications to the Commission, Member States did not invoke Article 2 or 3 of FD 2008 in order to limit the scope of the new terrorist offences or maintain fundamental rights concerns as a reason not to implement the new offences.

The Commission notes that stakeholders advocate enhanced **exchanges of experiences and practices between prosecutors and judges** and see the need to integrate law enforcement efforts into a more comprehensive approach which should include early prevention of radicalisation and recruitment to terrorism.

The Commission encourages Member States to **monitor and evaluate the application** of criminal law provisions on terrorism in practice. In doing so, consideration should be given to the protection of fundamental rights as well as the broader policy approach of tackling radicalisation and recruitment to terrorism.