

Combating terrorism. Framework Decision

2001/0217(CNS) - 08/06/2004 - Follow-up document

Under provisions established in the Framework Decision, the European Commission is obliged to prepare a report on measures taken by the Member States to comply with the Framework Decision. The deadline for the submission of the Commission Report should be end December 2003 on the basis of information received from the Member States. However, many Member States failed to meet their deadline, hence the Commission report is, in some areas incomplete (no information was forwarded from Luxembourg and the Netherlands). Further, the Commission has had to include information, which was sent late. The report, therefore, notes that a factual assessment and any conclusions drawn are based on incomplete information. A Commission staff working paper linked to this report details national measures taken to comply with the Framework Decision and includes tables regarding national transposition provisions. In detail, the report makes the following assessment.

Article 1: Terrorist offences and fundamental rights and principles. Eight Member States have specifically incriminated terrorist offences as a separate category of crimes, although there are differences as to the extent and method of implementation.

Article 2: Offences relating to a terrorist group. Most Member States have or will have legislation that separately incriminates terrorist acts committed in relation to terrorist groups.

Article 3: Offences linked to terrorist activities. Only four Member States appear to have legislation that fully complies with the obligations of this Article. Whilst Ireland should be able to comply with Article 3, once its legislation enters into force, other Member States will only be able to comply partially.

Article 4: Inciting, aiding or abetting, and attempting. Some Member States have specific provisions relating to this Article. The majority, however, appear to apply the general rules on complicity and inchoate offences by complying implicitly with this Article – provided the preceding articles have been fully implemented.

Article 5: Penalties. The Commission believes that all those who responded to the Commission will be able to meet the terms of this paragraph. As regards directing a terrorist group, seven Member States have provided for the required penalties and three more, would also comply partially with this provision.

Article 6: Particular circumstances. National legislation in six Member States specifically envisage the particular circumstances set up in the Article, whereas the rest have not referred to specific measures to implement this optional provision.

Article 7: Liability of legal persons. Eight Member States have, or will have, after completing their legislative procedure, legislation ensuring that legal persons can be held liable for terrorist offences. From these, however, only four have provided enough information to demonstrate that they will be able to comply with Article 7(2). Spain, Austria, Sweden and the United Kingdom did not provide enough information to consider this Article fully implemented.

Article 8: Penalties for legal persons. Seven Member States provide or will provide for criminal or non-criminal fines for legal persons. Most of them also apply all or some of the optional penalties indicated in this provision.

Article 9: Jurisdiction and prosecution. Most Member States will be able to comply with this Article in so far as it applies to the territoriality principles. As regard extra-territorial jurisdiction, a majority of

Member States have or will have rules, which cover the principles of active and passive personality. Other than Ireland, none of the Member States will have incorporated the criteria for solving positive conflicts of jurisdiction into their national legislations.

Article 10: Protection of, and assistance to, victims. Only Austria provided enough information demonstrating compliance with this Article.

Article 12. Territorial application. No information has been received regarding the implementation of these provisions in Gibraltar.

To conclude, the Commission invites the Member States to ensure a rapid and complete transposition of the Framework Decision into their national legislation and to inform the Commission immediately of what measures have been taken.