Basic information

2007/0236(CNS) CNS - Consultation procedure Decision	Procedure completed
Combating terrorism: criminalisation of offences linked to terrorist activities. Framework Decision Amending JHA act 2002/475/JHA 2001/0217(CNS) **Subject** 7.30.20 Action to combat terrorism	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
LIBE Civil Liberties, Justice and Home Affairs	LEFRANÇOIS Roselyne (PSE)	29/11/2007

Committee for opinion	Rapporteur for opinion	Appointed
AFET Foreign Affairs	The committee decided not to give an opinion.	
JURI Legal Affairs	DE GRANDES PASCUAL Luis (PPE-DE)	19/12/2007

Council of the European Union

Council configuration	Meetings	Date
Justice and Home Affairs (JHA)	2838	2007-12-06
Justice and Home Affairs (JHA)	2853	2008-02-28
Justice and Home Affairs (JHA)	2908	2008-11-28
Justice and Home Affairs (JHA)	2863	2008-04-18

European Commission

Commission DG	Commissioner
Justice and Consumers	BARROT Jacques

Key events

Date	Event	Reference	Summary
		COM(2007)0650	Summary

06/11/2007	Initial legislative proposal published		
06/12/2007	Debate in Council		Summary
11/12/2007	Committee referral announced in Parliament		
28/02/2008	Debate in Council		Summary
18/04/2008	Debate in Council		Summary
23/04/2008	Legislative proposal published	08707/2008	Summary
15/07/2008	Vote in committee		Summary
24/07/2008	Committee report tabled for plenary, 1st reading/single reading	A6-0323/2008	
23/09/2008	Decision by Parliament	T6-0435/2008	Summary
23/09/2008	Results of vote in Parliament		
23/09/2008	Debate in Parliament		
28/11/2008	Act adopted by Council after consultation of Parliament		
28/11/2008	End of procedure in Parliament		
09/12/2008	Final act published in Official Journal		

Technical information

Procedure reference	2007/0236(CNS)
Procedure type	CNS - Consultation procedure
Procedure subtype	Legislation
Legislative instrument	Decision
Amendments and repeals	Amending JHA act 2002/475/JHA 2001/0217(CNS)
Legal basis	Treaty on European Union (after Amsterdam) M 031-p1e Treaty on European Union (after Amsterdam) M 029 Treaty on European Union (after Amsterdam) M 034-p2b
Stage reached in procedure	Procedure completed
Committee dossier	LIBE/6/55998

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE400.537	15/05/2008	
Committee opinion	JURI	PE404.753	03/06/2008	
Amendments tabled in committee		PE407.734	10/06/2008	
Committee report tabled for plenary, 1st reading/single reading		A6-0323/2008	24/07/2008	
Text adopted by Parliament, 1st reading/single reading		T6-0435/2008	23/09/2008	Summary

Council of the EU

Document type	Reference	Date	Summary
Legislative proposal	08707/2008	23/04/2008	Summary

European Commission

Document type	Reference	Date	Summary
Initial legislative proposal	COM(2007)0650	06/11/2007	Summary
Document attached to the procedure	SEC(2007)1424	06/11/2007	
Document attached to the procedure	SEC(2007)1425	06/11/2007	
Commission response to text adopted in plenary	SP(2008)6073	17/10/2008	
Follow-up document	COM(2014)0554	05/09/2014	Summary
Follow-up document	SWD(2014)0270	05/09/2014	

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
CofR	Committee of the Regions: opinion	CDR0336/2007	08/10/2008	

Additional information

Source	Document	Date
National parliaments	IPEX	
European Commission	EUR-Lex	

Final act

Decision 2008/0919
OJ L 330 09.12.2008, p. 0021 Summary

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

2007/0236(CNS) - 05/09/2014 - Follow-up document

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.

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

2007/0236(CNS) - 28/02/2008

The Slovenian Presidency considered that this proposal was very important and stressed that it was very delicate since it was situated on the borderline of fundamental rights and freedoms such as freedom of expression, assembly or association and the right to respect for family life.

It was therefore essential that the right balance was struck in the instrument.

The Council focused its debate on the safeguards relating to respect for human rights and the principle of proportionality. The Slovenian Presidency concluded that a majority of Member States agreed to add to the recitals of the text a clause on proportionality based on Article 12.2 of the Council of Europe Convention on prevention of terrorism.

A majority of Member States also supported the addition to the framework decision of a new article based on the framework decision on combating certain forms of expressions of racism and xenophobia by means of criminal law.

The Presidency announced its intention of reaching a general approach on this proposal at the next JHA Council in April 2008.

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

2007/0236(CNS) - 28/11/2008 - Final act

PURPOSE: to update Framework Decision 2002/475/JAI on combating terrorism, in order to include in the concept of terrorism, public provocation to commit terrorist offences, as well as recruitment and training for terrorism.

LEGISLATIVE ACT: Council Framework Decision 2008/919/JHA amending Framework Decision 2002/475/JHA on combating terrorism.

CONTENT: terrorism constitutes one of the most serious violations of the universal values of human dignity, liberty, equality and solidarity, respect for human rights and fundamental freedoms on which the European Union is founded. It also represents one of the most serious attacks on democracy and the rule of law. The terrorist threat has grown and rapidly evolved in recent years, with changes in the *modus operandi* of terrorist activists and supporters including the replacement of structured and hierarchical groups by semiautonomous cells loosely tied to each other. Such cells inter-link international networks and increasingly rely on the use of new technologies, in particular the Internet, which acts as a “virtual training camp”. The Internet has allowed terrorists to provoke the public to commit terrorist offences; to recruit terrorists and to train terrorists at very low cost and risk.

It is therefore necessary to amend Council Framework Decision 2002/475/JHA of 13 June

2002 on combating terrorism in order to take account of his new reality and to extend the scope of its application.

Extension of the scope of Framework Decision 2002/475/JHA: the definition of terrorist offences, including offences linked to terrorist activities, should be further approximated in all Member States, so that it covers the following:

1) Public provocation to commit a terrorist offence: this will mean the distribution, or otherwise making available of a public message, that includes:

- public provocation to commit a terrorist offence;
- recruitment for terrorism;
- training for terrorism;
- aggravated theft;
- extortion;
- drawing up false administrative documents.

It should be noted that the expression of radical, polemic or controversial views in the public debate on sensitive political questions, including terrorism, falls outside the scope of this Framework Decision and, in particular, of the definition of public provocation to commit terrorist offences.

2) Recruitment for terrorism: this will mean soliciting another person to commit any of the offences list above.

3) Training for terrorism: this will mean providing instruction in the making or use of explosives, firearms or other weapons or noxious or hazardous substances, or in other specific methods or techniques, for the purpose of committing any one of the offences list above.

Aiding or abetting, inciting and attempting: for an act to be punishable, it shall not be necessary that a terrorist offence be actually committed.

Fundamental principles relating to freedom of expression: nothing in this Framework Decision may be interpreted as being intended to reduce or restrict fundamental rights or freedoms such as freedom of expression, assembly, or of association, the right to respect for private and family life, including the right to respect of the confidentiality of correspondence. Furthermore, this Framework Decision shall not have the effect of requiring Member States to **take measures in contradiction of fundamental principles relating to freedom of expression, in particular freedom of the press and the freedom of expression** in other media as they result from constitutional traditions or rules governing the rights and responsibilities of, and the procedural guarantees for, the press or other media where these rules relate to the determination or limitation of liability.

Implementation and report: Member States shall take the necessary measures to comply with this Framework Decision by 9 December 2010. In the implementation of this Framework Decision, Member States shall ensure that the criminalisation shall be proportionate to the legitimate aims pursued and necessary in a democratic society and shall exclude any form of arbitrariness and discrimination.

ENTRY INTO FORCE: 9 December 2008.

TRANSPOSITION: by 9 December 2010, Member States shall forward to the General Secretariat of the Council and to the Commission the text of the provisions transposing into their national law the obligations imposed on them under this Framework Decision. On the basis of a report drawn up from that information and a report from the Commission, the Council shall assess, by 9 December 2011, whether Member States have taken the necessary measures to comply with this Framework Decision.

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

2007/0236(CNS) - 23/04/2008 - Legislative proposal

PURPOSE: to update the 2002 Council Framework Decision on combating terrorism.

BACKGROUND: terrorism threatens the fundamental freedoms on which the EU is founded. In recent years, however, the threat of terrorism has grown. At the same time the *modus operandi* of certain terrorist organisations has changed. They have evolved from structured and hierarchical groups to semi-autonomous cells loosely tied to each other. Such cells inter-link international networks and increasingly rely on the use of new technologies, in particular the Internet, which acts as a “virtual training camp”. The Internet has allowed terrorists to provoke the public to commit terrorist offences; to recruit terrorists and to train terrorists at very low cost and risk.

In November 2007, therefore, the Commission presented a proposal to amend Framework Decision 2002/475/JHA on combating terrorism. The main objectives of the proposal are to update the Decision and align it with the Council of Europe Convention on Prevention of Terrorism. This will include new references to: (i) public provocation to commit terrorist offences; (ii) recruitment for terrorism; and (iii) terrorist training. In April 2008, the Council reached a general approach on this proposal, subject to further parliamentary scrutiny in some Member States and the opinion of the European Parliament

CONTENT: this proposal amends the 2002 Council Framework Decision, by setting out and specifying three key concepts relating to the combating of terrorism namely,

Public provocation to commit a terrorist offence: this will mean the distribution, or otherwise making available of a public message, that includes:

- public provocation to commit a terrorist offence;
- recruitment for terrorism;
- training for terrorism;
- aggravated theft with a view to committing any of the offences mentioned above;
- extortion with a view to the perpetration of any of the offences mentioned above; and
- drawing up false administrative documents with a view to committing any one of the offences listed above.

Recruitment for terrorism: this will mean soliciting another person to commit any of the offences list above.

Training for terrorism: this will mean providing instruction in the making or use of explosives, firearms or other weapons or noxious or hazardous substances, or in other specific methods or techniques, for the purpose of committing any one of the offences list above.

For an act to be punishable, is will not be necessary for the offence to have actually been committed. The Member States will be responsible for ensuring that aiding or abetting any of the offences set out in the proposed Council Framework Decision will be made punishable. The Member States will not be expected to take measures that contradict the fundamental principles relating to the freedom of expression, the freedom of the press and the freedom of expression in other media.

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

2007/0236(CNS) - 18/04/2008

The Council reached a **general approach** on a framework decision which aims at including three new crimes in EU legislation:

- public provocation to commit terrorist offences;
- recruitment for terrorism; and
- training for terrorism.

The inclusion of those offences will bring the advantage of a more integrated EU institutional framework. There will be rules in respect of the type and level of criminal penalties and mandatory rules on jurisdiction which will be applicable to the offences.

EU cooperation mechanisms (see for instance the Decision of 2005 on the communication of terrorist-related information to Europol and Eurojust) will be triggered since they have as their scope of application the Framework Decision.

In accordance with the text,

- "public provocation to commit a terrorist offence" means the distribution, or otherwise making available, of a message to the public, with the intent to incite the commission of one of the offences listed in the framework decision, where such conduct, whether or not directly advocating terrorist offences, causes a danger that one or more such offences may be committed;
- "recruitment for terrorism" means to solicit another person to commit one of the offences listed in the framework decision; and

- "training for terrorism" means to provide instruction in the making or use of explosives, firearms or other weapons or noxious or hazardous substances, or in other specific methods or techniques, for the purpose of committing one of the offences listed in the framework decision, knowing that the skills provided are intended to be used for this purpose.

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

2007/0236(CNS) - 06/11/2007 - Initial legislative proposal

PURPOSE: to update Framework Decision 2002/475/JAI on combating terrorism, in order to include in the concept of terrorism, public provocation to commit terrorist offences, as well as recruitment and training for terrorism.

PROPOSED ACT: Council Framework Decision

BACKGROUND: terrorism constitutes one of the most serious threats to democracy, to the free exercise of human rights and to economic and social development. The European Union has set itself an objective in the Treaty on European Union to provide citizens with a high level of safety within an Area of Freedom, Security and Justice. It is vitally important that Member States of the European Union have effective criminal laws in place to achieve this objective in the context of the fight against terrorism.

Modern information and communication technologies play an important role in the propagation of the terrorist threat. The Internet, in particular, is cheap, fast, easily accessible and has a practically global reach. All these advantages, highly appreciated by law-abiding citizens that benefit from the Internet in their daily lives, are also unfortunately exploited by terrorists. They use the Internet as a means of dissemination of propaganda aiming at mobilisation and recruitment as well as instructions and online manuals intended for training or planning of attacks. Both are addressed at current and potential supporters. The Internet serves in this manner as one of the principal boosters of the processes of radicalisation and recruitment and also serves as a source of information on terrorist means and methods, thus functioning as a 'virtual training camp'.

Preventing such a growing threat constitutes a political urgency for the EU. Therefore, the Commission proposes to amend and update Framework Decision 2002/475/JAI on combating terrorism (see CNS/2001/0217) to take this new development into consideration and to:

- offer Member States the advantages of a more integrated institutional framework of the European Union for these particular offences (in particular, common interpretation by the Court of Justice);
- provide for a specific legal regime that will be applicable to the newly integrated offences (in particular, criminal penalties in all Member States and compulsory rules on jurisdiction);
- strengthen the EU’s antiterrorism policy by triggering the European Union cooperation mechanisms for such offences.

CONTENT: this proposal aims to amend Framework Decision 2002/475/JAI in order to align it with the Council of Europe Convention on the prevention of terrorism (Warsaw, 16 May 2005) by including in the Framework Decision’s current concept of terrorism: i) public provocation to commit terrorist offences; ii) recruitment and training for terrorism.

In this context, the following definitions are added to the text of the Framework Decision:

- "public provocation to commit a terrorist offence" means the distribution, or otherwise making available, of a message to the public, with the intent to incite the commission of terrorist acts as listed in the Framework Decision (whether or not this behaviour directly advocates terrorist offences);
- "recruitment for terrorism" means to solicit another person to commit an act of terrorism as listed in the Framework Decision;
- "training for terrorism" means to provide instruction in the making or use of explosives, firearms or other weapons or noxious or hazardous substances for the purpose of committing a terrorist act as listed in the Framework Decision (including providing skills to be used for this purpose).

The Framework Decision, as amended by this proposal, will aim at approximating the definition of terrorist offences in all Member States and harmonising national provisions on public provocation to commit a terrorist offence, and recruitment and training for terrorism, so that these forms of behaviour are punishable, also when committed through the Internet, throughout the EU. Aggravated theft, extortion or drawing up false administrative documents with a view to committing a terrorist act would also be considered as terrorist activities punishable by sanctions.

In addition, the Framework Decision specifies that for an act to punishable, it shall not be necessary that a terrorist offence actually be committed (provocation is sufficient).

The Framework Decision also aims to ensure that existing provisions on penalties, liability of legal persons, jurisdiction and prosecution applicable to terrorist offences, also apply to the provocation to commit terrorist offences and to recruitment and training for terrorism.

Member States shall take the necessary measures to comply with this Framework Decision by 31 December 2008.

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

2007/0236(CNS) - 23/09/2008 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted, by 556 votes to 90 with 19 abstentions, a legislative resolution amended the proposal for a Council Framework Decision amending Framework Decision 2002/475/JHA on combating terrorism. The report had been tabled for consideration by Roselyne **LEFRANCOIS** (PES, FR) on behalf of the Committee on Civil Liberties, Justice and Home Affairs. The main amendments are as follows :

Definitions: the term 'provocation' should be replaced by the term 'incitement', since the latter is a clearer concept and it is more frequently used in legal language. The definitions of "public incitement to commit a terrorist offence", "recruitment for terrorism" and “training for terrorism” have been tightened up with a greater emphasis on the element of intent.

The words 'whether or not directly advocating terrorist offences' have been dropped from the definition of 'public incitement to commit a terrorist offence'.

The jurisdictional rules applicable to the new offences: Parliament felt that the new paragraph 1a incorporated by the Commission into Article 9 of the framework decision goes much too far and should be deleted. The Commission's text had stated that each Member State shall also establish its jurisdiction over the offences referred to in Article 3(2)(a) to (c) where the offence was directed towards or resulted in the carrying out of an offence referred to in Article 1 and such offence is subject to the jurisdiction of the Member State under any of the criteria set out in paragraph 1(a) to (e) of this Article.

Members felt that Member States should not be required to establish their jurisdiction extra-territorially as regards the three new offences, since this is a highly sensitive matter, the perception of which varies greatly from one Member State to another. Member States should instead be allowed to choose whether or not to apply the jurisdictional rules laid down in Article 9(d) and (e).

Criminalisation of acts: Member States shall ensure that the three acts referred to in the text are criminalised with due respect for the obligations relating to freedom of speech and freedom of association by which those States are bound, in particular the obligations relating to freedom of the press and freedom of expression in other media, and with due respect for the confidentiality of correspondence, including the content of e-mail and other kinds of electronic correspondence. The criminalisation of these acts shall not have the effect of reducing or restricting the dissemination of information for scientific, academic, artistic or reporting purposes, the expression of radical, polemic or controversial views in the public debate on sensitive political questions, including terrorism.

Proportionality and safeguards relating to the protection of human rights and fundamental freedoms: the criminalisation of the acts listed in this Framework Decision should be effected in such a way as to be proportionate to the legitimate aims pursued, necessary and appropriate in a democratic society, and non-discriminatory; it should, in particular, be compatible with the Charter of Fundamental Rights of the European Union and with the European Convention for the Protection of Human Rights and Fundamental Freedoms. The text states that the Framework Decision shall not have the effect of altering the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty on European Union, in the Charter of Fundamental Rights of the European Union and in the European Convention for the Protection of Human Rights and Fundamental Freedoms."

Council of Europe Convention on the prevention of terrorism: lastly, Parliament noted in a new recital that the Framework Decision is complementary to the Council of Europe Convention on the Prevention of Terrorism of 16 May 2005, and it is therefore essential, in parallel with the entry into force of the Framework Decision, that all Member States ratify that Convention.

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

2007/0236(CNS) - 06/12/2007

The Council had an initial exchange of views concerning a proposal amending the Framework Decision on combating terrorism.

The Presidency indicated that:

– the text struck the right balance with fundamental rights and freedoms such as freedom of

expression, assembly or of association and the right to respect for family life,

– the text of the Framework Decision should be agreed as regards the charges (Article 3 of the Commission proposal) with the objective of avoiding any contradiction with the Council of Europe Convention, and without jeopardising the process of ratification of the Council of Europe Convention,

– it should be made absolutely clear that the principle of proportionality applied in the implementation of the Framework Decision; a paragraph should be added to the preamble similar in content to Article 12 (2) of the Convention, and that – in order to enhance cooperation, especially with other countries, member states should seek to accelerate procedures for ratification of the Council of Europe Convention.

In the light of the debate, the Presidency concluded that delegations broadly welcomed this Commission proposal.