



Brussels, 22.3.2023
COM(2023) 151 final

Recommendation for a

COUNCIL DECISION

**authorising the European Commission to participate, on behalf of the European Union,
in negotiations on the amendment of the Council of Europe Convention on the
prevention of terrorism (CETS No. 196) or an additional protocol thereto regarding the
revision of the definition of terrorist offences**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• **Reasons for and objectives of the proposal**

Terrorism is an increasingly global phenomenon and represents a growing threat to fundamental rights, democracy and the rule of law in Europe and all over the world. The terrorist attacks perpetrated in the last years in the European Union and elsewhere in the world were unacceptable infringements of the values and principles which underpin democratic societies.

In the face of such an enduring threat, decisive action against terrorism is necessary, not only at national level, but also at pan-European level and beyond. The often cross-border nature of terrorism requires strong international cooperation based on a common understanding of terrorist and terrorism-related offences.

In pursuit of strengthening the international cooperation in this area, the European Union signed the Council of Europe Convention on the prevention of terrorism ('Convention No. 196') and the Additional Protocol to the Council of Europe Convention on the prevention of terrorism ('Convention No. 217') on 22 October 2015 and ratified them on 26 June 2018. Both Conventions entered into force in the European Union on 1 October 2018. As of 27 January 2023, 25 EU Member States¹ have ratified the Convention No. 196.

Convention No. 196 relates to the criminalisation of terrorist and terrorism-related activities, as well as international cooperation regarding such offences and the protection, compensation and support for victims of terrorism. Article 1 of the Convention No. 196 defines the notion of "terrorist offences" referring to acts listed in the Appendix I to Convention No. 196. The Appendix I lists a number of UN counter-terrorism treaties, namely:

- Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970;
- Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, concluded at Montreal on 23 September 1971;
- Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents, adopted in New York on 14 December 1973;
- International Convention Against the Taking of Hostages, adopted in New York on 17 December 1979;
- Convention on the Physical Protection of Nuclear Material, adopted in Vienna on 3 March 1980;
- Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, done at Montreal on 24 February 1988;
- Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, done at Rome on 10 March 1988;
- Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on 10 March 1988;

¹ All EU Member States except Greece and Ireland have ratified the Convention No. 196.

- International Convention for the Suppression of Terrorist Bombings, adopted in New York on 15 December 1997;
- International Convention for the Suppression of the Financing of Terrorism, adopted in New York on 9 December 1999;
- International Convention for the Suppression of Acts of Nuclear Terrorism, adopted in New York on 13 April 2005.

Convention No. 196 criminalises a number of acts when committed intentionally: public provocation to commit a terrorist offence (Article 5), recruitment for terrorism (Article 6), training for terrorism (Article 7) as well as aiding and abetting, inciting and attempting the aforementioned offences (so-called "ancillary offences" as defined in Article 9).

Convention No. 217 supplements Convention No. 196 by criminalisation of the following acts: participation in an association or group for the purpose of terrorism (Article 2), receiving training for terrorism (Article 3), travelling or attempting to travel for terrorist purposes (Article 4), providing or collecting funds for such travels (Article 5) and organising and facilitating such travels (Article 6).

However, Convention No. 196 and Convention No. 217 do not provide for a comprehensive and clear legal definition of "terrorist offences".

The Directive (EU) 2017/541 establishes minimum rules concerning the definition of criminal offences and sanctions in the area of terrorist offences; offences related to a terrorist group and offences related to terrorist activities in the European Union. Article 3 of Directive (EU) 2017/541 lists the intentional acts that may seriously damage a country or an international organisation which qualify as "terrorist offences" when committed with one of the terrorist aims specified in the Article. In comparison, the current definition in Article 1 of Convention No. 196 does not provide an explicit list of acts considered "terrorist offences" and makes a general reference to the acts found in the UN counter-terrorism treaties listed in the Appendix to the Convention. Moreover, the current definition in Convention No. 196 does not comprise of the terrorist aims which qualify certain acts as "terrorist offences" under EU acquis. Thus, there are considerable differences between the current definition of "terrorist offences" in Convention No. 196 and the definition in Directive (EU) 2017/541.

In 2017, in order to reflect the evolving terrorist threat moving beyond traditional targets and the *modi-operandi*, which are the subjects of the UN counter-terrorism treaties referred to in Article 1 of the Convention No. 196, the Council of Europe Committee on Counter-Terrorism ('CDCT') formed a working group tasked with assessing the need and feasibility of elaborating a legal definition of "terrorist offences" to be applied among the Parties to the Convention No. 196. The working group developed a series of alternative formulations of the definition and presented its final report² to the CDCT Plenary, composed of Parties to Convention No. 196, in November 2019. In its final report, the working group recommended the CDCT Plenary to decide that it is feasible and necessary to elaborate a legal definition of "terrorist offences" in the Convention No. 196, and proposed textual elements for a potential future legal definition.

² Final Report of the CDCT Sub-group for the purpose of examining the feasibility of elaborating a definition of terrorism 26 September 2019 [CDCT-DEF \(2019\)03rev](#)

During 2020 and 2021, experts from Parties to the Convention submitted written comments on the final report. The European Union did not submit written comments. However, in their written comments, a number of EU Member States pointed out the need for aligning the elements of a potential future legal definition of “terrorist offences” at Council of Europe level with the definition of “terrorist offences” laid down in the Directive (EU) 2017/541 on combating terrorism³. The negotiations at the Council of Europe would allow for the definition of terrorist offences to better reflect the Union acquis in the field of counter-terrorism.

In 2022, the Council of Europe Committee of Ministers mandated the CDCT to reach a decision on the feasibility of elaborating a legal definition of “terrorist offences” and to launch the negotiations on the text of the new definition. On 2 December 2022, at its 9th Plenary meeting, the CDCT Plenary agreed that a new definition of terrorism is feasible and unanimously decided to open formal negotiations on the text of the definition at the 10th CDCT Plenary meeting on 23-25 May 2023⁴.

On 8 February 2023, the Council of Europe Committee of Ministers adopted the Council of Europe Counter-terrorism Strategy (2023-2027)⁵. In the 2023-2027 Counter-Terrorism Action Plan found in Annex I to the Strategy, ‘Updating the Council of Europe Counter-terrorism Conventions’ is identified as Activity 1.9. The expected output of the update is ‘to draft an additional protocol or amendment to the Convention No. 196, inclusive of the proposed new definition of the notion “terrorist offences” in Article 1 of the Convention by December 2025’.

Article 3(2) of the Treaty on the Functioning of the European Union (TFEU) provides that the Union has exclusive competence ‘for the conclusion of an international agreement (...) in so far as its conclusion may affect common rules or alter their scope.’ An international agreement may affect common rules or alter their scope where the area covered by the agreement overlaps with Union legislation or is covered to a large extent by Union law. The European Union is a party to Convention No. 196, and it has exercised its competence through the adoption of the Directive (EU) 2017/541 on combating terrorism. The envisioned revision of the definition of “terrorist offences” in the Convention No. 196 is covered by Union law in the field of combating terrorism, notably the Directive (EU) 2017/541. The revision may affect the scope of Convention No. 196 as well of Directive (EU) 2017/541. Therefore, the Union has exclusive competence to participate in these negotiations.

The aim of the Union in the negotiations should be to avoid any discrepancies and the future legal definition of “terrorist offences” at Council of Europe level should be compatible with the legal definition of “terrorist offences” laid down in Article 3 of the Directive (EU) 2017/541 on combating terrorism⁶.

The successful outcome of the negotiations would lead to a pan-European definition of “terrorist offences”, expanding the common understanding of “terrorist offences” from EU Member States to member states of the Council of Europe that ratify the amendment to the

³ Directive (EU) 2017/541 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA, (OJ L 88, 31 March 2017, p. 6).

⁴ CDCT 9th Plenary Meeting Abridged Report and List of Decisions 2 December 2022, p.4 [CDCT\(2022\)16](#)

⁵ Council of Europe Counter-Terrorism Strategy (2023-2027) [CM\(2023\)2-add-final](#)

⁶ Directive (EU) 2017/541 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA, (OJ L 88, 31 March 2017, p. 6).

Convention No. 196 or the new additional protocol containing the definition of “terrorist offences”, depending on which instrument is deemed more appropriate for the revision by the Council of Europe. The acceptance of a pan-European definition could also contribute to the furtherance of ongoing discussions on a definition of “terrorist offences” in the context of negotiations on the Draft Comprehensive Convention on International Terrorism at UN level⁷.

This recommendation is submitted to the Council pursuant to Article 218(3) and (4) TFEU in order to receive authorisation to negotiate the amendment of Convention No. 196 or the potential new additional protocol to the Convention providing for a revision of the definition of “terrorist offences” on behalf of the European Union, to provide negotiating directives, and to appoint the Commission as negotiator.

- **Consistency with existing policy provisions in the policy area**

The negotiations on the revision of the definition of “terrorist offences” in Convention No. 196 or in the potential new additional protocol to the Convention directly relate to common EU rules to combat terrorism.

On 15 March 2017, the Union adopted Directive (EU) 2017/541 on combating terrorism. The Directive sets harmonised definitions for terrorist offences and offences related to terrorist activities which serve as a benchmark for cooperation and information exchange between national authorities. EU Member States applying the Directive⁸ need to ensure that the offences set out in the Directive are criminalised under their national laws. Title II of the Directive (EU) 2017/541 includes definitions for “terrorist offences” (Article 3) and “offences relating to a terrorist group” (Article 4), whereas Title III includes definitions for offences related to terrorist activities, such as training for terrorism (Article 7 and 8), travelling for the purpose of terrorism (Article 9) and terrorist financing (Article 11).

Article 3 of the Directive (EU) 2017/541 on combating terrorism lays down the legal definition of “terrorist offences”. Article 3 is composed of two paragraphs: paragraph 1 lists the intentional acts that may seriously damage a country or an international organisation which are defined as terrorist offences when committed with one of the terrorist aims listed in paragraph 2.

The CDCT working group prepared a document with the textual elements of the potential future definition of “terrorist offences”, which was circulated to parties to Convention No. 196 in October 2022. This document presented a non-binding preliminary illustration of possible elements of the future definition. The option proposes a two-limb structure with paragraph 1 specifying the criminal offences and paragraph 2 setting out the terrorist aims. This two-limb structure mirrors the structure of the definition laid down in Article 3 of Directive 2017/541. Even though the list of criminal offences included in paragraph 1 of the option is not as comprehensive as the list in paragraph 1 of Article 3 of Directive 2017/541, there is a good level of alignment with the Directive, when the list is read in conjunction with the terrorist offences defined in the treaties found in Appendix I of the Convention No. 196. While the document is non-binding, it illustrates that preliminary reflections offer a reasonable expectation that the Council of Europe definition of “terrorist offences” will be brought closer to EU law during the negotiations.

⁷ Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996 – [Product of the Ad Hoc Committee’s work](#) Last updated: 17 February 2022

⁸ The Directive (EU) 2017/541 does not apply to Denmark and Ireland.

Given the EU acquis covering the subject-matter of the negotiations, the Union should aim to ensure consistency and coherence between the revised definition of “terrorist offences” at Council of Europe level and the definition of “terrorist offences” under EU law.

- **Consistency with other Union policies**

Title V of Part Three of the TFEU confers upon the European Union competences in the area of freedom, security and justice, including to establish minimum rules concerning the definition of criminal offences and sanctions in respect of certain particularly serious crimes.⁹ In addition to Directive (EU) 2017/541 on combating terrorism which requires Member States to criminalise terrorist offences, which contains such minimum rules, the European Union has adopted a comprehensive set of legal instruments to fight terrorism, among other crimes. These EU legal instruments contribute to the four pillars of the EU Counter-terrorism Agenda¹⁰: (i) anticipate existing and emerging terrorist threats in Europe, (ii) prevent attacks from occurring, (iii) protect Europeans and (iv) respond to attacks when they do occur. The following legal instruments form a part of this comprehensive legal framework:

- Council Framework Decision 2002/465/JHA on joint investigation teams¹¹;
- Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States¹²;
- Directive 2014/41/EU regarding the European Investigation Order in criminal matters¹³;
- Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union¹⁴;
- Council Decision 2005/671/JHA on the exchange of information and cooperation concerning terrorist offences¹⁵;
- Council Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union¹⁶;
- Council Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combatting terrorism and cross-border crime (Prüm-Decision)¹⁷;
- Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA,

⁹ Art. 83 TFEU.

¹⁰ COM(2020) 795 final.

¹¹ OJ L 162, 20.6.2002, p. 1.

¹² OJ L 190, 18.7.2002, p.1.

¹³ OJ L 130, 1.5.2014, p. 1.

¹⁴ Council Act of 29.5.2000 establishing the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union, OJ C197, 12.7.2000, p. 1.

¹⁵ OJ L 253, 29.9.2005, p. 22.

¹⁶ OJ L 386, 29.12.2006, p. 89.

¹⁷ OJ L 210, 6.6.2008, p. 1.

2009/935/JHA, 2009/936/JHA and 2009/968/JHA, as amended by Regulation (EU) 2022/991 of the European Parliament and of the Council of 8 June 2022¹⁸;

- Regulation (EU) 2021/784 of the European Parliament and of the Council of 29 April 2021 on addressing the dissemination of terrorist content online¹⁹;
- Directive 2012/29/EU on establishing minimum standards on the rights, support and protection of victims of crime and replacing Council Framework Decision 2001/220/JHA²⁰;
- Council Directive 2004/80/EC on compensation to crime victims²¹.

This comprehensive set of EU legal instruments highlights the obligation for Member States to act within the framework of the EU institutions when undertaking international commitments in the area of fighting terrorism. Thus, the negotiations should ensure the continued ability of Member States to comply with EU law, also taking into account the future development of EU law.

In view of future development of the EU law in this area, in particular, the following legislative proposals tabled by the Commission should be taken into consideration:

- Proposal for a Directive on information exchange between law enforcement authorities of Member States, repealing Council Framework Decision 2006/960/JHA²²;
- Proposal for a Regulation of the European Parliament and of the Council on automated data exchange for police cooperation (“Prüm II”), amending Council Decisions 2008/615/JHA and 2008/616/JHA and Regulations (EU) 2018/1726, 2019/817 and 2019/818 of the European Parliament and of the Council²³;
- Proposal for a Regulation establishing a collaboration platform to support the functioning of Joint Investigation Teams and amending Regulation (EU) 2018/1726²⁴;
- Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2018/1727 of the European Parliament and Council Decision 2005/671/JHA, as regards the digital information exchange in terrorism cases²⁵.

Title V of the Treaty on the European Union (TEU) sets out the aims and objective of the Union’s external action. Chapter 2 of that Title also sets out the Union’s policy in the area of the Common Foreign and Security Policy (CFSP). As terrorism and the fight against it concerns not only internal security, but also the CFSP, coherence between these areas of Union action needs to be ensured by the relevant actors (Article 21(3) TEU second subparagraph). The Commission, assisted by the High Representative of the Union for Foreign Affairs and Security Policy, shall ensure that consistency and shall cooperate to that effect.

¹⁸ OJ L 169, 27.6.2022, p. 1

¹⁹ OJ L 172, 17.5.2021, p. 79.

²⁰ OJ L 315, 14.11.2012, p. 57.

²¹ OJ L 261, 6.8.2004, p. 15.

²² COM/2021/782 final

²³ COM(2021) 784 final

²⁴ COM(2021) 756 final

²⁵ COM(2021) 757 final

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

Article 218(3) of the Treaty on the Functioning of the European Union (TFEU) provides that the Commission shall submit recommendations to the Council, which shall adopt a decision authorising the opening of negotiations and nominating the Union negotiator. The Commission shall be appointed as the negotiator. According to Article 218(4) of the TFEU, the Council may address directives to the negotiator.

- **Subsidiarity (for non-exclusive competence)**

Not applicable.

- **Proportionality**

This initiative does not go beyond what is necessary to achieve the policy objectives at stake. The Union is best placed to act as the Union has already exercised internal competence in this area through the adoption of Directive (EU) 2017/541 on combatting terrorism. The Directive provides for an EU definition of terrorist offences constituting minimum rules to be uniformly applied by EU Member States. Therefore, a common EU approach should be taken in the negotiations to avoid discrepancies between the legal definition of terrorist offences at Council of Europe level with EU law.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

Not applicable.

- **Stakeholder consultations**

Not applicable.

- **Collection and use of expertise**

The Commission took into account views expressed by Member State experts during discussions in the relevant Council working groups in the preparation of the negotiations.

- **Impact assessment**

Not applicable.

- **Regulatory fitness and simplification**

Not applicable.

- **Fundamental rights**

A variety of fundamental rights and freedoms enshrined in the Charter of Fundamental Rights of the European Union (“Charter”) have to be taken into account during the negotiations on the revision of the legal definition of terrorist offences in Convention No. 196 and Convention No. 217. The rights which are particularly relevant include; the rights included in Title I of the Charter on dignity, the right to liberty and security (Article 6 of the Charter), the freedom of thought, conscience and religion (Article 10 of the Charter), the freedom of expression and information (Article 11 of the Charter), the freedom of assembly and of association (Article 12 of the Charter), the prohibition of discrimination, including on grounds of race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other

opinion (Article 21 of the Charter), the right to an effective remedy and a fair trial (Article 47 of the Charter), the presumption of innocence and the right of defence (Article 48 of the Charter), the principles of legality and proportionality of criminal offences and penalties (Article 49 of the Charter) and the right not to be tried or punished twice in criminal proceedings for the same criminal offence (*ne bis in idem*, Article 50 of the Charter). As the participation in the negotiations on behalf of the European Union should not compromise the level of protection of fundamental rights in the Union, this initiative proposes to pursue a high level of protection of fundamental rights.

4. BUDGETARY IMPLICATIONS

There are no budgetary implications for the Union budget.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

On 8 February 2023, the Council of Europe Committee of Ministers adopted the Council of Europe Counter-terrorism Strategy (2023-2027)²⁶. Under the 2023-2027 Counter-Terrorism Action Plan annexed to the Strategy, the Council of Europe has committed to updating its Counter-terrorism Conventions. The update should take the form of ‘a draft additional protocol or an amendment of the Convention No. 196, inclusive of the proposed new definition of “terrorist offences” in Article 1 of the Convention by December 2025’. The initiative proposes to pursue a negotiation process that is open, inclusive and transparent.

²⁶ Council of Europe Counter-Terrorism Strategy (2023-2027) [CM\(2023\)2-add-final](#)

Recommendation for a

COUNCIL DECISION

authorising the European Commission to participate, on behalf of the European Union, in negotiations on the amendment of the Council of Europe Convention on the prevention of terrorism (CETS No. 196) or an additional protocol thereto regarding the revision of the definition of terrorist offences

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 218(3) and (4) thereof,

Having regard to the recommendation from the European Commission,

Whereas:

- (1) In 2022, the Council of Europe Committee of Ministers mandated the Council of Europe Committee on Counter-terrorism ('CDCT') to launch the negotiations on the revision of the legal definition of terrorist offences to be applied among the Parties to the Council of Europe Convention on the prevention of terrorism ('Convention No. 196').
- (2) On 2 December 2022, the CDCT decided to revise the definition of terrorist offences and to launch the formal negotiations on the text of that definition at its meeting on 23-35 May 2023.
- (3) The Union is a party to Convention No. 196. It has exercised its competence in this area through the adoption of Directive (EU) 2017/541 of the European Parliament and of the Council²⁷, establishing minimum rules concerning the legal definition of criminal offences and sanctions in the area of terrorist offences and offences related to terrorist activities.
- (4) The definition of terrorist offences is covered by Union law, notably by Article 3 of Directive (EU) 2017/541. The revision of the definition of terrorist offences in the Convention No. 196 may affect common rules established by Directive (EU) 2017/541 or alter its scope. Therefore, the Union has exclusive competence to participate in the negotiations.

HAS ADOPTED THIS DECISION:

Article 1

The Commission is hereby authorised to negotiate, on behalf of the Union, the amendment of the Council of Europe Convention on the prevention of terrorism (CETS No. 196) or a new additional protocol thereto regarding the revision of the definition of terrorist offences.

²⁷ Directive (EU) 2017/541 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA, (OJ L 88, 31 March 2017, p. 6).

Article 2

The negotiating directives are set out in the Annex.

Article 3

The negotiations shall be conducted in consultation with the [*the name of the special committee to be inserted by the Council*].

Article 4

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*