

ACTS ADOPTED UNDER TITLE VI OF THE EU TREATY

COUNCIL FRAMEWORK DECISION 2008/919/JHA

of 28 November 2008

amending Framework Decision 2002/475/JHA on combating terrorism

THE COUNCIL OF THE EUROPEAN UNION,

inter-link international networks and increasingly rely on the use of new technologies, in particular the Internet.

Having regard to the Treaty on European Union, and in particular Article 29, Article 31(1)(e) and Article 34(2)(b) thereof,

- (4) The Internet is used to inspire and mobilise local terrorist networks and individuals in Europe and also serves as a source of information on terrorist means and methods, thus functioning as a 'virtual training camp'. Activities of public provocation to commit terrorist offences, recruitment for terrorism and training for terrorism have multiplied at very low cost and risk.

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament ⁽¹⁾,

- (5) The Hague Programme on strengthening freedom, security and justice in the European Union, adopted by the European Council on 5 November 2004, underlines that effective prevention and combating of terrorism in full compliance with fundamental rights requires Member States not to confine their activities to maintaining their own security, but to focus also on the security of the Union as a whole.

Whereas:

- (1) 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, principles which are common to the Member States and on which the European Union is based.

- (6) The Council and Commission Action Plan implementing the Hague Programme on strengthening freedom, security and justice in the European Union ⁽³⁾, recalls that a global response is required to address terrorism and that the expectations that citizens have of the Union cannot be ignored, nor can the Union fail to respond to them. In addition, it states that attention must focus on different aspects of prevention, preparedness and response to further enhance, and where necessary complement, Member States' capabilities to fight terrorism, concentrating particularly on recruitment, financing, risk analysis, protection of critical infrastructures and consequence management.

- (2) Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism ⁽²⁾ is the basis of the counter-terrorist policy of the European Union. The achievement of a legal framework common to all Member States, and in particular, of a harmonised definition of terrorist offences, has allowed the counter-terrorist policy of the European Union to develop and expand, subject to the respect of fundamental rights and the rule of law.

- (3) 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 semi-autonomous cells loosely tied to each other. Such cells

- (7) This Framework Decision provides for the criminalisation of offences linked to terrorist activities in order to contribute to the more general policy objective of preventing terrorism through reducing the dissemination of those materials which might incite persons to commit terrorist attacks.

⁽¹⁾ Not yet published in the Official Journal.

⁽²⁾ OJ L 164, 22.6.2002, p. 3.

⁽³⁾ OJ C 198, 12.8.2005, p. 1.

- (8) United Nations Security Council Resolution 1624 (2005) calls upon States to take measures that are necessary and appropriate, and in accordance with their obligations under international law, to prohibit by law incitement to commit terrorist act or acts and to prevent such conduct. The report of the Secretary-General of the United Nations 'Uniting against terrorism: recommendations for a global counter-terrorism strategy' of 27 April 2006, interprets the above-mentioned Resolution as providing for a basis for the criminalisation of incitement to terrorist acts and recruitment, including through the Internet. The United Nations Global Counter-Terrorism Strategy of 8 September 2006 mentions that the Member States of the UN resolve to explore ways and means to coordinate efforts at the international and regional level to counter terrorism in all its forms and manifestations on the Internet.
- (9) The Council of Europe Convention on the Prevention of Terrorism establishes the obligations of States parties thereto to criminalise public provocation to commit a terrorist offence and recruitment and training for terrorism, when committed unlawfully and intentionally.
- (10) The definition of terrorist offences, including offences linked to terrorist activities, should be further approximated in all Member States, so that it covers public provocation to commit a terrorist offence, recruitment for terrorism and training for terrorism, when committed intentionally.
- (11) Penalties should be provided for natural persons having intentionally committed or legal persons held liable for public provocation to commit terrorist offences, recruitment for terrorism and training for terrorism. These forms of behaviour should be equally punishable in all Member States irrespective of whether they are committed through the Internet or not.
- (12) Given that the objectives of this Framework Decision cannot be sufficiently achieved by the Member States unilaterally, and can therefore, because of the need for European-wide harmonised rules, be better achieved at the level of the Union, the Union may adopt measures, in accordance with the principle of subsidiarity, as set out in Article 5 of the EC Treaty and referred to in Article 2 of the EU Treaty. In accordance with the principle of proportionality, as set out in Article 5 of the EC Treaty, this Framework Decision does not go beyond what is necessary in order to achieve those objectives.
- (13) The Union observes the principles recognised by Article 6(2) of the EU Treaty and reflected in the Charter of Fundamental Rights of the European Union, notably Chapters II and VI thereof. 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.

- (14) Public provocation to commit terrorist offences, recruitment for terrorism and training for terrorism are intentional crimes. Therefore, nothing in this Framework Decision may be interpreted as being intended to reduce or restrict the dissemination of information for scientific, academic or reporting purposes. 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.
- (15) The implementation of the criminalisation under this Framework Decision should be proportional to the nature and circumstances of the offence, with respect to the legitimate aims pursued and to their necessity in a democratic society, and should exclude any form of arbitrariness or discrimination,

HAS ADOPTED THIS FRAMEWORK DECISION:

Article 1

Amendments

Framework Decision 2002/475/JHA shall be amended as follows:

- Article 3 shall be replaced by the following:

'Article 3

Offences linked to terrorist activities

- For the purposes of this Framework Decision:

- "public provocation to commit a terrorist offence" shall mean 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 Article 1(1)(a) to (h), 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" shall mean soliciting another person to commit one of the offences listed in Article 1(1)(a) to (h), or in Article 2(2);
- "training for terrorism" shall 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 one of the offences listed in Article 1(1)(a) to (h), knowing that the skills provided are intended to be used for this purpose.

2. Each Member State shall take the necessary measures to ensure that offences linked to terrorist activities include the following intentional acts:

- (a) public provocation to commit a terrorist offence;
- (b) recruitment for terrorism;
- (c) training for terrorism;
- (d) aggravated theft with a view to committing one of the offences listed in Article 1(1);
- (e) extortion with a view to the perpetration of one of the offences listed in Article 1(1);
- (f) drawing up false administrative documents with a view to committing one of the offences listed in Article 1(1)(a) to (h) and Article 2(2)(b).

3. For an act as set out in paragraph 2 to be punishable, it shall not be necessary that a terrorist offence be actually committed.'

2. Article 4 shall be replaced by the following:

'Article 4

Aiding or abetting, inciting and attempting

1. Each Member State shall take the necessary measures to ensure that aiding or abetting an offence referred to in Article 1(1), Articles 2 or 3 is made punishable.

2. Each Member State shall take the necessary measures to ensure that inciting an offence referred to in Article 1(1), Article 2 or Article 3(2)(d) to (f) is made punishable.

3. Each Member State shall take the necessary measures to ensure that attempting to commit an offence referred to in Article 1(1) and Article 3(2)(d) to (f), with the exception of possession as provided for in Article 1(1)(f) and the offence referred to in Article 1(1)(i), is made punishable.

4. Each Member State may decide to take the necessary measures to ensure that attempting to commit an offence referred to in Article 3(2)(b) and (c) is made punishable.'

Article 2

Fundamental principles relating to freedom of expression

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.

Article 3

Implementation and report

1. 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.

2. 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.

Article 4

Entry into force

This Framework Decision shall enter into force on the day of its publication in the *Official Journal of the European Union*.

Done at Brussels, 28 November 2008.

For the Council

The President

M. ALLIOT-MARIE