

**ANNEX XVI**

**LITHUANIA**

Lithuanian delegation welcomes the initiative to share information about the national measures in the Member States related to the implementation of the operative paragraph 6 (OP 6) of the UN Security Council Resolution 2178 (2014).

The Law No. XII-497 amending the Penal Code of the Republic of Lithuania, which entered into force as of 2013 July 13, has comprehensively reviewed and improved the elements of terrorist offences, introduced new offences of public incitement to terrorism, recruitment for terrorism, training of terrorists, threatening to commit a terrorist offence, financing and support of terrorism, introduced definitions of “terrorist offences” and “offences linked to terrorism”, etc. The Law also brought necessary adjustments regarding criminalization of activities of criminal organisation.

With these amendments Lithuania has fully implemented the Council Framework Decision 2008/919/JHA of 28 November 2008 amending Framework Decision 2002/475/JHA and the Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime. In parallel it has also substantially reviewed the national provisions implementing the Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism.

Regarding the OP 6 of the Resolution 2178 (2014), the preliminary analysis of the national legal framework and related case law has shown that Lithuania already partially criminalises activities foreseen in point a of OP 6 and criminalises activities foreseen in points b and c of OP 6. Decision on the need to adopt additional legislative measures further criminalising certain activities foreseen in point a of OP 6 will depend on the forthcoming judgment of the Lithuanian Supreme Court in criminal case 1-22-256/2013, which is specifically related with the interpretation of the existing provisions of the Penal Code and foreign fighters phenomena.

Please find below the table of correspondence of the existing national measures in Lithuania with the OP 6 of the Resolution 2178 (2014).

OP 6 of Resolution 2178 (2014)	Penal Code of the Republic of Lithuania	Comments
<p><i>decides</i> that all States shall ensure that their domestic laws and regulations establish serious criminal offenses sufficient to provide the ability to prosecute and to penalize in a manner duly reflecting the seriousness of the offense:</p>	<p><b>Article 11. Crime</b></p> <p>1. A crime shall be a dangerous act (act or omission) forbidden under this Code and punishable with a custodial sentence.</p> <p>2. Crimes shall be committed with intent and through negligence. Premeditated crimes are divided into minor, less serious, serious and grave crimes.</p> <p>3. A minor crime is a premeditated crime punishable, under the criminal law, by a custodial sentence of the maximum duration of three years.</p> <p>4. A less serious crime is a premeditated crime punishable, under the criminal law, by a custodial sentence of the maximum duration in excess of three years, but not exceeding six years of imprisonment.</p> <p>5. A serious crime is a premeditated crime punishable, under the criminal law, by a custodial sentence of the duration in excess of three years, but not exceeding ten years of imprisonment.</p> <p>6. A grave crime is a premeditated crime punishable, under the criminal law, by a custodial sentence of the maximum duration in excess of ten years.</p> <p><b>Article 252<sup>1</sup>. Interpretation of Concepts</b></p> <p>1. Terrorist crimes means the crimes referred to in Article 250 of this Code and the crimes referred to in Articles 251 and 252 of this Code when committed for terrorist purposes.</p> <p>2. Crimes linked to terrorist activities are the crimes referred to in Articles 249<sup>1</sup>, 250<sup>1</sup>, 250<sup>2</sup>, 250<sup>3</sup>, 250<sup>4</sup> and 250<sup>5</sup> of this Code as well as the crimes referred to in Articles 178, 180, 181 and 300 of this Code if they aim at obtaining funds, instruments or means to commit terrorist crimes or support activities of a terrorist group the purpose whereof is the commission of terrorist crimes.</p> <p>3. Terrorist purposes mean the intention to seriously intimidate population or part of it or to unlawfully demand that an international organisation, the State or institutions thereof carry out certain actions or refrain from them, or</p>	<p>Currently all relevant terrorist crimes and crimes linked to terrorism are punishable by a maximum sentence of at least six years of imprisonment, which means that they fall into categories of serious or grave crimes under the Penal Code of the Republic of Lithuania.</p>

	to destabilise or destruct the main constitutional, political, economic or social formations of the State or an international public organisation.	
<p>(a) their nationals who travel or attempt to travel to a State other than their States of residence or nationality, and other individuals who travel or attempt to travel from their territories to a State other than their States of residence or nationality, for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts, or the providing or receiving of terrorist training;</p>	<p><b>Article 21. Preparation for Commission of a Crime</b>  1. Preparation for the commission of a crime shall be a search for or adaptation of means and instruments, development of an action plan, engagement of accomplices or other intentional creation of the conditions facilitating the commission of the crime. A person shall be held liable solely for preparation to commit a serious or grave crime.  2. A person shall be held liable for preparation to commit a crime according to paragraph 1 of this Article and an article of this Code providing for an appropriate completed crime. A penalty imposed upon such a person may be commuted under Article 62 of this Code.</p> <p><b>Article 22. Attempt to Commit a Criminal Act</b>  1. An attempt to commit a criminal act shall be an intentional act or omission which marks the direct commencement of a crime or misdemeanour where the act has not been completed by reason of the circumstances beyond the control the offender.  2. An attempt to commit a criminal act shall also occur when the offender is not aware that his act cannot be completed, because his attempt is directed at an inappropriate target or he is applying improper means.  3. A person shall be held liable for an attempt to commit a criminal act according to paragraph 1 or 2 of this Article and an article of this Code providing for an appropriate completed crime. A penalty imposed upon such a person may be commuted under Article 62 of this Code.</p> <p><b>Article 250. Act of Terrorism</b>  1. A person who produces, acquires, stores, transports, transfers or otherwise uses of a firearm, ammunition, explosives, explosive, nuclear or radioactive materials for terrorist purposes, other sources of ionising radiation, as well as a person who creates, produces, acquires, stores, transports, transfers or otherwise uses of a chemical or biological</p>	<p>The scope of compliance is still <b>under assessment</b> pending a final decision of the Lithuanian Supreme Court in a criminal case, related to foreign fighter phenomenon.</p>

	<p>weapon or chemical substances or their precursors, micro-organisms, other biological materials or toxins for terrorist purposes shall be punished by imprisonment for a term of up to 8 years.</p> <p>2. A person who for terrorist purposes causes a flood or disrupts the supply of water, power or any other resources, or explodes, sets on fire or otherwise destroys or damages property on a large scale, violates the safety of an information system or electronic data of major importance for state government, the economy or the financial system, or disperses radioactive materials, biological or chemical hazardous substances, preparations or micro-organisms where this has caused or was likely to cause serious consequences as well as a person who for terrorist purposes causes a non-severe health impairment to one or more persons or poses threat to the life or health of many persons shall be punished by imprisonment for a term of up to 10 years.</p> <p>3. A person who causes a serious health impairment to one or more persons for terrorist purposes shall be punished by imprisonment for a term of 3 up to 15 years.</p> <p>4. A person who kills one or more persons for terrorist purposes shall be punished by imprisonment for a term of 8 up to 20 years or by life imprisonment.</p> <p>5. A person who commits the act provided for in paragraph 2, 3 or 4 of this Article where it was directed against an object of strategic importance to national security or where it has led to very serious consequences shall be punished by imprisonment for a term of 10 up to 20 years or by life imprisonment.</p> <p>6. A legal entity shall also be liable for the criminal acts provided for in this Article.</p> <p><b>Article 250<sup>5</sup>. Training of Terrorists</b></p> <p>1. A person who imparts to another person special knowledge or skills necessary to commit a terrorist crime or to take part in the commission of a terrorist crime, knowing that the person intends to use the knowledge or skills for terrorist purposes shall be punished by imprisonment for a term of up to 7 years.</p>	
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	<p>2. A legal entity shall also be liable for the criminal acts provided for in this Article.</p> <p><b>Article 251. Seizure of an Aircraft, Ship or Other Means of Public or Goods Transport or a Fixed Platform on a Continental Shelf</b></p> <p>1. A person who seizes an aircraft, ship or fixed platform on a continental shelf shall be punished by arrest or by imprisonment for a term of up to 5 years.</p> <p>2. A person who seizes an aircraft, ship or fixed platform on a continental shelf by using physical violence or threatening the use of violence shall be punished by imprisonment for a term from 3 up to 8 years.</p> <p>3. A person who seizes an aircraft, ship or fixed platform on a continental shelf by using a firearm, explosive or another means posing a threat to the life or health of the crew or passengers of the aircraft, ship or other means of public or goods transport or of the persons present on the fixed platform on a continental shelf shall be punished by imprisonment for a term of 5 up to 10 years.</p> <p>4. A person who commits the act provided for in paragraph 1, 2 or 3 of this Article for terrorist purposes shall be punished by imprisonment for a term of 5 up to 15 years.</p> <p>5. A person who commits the act provided for in paragraph 1, 2, 3 or 4 of this Article where this leads to an incident, accident or causes some other very serious consequences shall be punished by imprisonment for a term of 10 up to 20 years or by life imprisonment.</p> <p>6. A legal entity shall also be liable for the criminal acts provided for in this Article.</p> <p><b>Article 252. Hostage Taking</b></p> <p>1. A person who kidnaps or holds hostage a person and demands that an international organisation, the State or institution thereof carry out any action or refrain from actions, also a person who threatens the immediate killing or causing bodily harm to the person held hostage unless he is provided conditions to avoid detention, shall be punished by imprisonment for a term of three up to ten years.</p>	
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	<p>2. A person who commits the act provided for in paragraph 1 of this Article, where he kidnaps or holds hostage two or more persons, shall be punished by imprisonment for a term of three up to fifteen years.</p> <p>3. A legal entity shall also be held liable for the acts provided for in this Article.</p>	
<p>(b) the wilful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to finance the travel of individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training; and,</p>	<p><b>Article 250<sup>4</sup>. Financing and support of terrorism</b></p> <p>1. A person who directly or indirectly collects, holds or provides for funds or other property or rendered other material support to other person, seeking or with knowledge that this property, support or part of it should be used to commit a terrorist crime or a crime linked to terrorism or to support one or several terrorists, shall be punishable by imprisonment for a term of up to 10 years.</p> <p>2. A legal entity shall also be held liable for the acts provided for in this Article.</p>	<p><b>Fully compliant</b> provided that a crime under point a) is criminalised under the Lithuanian legislation as a terrorist crime or a crime linked to terrorism.</p>
<p>(c) the wilful organization, or other facilitation, including acts of recruitment, by their nationals or in their territories, of the travel of individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training;</p>	<p><b>Article 24. Complicity and Types of Accomplices</b></p> <p>1. Complicity shall be the intentional joint participation in the commission of a criminal act of two or more conspiring legally capable persons who have attained the age specified in Article 13 of this Code.</p> <p>2. Accomplices in a criminal act shall include a perpetrator, an organiser, an abettor and an accessory.</p> <p>3. A perpetrator shall be a person who has committed a criminal act either by himself or by involving legally incapacitated person or the persons who have not yet attained the age specified in Article 13 of this Code or other persons who are not guilty of that act. If the criminal act has been committed by several persons acting together, each of them shall be considered a perpetrator/co-perpetrator.</p>	<p><b>Fully compliant</b> provided that a crime under point a) is criminalised under the Lithuanian legislation as a terrorist crime or a crime linked to terrorism.</p>

4. An organiser shall a person who has formed an organised group or a criminal association, has been in charge thereof or has co-ordinated the activities of its members or has prepared a criminal act or has been in charge of commission thereof.

5. An abettor shall be a person who has incited another person to commit a criminal act.

6. The accessory shall be a person who has aided in the commission of a criminal act through counselling, issuing instructions, providing means or removing obstacles, protecting or shielding other accomplices, who has promised in advance to conceal the offender, hide the instruments or means of commission of the criminal act, the traces of the act or the items acquired by criminal means, also a person who has promised in advance to handle the items acquired or produced in the course of the criminal act.

**Article 26. Criminal Liability of Accomplices**

1. Accomplices shall be held liable solely for the criminal acts as committed by the perpetrator which are covered by their intent.

2. Where a perpetrator's criminal act was discontinued at the stage of preparation for commission of or an attempt to commit it, an organiser, an abettor and an accessory shall be held liable for complicity in preparation or attempt to commit the criminal act.

3. Where there are the circumstances eliminating, mitigating or aggravating the liability of one of accomplices, they shall not be taken into account when determining the criminal liability of other accomplices

4. An organiser, an abettor or an accessory shall be held liable under an article of the Code which provides for liability for an act committed by a perpetrator and under paragraph 4, 5 or 6 of Article 24 of this Code.

5. Members of a criminal association shall be held liable under Article 249 of this Code as perpetrators regardless of their roles in the commission of a criminal act which is covered by their intent.

**Article 250<sup>2</sup>. Recruitment for Terrorism**

1. A person who recruits another person to commit a terrorist crime or take part in the

	<p>commission of a terrorist crime or participates in activities of a terrorist group the purpose whereof is the commission of a terrorist crime shall be punished by imprisonment for a term of up to 7 years.</p> <p>2. A legal entity shall also be liable for the criminal acts provided for in this Article.</p>	
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NETHERLANDS

The Netherlands have comprehensive anti-terrorism legislation in place, that enables to prosecute all types of behaviour set forward in paragraph 6 of United Nations Security Council Resolution 2178 (2014) on Foreign Terrorist Fighters.

Paragraph 6 (a) demands for legislative measures to prosecute “nationals who travel or attempt to travel to a State other than their States of residence or nationality, and other individuals who travel or attempt to travel from their territories to a State other than their States of residence or nationality, for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts, or the providing or receiving of terrorist training”.

This type of behaviour is criminalized by Articles 46, 134a and 140a of the Penal Code. Jurisdiction to prosecute nationals on charges of these offences is largely at hand.

Paragraph 6 (b) demands for legislative measures to prosecute “the willful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to finance the travel of individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training”.

This behaviour is criminalized by Article 421 of the Penal Code on terrorist financing , which covers also the financing of offences for the preparation or facilitation of terrorist offences (including f.e. terrorist training).

Paragraph 6 (c) is demanding legislative measures to prosecute “the wilful organization, or other facilitation, including acts of recruitment, by their nationals or in their territories, of the travel of individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training.”

The different types of criminal behaviour that can be distinguished in Paragraph 6 (c) are covered by Articles 46, 134a, 140, 140a, 205 and 421 of the Penal Code. They include the criminalization of the preparation of serious (terrorist) offences, whether or not committed in the framework of a terrorist organization, soliciting, aiding and abetting of (terrorist) offences (Articles 47 and 48 Penal Code), training for terrorism, recruitment and terrorist financing.

The Articles of the Penal Code cited above:

***Article 46 (Preparation of serious offences)***

- 1. Preparation to commit a serious offence which, by statutory definition, carries a term of imprisonment of eight years or more, shall be punishable, if the offender intentionally obtains, manufactures, imports, conveys in transit, exports or has possession of objects, substances, information carriers, spaces or means of transport intended for the commission of that serious offence.*
- 2. In the case of preparation, the maximum principal punishments prescribed for the serious offence shall be reduced by one half.*
- 3. In the case of a serious offence carrying a sentence of life imprisonment, a term of imprisonment not exceeding fifteen years shall be imposed.*
- 4. The additional punishments for preparation shall be the same as for the completed serious offence.*
- 5. Objects shall mean all property of any description, whether corporeal or incorporeal.*

***Article 134a (Training for terrorism and other means of preparation for terrorism)***

*Any person who intentionally obtains or attempts to obtain for himself or another person means or information for the commission of a terrorist offence or a serious offence for the preparation or facilitation of a terrorist offence, or gains knowledge or skills for that purpose or imparts this knowledge or these skills to another person, shall be liable to a term of imprisonment not exceeding eight years or a fine of the fifth category.*

**Article 140 (Participation in a criminal organization)**

1. *Participation in an organization which has as its purpose the commission of serious offences, shall be punishable by a term of imprisonment not exceeding six years or a fine of the fifth category.*
2. *Participation in the continuation of the activities of an organization that has been declared prohibited by final judicial decision or is prohibited by operation of law or against which an irrevocable declaratory judgment has been pronounced as referred to in Article 2:20(1) of the Civil Code, shall be liable to a term of imprisonment not exceeding one year or a fine of the third category.*
3. *The terms of imprisonment for founders, directors or managers may be increased by one third.*
4. *Participation, as defined in subArticle (1), shall also include the provision of financial or other material support as well as the raising of funds or the recruitment of persons on behalf of the organization defined in said subArticle.*

**Article 140a (Participation in a terrorist organization)**

1. *Participation in an organization which has as its purpose the commission of terrorist offences shall be punishable by a term of imprisonment not exceeding fifteen years or a fine of the fifth category.*
2. *Founders, directors or managers shall be liable to life imprisonment or a determinate term of imprisonment not exceeding thirty years or a fine of the fifth category.*
3. *Article 140(4) shall apply mutatis mutandis.*

### **Article 205 (Recruitment)**

1. *Any person who, without leave of the King, recruits another person for foreign military service or armed combat shall be liable to a term of imprisonment not exceeding four years or a fine of the fifth category.*
2. *If the offender commits any of the criminal offences defined in subArticle (1) in the practice of his profession, he may be disqualified from the practice of that profession.*
3. *If the armed combat for which persons are recruited involves the commission of a terrorist offence, the term of imprisonment prescribed for the offence defined in subArticle (1) shall be increased by one third.*

### **Article 421 (Terrorist financing)**

1. *As guilty of terrorist financing and liable to a punishment of either a term of imprisonment not exceeding eight years or a fine of the fifth category, shall be, a person who:*
  - a. *intentionally provides himself or another person with means or information or intentionally acquires objects, has objects at his disposal or provides objects to another person, which serve in full or in part, directly or indirectly, to provide monetary support for the commission of a terrorist offence or an offence for the preparation or facilitation of a terrorist offence;*

*b. intentionally provides himself or another person with means or information or intentionally acquires objects, has objects at his disposal or provides objects to another person, which serve in full or in part, directly or indirectly, to provide monetary support for the commission of one of the offences defined in:*

- Articles 117 to 117b inclusive as well as Article 285, if that offence is against an internationally protected person or his protected property;*
- Articles 79 and 80 of the Nuclear Energy Act [Kernenergiewet], Articles 161quater, 173a and 284a as well as Articles 140, 157, 225, 310 to 312 inclusive, 317, 318, 321, 322 and 326, if the offence involves intentionally unlawful acts with regard to nuclear material;*
- Articles 162, 162a, 166, 168, 282a, 352, 385a to 385d inclusive;*
- Articles 92 to 96 inclusive, 108, 115, 121 to 123 inclusive, 140, 157, 161, 161bis, 161sexies, 164, 170, 172, 287, 288 and 289, in the case of offences committed by means of intentionally unlawful discharge or detonation of an explosive or other object, or release, dissemination or impact of an object, as a result of which danger to life, danger for serious bodily harm for another person or substantial material damage is feared.*

2. *Objects shall mean any good and property right.*

POLAND

In response to the request by the Presidency (document no. CM 5005/14), the Polish delegation presents below the provisions of Polish legislation which are in compliance with operative paragraph 6 (OP 6) of the UN Security Council Resolution 2178(2014) and ensure its full application.

The Polish criminal law any offence is considered to be a terrorist act if it carries a maximum penalty of at least 5 years of imprisonment and is committed for at least one of the following purposes:

- intimidation of many persons,
- compelling a public authority of the Republic of Poland or of another State or a body of an international organisation to undertake or abandon specific actions,
- cause serious disturbance to the constitutional system or to the economy of the Republic of Poland, another State or an international organisation.

Polish law has been amended in order to grant courts jurisdiction over terrorist acts which were committed within the territory of Poland and abroad, irrespective of whether they were committed by Polish nationals or not.

OP 6 (a)

The Polish legal system provides for the criminalisation of preparation for a commission of certain criminal offences. Preparation occurs if a person, with a view to committing a criminal offence, undertakes to create conditions conducive to the commission of the main offence. Preparation includes gathering resources, preparing instruments, drafting a plan of action, gathering information or conspiring with another person. This list is not exhaustive, though, therefore any action conducted with the view of committing an offence can be considered preparation, including travelling to a different State.

The very act of travelling to a different State may be considered as directly leading to the commission of an offence. In such an event it is penalised under ‘attempt’ which generally carries a more severe penalty than preparation.

Finally, while not all instances of preparation are criminalised, travelling for the purpose of participating in the activities of a terrorist organisation is criminalised as a separate offence, either as direct commission (if the person in question already belongs to a terrorist organisation) or as attempt (if the person is seeking to join one).

#### OP 6 (b)

Polish law directly penalises the gathering and provision (including offering) of funds and goods for the purpose of committing a terrorist act. Polish law goes even further by what is required by the Resolution as it penalises not only funding but also gathering or provision of material goods, e. g. providing a motor vehicle to be used to travel to a different State to commit a terrorist act would also fall within the relevant provision of Polish law.

#### OP6 (c)

Polish law recognises the concept of aiding another person in committing a criminal offence which encompasses all forms of facilitation of committing a criminal offence by another person. The acts set out in OP 6 (c) would therefore be considered aiding in committing the base offence.

Recruitment can also be penalised through the concept of ‘incitement’. In Polish law this concept is understood broadly and includes coercion, enticement, commissioning and simply hiring another person to commit a criminal offence.

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**PORTUGAL**

In what concerns to the criminalization of the travel, intent to travel, organization, financing or facilitation of the travel to another State, for the purpose of committing, training or preparing others to commit a terrorist act (OP 6 of the UNSC Resolution) we can affirm that Portugal is preparing draft legislation on this subjects, still under consideration by a Working Group. We can inform, however, that the purpose of the envisaged amendments is to anticipate the criminalization of conducts, in order to encompass the phases prior to the effective participation in terrorist organizations such as organizing or financing the travel and the travel to another State other than the State of residence or nationality.

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ROMANIA

The Romanian Law no.535/2004 on preventing and countering terrorism was amended in 2012, and the offences focus on multiple alternative actions which could cover the provisions stipulated by UNSC Resolution no.2178/2014. Still, the national law does not expressly incriminate the following:

- the travel or attempted travel with the purpose of staging a terrorist attack;
- the providing or collecting of funds, by any means, directly or indirectly, for financing or being aware of their use for terrorist travel, and also organizing or facilitating such travels by any other means, including by recruiting individuals.

However, the national legislation provides sufficient general rules to be used for punishing individuals, and any difficulties may be related to the probation of such deeds, and not to their incrimination.

In this respect, Law no.535/2004 on preventing and countering terrorism, with subsequent amendments, incriminates the following deeds:

1. Article.33 paragraph 1, point b): training or preparing a person how to use or assemble firearms, ammunition, explosives, any kind of explosive devices, chemical, biological, radiological or nuclear weapons, including any equipment specifically designed to be directly used in the preparation of chemical, biological, radiological or nuclear substances;

- paragraph 2 point a): facilitating border crossing, hosting or facilitating access to the targeted objectives for an individual who has carried out / participated or will participate / carry out a specific terrorism offense stipulated in paragraph 1 or in article 32, paragraph 1 or 3;

- paragraph 2 point e): taking part in the training / preparing process in order to know how to use the destructive means, lethal or toxic substances, firearms, any kind of explosive devices, ammunition, explosives, chemical, biological, radiological or nuclear weapons with the purpose to carry out a terrorist act;

2. According to article 33<sup>1</sup>, an offence is also 'any act to recruit a person to carry out any of the acts stipulated by article 32, paragraph 1 and 3 and article 33'. Furthermore, article no.33<sup>2</sup> sanctions 'the act to urge the people, verbally, in writing or by any other means, to carry out any offences stipulated by Law no.535/2004'.

3. According to article 36, a terrorist financing offence is to provide or collect legal or illegal funds, directly or indirectly, knowing their future use (partially or totally) in acts of terrorism or to support a terrorist entity.

Perpetrating an offence in order to gain such funds, knowing their future use (totally or partially) in acts of terrorism or to support a terrorist entity is also an offence.

4. According to article 34, the attempt to perpetrate a terrorist act is also punished, where the attempt is defined as the producing or acquiring of such means and instruments or the undertaking of any measures to carry out such offences.

The attempted travel with the purpose of carrying out a terrorist act (the activities for which the travel takes place) is very hard to probate. Thus, the terrorist travel is an offence from the point of view of attempting to carry out terrorist acts.

Romania is examining the national legal framework in order to assess the necessity to be accordingly aligned / amended.

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SPAIN

In response to the Presidency's invitation to the delegations to provide information on the counter-terrorism measures that have been adopted or will be adopted, in particular in relation to operative paragraph 6 of UN Security Council Resolution 2178 (2014) of 24 September, the Spanish Ministry of Justice notes that a draft Organic Law, amending Organic Law 10/1995 of 23 November on the Criminal Code regarding terrorist offences, was presented in the Congress of Deputies on 3 February 2015.

This draft Organic Law, presented jointly by the two main parliamentary groups with the support of other minority parliamentary groups, is based on United Nations Security Council Resolution 2178, adopted on 24 September 2014, which recognises the international community's grave concern over the surge in terrorist activity and the heightened call to commit attacks in all regions of the world.

Among the range of measures included in the operative part of this Resolution, paragraph 6 contains a reminder of Resolution 1373 (2001), according to which all Member States should ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice. Following that reminder, Resolution 2178 asks Member States to ensure that their domestic legislation and regulations establish serious criminal offences sufficient to provide the ability to prosecute and to penalise in a manner duly reflecting the seriousness of the offence.

In line with these Resolutions, the draft Organic Law presented in the Spanish Parliament amends Book II, Title XXII, Chapter VII of Organic Law 10/1995 of 23 November on the Criminal Code, in such a way that the strict criminal justice response to such serious crimes will apply to the new threats in addition to familiar forms of terrorism.

Book II, Title XXII, Chapter VII of Organic Law 10/1995 of 23 November on the Criminal Code is divided into two sections and includes Articles 571 to 580.

The first section is titled "On terrorist organisations and groups" and follows the same punitive approach as the existing regulations, laying down the definition of a terrorist organisation or group and the penalty applicable to those who promote, create, organise or lead such groups or to those who belong to them.

The second section is titled "On terrorist offences" and begins, in Article 573, with a new definition of a terrorist offence inspired by Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism, amended by Council Framework Decision 2008/919/JHA of 28 November 2008. The definition establishes that any serious offence committed against the legal interests listed in paragraph 1 constitutes a terrorist offence when it is committed for any of the purposes laid down in the same article: 1. Undermining the constitutional order, or destroying or seriously destabilising the functioning of the political institutions or economic or social structures of the State, or compelling the public authorities to perform or to abstain from performing an act; 2. Seriously disturbing the public peace; 3. Seriously destabilising the functioning of an international organisation; 4. Provoking a state of terror in the general public or a section of it.

Article 573a establishes the penalty for each terrorist offence, on the basis that an offence which causes the death of a person will incur the maximum prison term provided for in the Criminal Code.

Article 574 criminalises all types of conduct relating to storage of weapons or explosives, their manufacture, trafficking, supply, or merely placing or using weapons or explosives, when such conduct is for the purposes listed in Article 573(1). More severe penalties are expressly laid down when such conduct relates to nuclear, radiological, chemical or biological weapons, substances or equipment, or any other weapons, substances or equipment of a similarly destructive nature.

Article 575 criminalises instruction or training in military or combat activities or in the handling of any type of weapons or explosives, and explicitly includes passive instruction or training, with particular reference to instruction or training via the internet or publicly available communication services, which, to be considered an offence, must take place with some degree of regularity and with the express purpose of joining, collaborating with or pursuing the aims of a terrorist organisation. Article 575 also criminalises the phenomenon of foreign terrorist fighters, i.e. those who travel abroad in order to join or collaborate with a terrorist organisation or to commit a terrorist offence.

Article 576 establishes the penalty for conduct relating to terrorist financing, including for any person who, by whatever means, directly or indirectly raises, acquires, possesses, uses, converts, transfers or performs any other activity involving goods or assets of any kind, with the intention that they be used, or knowing that they will be used, in whole or in part, to commit any of the terrorist offences contained in the chapter. It also criminalises the commission of offences through failure to exercise due care, such as negligent omission to perform duties pursuant to the legislation on money laundering and the prevention of terrorist financing.

Article 577 criminalises and lays down penalties for the different forms of collaboration with terrorist organisations or groups or aimed at committing a terrorist offence. It specifically includes grooming or recruitment on behalf of terrorist organisations or for terrorist purposes, increasing the penalty when the target is a minor or a person in need of special protection.

Articles 578 and 579 penalise the public glorification or justification of terrorism, actions discrediting, disdaining or humiliating the victims of terrorism, and the dissemination of messages or orders inciting others to commit acts of terrorism. The criminalisation of such conduct gives special consideration to the fact that it may comprise the dissemination of publicly available content or services via the media, the internet or electronic communication services, or using information technology, and includes the possibility for judges to have such content removed as a provisional measure.

Article 579a includes, subject to the circumstances listed in the article, the penalty of absolute barring and the new penalty of special barring from educational office or employment in the fields of teaching, sports or leisure activities, for a period which exceeds any custodial term imposed by between six and 20 years. In addition, it provides for the possibility of an adjusted penalty for those who voluntarily cease their criminal activities and cooperate with the authorities, or in the event that the act is objectively minor in the light of the means employed or the outcome produced.

Finally, Article 580 provides that terrorist offences will be punishable in Spain whenever the perpetrator is Spanish, is ordinarily resident in Spain or is on Spanish territory, regardless of whether or not those offences are punishable where they were carried out. In addition, it is specified that, for all terrorist offences, convictions handed down by a foreign judge or court will be considered equal to judgments delivered by Spanish judges or courts for the purposes of applying the aggravated circumstance of repeated infringement.

**SWEDEN**

We have been requested to submit information about existing national measures which are already in compliance with the requirements of the operative paragraph 6 (OP 6) of the UN Security Council Resolution 2178 (2014), or have been adopted in implementation of OP 6 of the Resolution, or to inform about our plans to do so.

Sweden fulfils its current international criminal obligations in the anti-terrorism field and has far reaching criminal legislation in place. In order to enable Sweden to fully meet also the penal law requirements of UN Security Council Resolution 2178 (2014), Swedish Government has appointed a committee of enquiry on 18 December 2014 with the task to analyse the Swedish penal legislation in light of OP 6 of UNSCR 2178 (2014) and to submit necessary proposals of legislative changes. The committee report is due on 18 June 2015.

**Committee terms of reference**

**Implementation of certain repressive measures to prevent and combat terrorism**

Decision taken at Government meeting on 18 December 2014

**Summary**

A special investigator will assess the need for legislative changes to ensure that Sweden can comply with the requirements laid down in UN Security Council resolution 2178 (2014) for repressive measures to prevent and combat terrorism. If the investigator considers that there is such a need, proposals will be submitted accordingly.

The investigator will also determine whether the repressive measures implemented by Sweden to prevent and combat the financing of terrorism satisfy the requirements laid down by the Financial Action Task Force (FATF), and will propose any necessary legislative amendments.

The investigator will report on his findings by no later than 18 June 2015.

## **Effective criminal law - a means of countering terrorism**

Persons who travel abroad to take part in terrorist acts or terrorist training pose a threat to international peace and security. Effective criminal law is essential in order to counteract this. However, criminalisation constitutes just one of a number of possible measures. There is also a need for efforts to prevent radicalisation and recruitment. Such efforts are, for example, among the tasks which have been assigned to a national coordinator for the safeguarding of democracy against violent extremism.

On 24 September 2014, the UN Security Council adopted resolution 2178 (2014). The resolution was adopted in accordance with Chapter VII of the UN Charter and is therefore binding on all member states.

The resolution reaffirms that terrorism in all forms and manifestations constitutes a threat to international peace and security. It is noted that the terrorism threat has become more diffuse, with an increase, in various regions of the world, of terrorist acts including those motivated by intolerance or extremism. It also expresses grave alarm over the acute and growing threat posed by persons who travel abroad for the purpose of participation in terrorist acts or terrorist training, including in connection with armed conflict. According to the resolution, this is increasing the intensity, duration and intractability of conflicts. It is claimed that such persons may pose a serious threat to their States of origin, the States they transit and the States to which they travel. In addition, the resolution expresses grave concern that such persons are using their extremist ideology to promote terrorism.

Paragraph 5 states that Member States should, consistent with international human rights law, international refugee law, and international humanitarian law, prevent and suppress the recruiting, organising, transporting or equipping of individuals who travel to another State for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training. The same applies to the financing of their travel and of their activities.

Paragraph 6 requires that Member States' legislation must include provisions which provide the ability to prosecute and to penalise in a manner duly reflecting the seriousness of the offence.

Moreover, Sweden has given an international undertaking to criminalise the financing of terrorism within the framework of the Financial Action Task Force (FATF). The FATF is an international organisation whose objectives are to set standards and promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and the proliferation of weapons of mass destruction as well as other threats to the integrity of the international financial system.

Sweden has been a member of the FATF since the organisation's establishment in 1989.

In Swedish law, provisions on terrorist and terrorism-related offences are laid down in the Act on criminal responsibility for terrorist offences (2003:148) (the Terrorist Offences Act), the Act on criminal responsibility for public provocation to commit and recruitment and training for terrorist offences and other particularly serious crime (2010:299), and the Act on criminal responsibility for the financing of particularly serious crime in some cases (2002:444) (the Financing Act).

#### **The mandate to review criminal law in the light of UN Security Council resolution 2178 (2014)**

Sweden has an obligation under international law to honour its international criminal law commitments in the field of terrorism. A special investigator will therefore determine whether Swedish legislation needs to be amended in order to comply with the criminal law requirements laid down in UN Security Council resolution 2178 (2014), and if so, in what way.

This mandate brings to the fore issues relating to the protection of fundamental rights and freedoms pursuant to the Instrument of Government and the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). It concerns *inter alia* the right to freedom of movement pursuant to Chapter 2, Section 8 of the Instrument of Government and Article 2 of Protocol No. 4 to the ECHR, and the right to freedom of expression and information pursuant to Chapter 2, Section 1 of the Instrument of Government and Article 10 ECHR. It is important that close attention be paid to the protection of fundamental rights and freedoms, and that any assessments carried out and any proposals submitted be compatible with both the Instrument of Government and the ECHR, as well as with Sweden's obligations under international law.

Finally, account should be taken of how the formulation of criminalisation proposals and delimitation of the acts which are to be criminalised affect the ability of civil society organisations and competent authorities to work effectively to forestall and prevent persons from travelling abroad for the purpose of participation in terrorist acts or terrorist training.



*Does Swedish law need to be amended in order to comply with the resolution's requirement regarding travel or attempted travel?*

Pursuant to paragraph 6(a) of the resolution, it will be a criminal offence for a State's nationals to travel or attempt to travel to a State other than their States of residence or nationality, or for other individuals to travel or attempt to travel from their territories to a State other than their States of residence or nationality, for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts. The resolution does not define what precisely is meant by the term "terrorist acts".

There are no criminal provisions under Swedish law which directly address the types of travel in question. However, the concept of inchoate offences, and in particular the preparation of and conspiracy to commit offences, means that there are provisions which can be applied to acts perpetrated at an early stage in the planning of a terrorist offence. In order for travel or attempted travel, for the purpose indicated in the resolution, to constitute an offence under the Terrorist Offences Act, the conduct in question must fulfil the conditions necessary for preparation of or an attempt or conspiracy to commit a terrorist offence.

The requirement laid down in paragraph 6(a) also extends to individuals who travel or attempt to travel for the purpose of the providing or receiving of terrorist training. The resolution does not define what precisely is meant by that term. The Act on criminal responsibility for public provocation to commit and recruitment and training for terrorist offences and other particularly serious crime provides for specific criminal responsibility for certain acts which may precede a terrorist offence, including training. The provision in question covers cases in which someone communicates or attempts to communicate instructions on the production or use of explosives, weapons or harmful or dangerous materials which are particularly suitable for use in the commission of particularly serious crime, or on other methods or techniques which are particularly suitable for such a purpose. The offence of training is not criminalised at the stages of attempt, preparation or conspiracy. Moreover, it covers only individuals who *provide* training.

Consequently, it is doubtful whether the existing repressive measures are sufficient in the light of the requirements laid down by the resolution.

The investigator will therefore:

- determine the extent of the resolution's criminalisation requirement in respect of travel or attempted travel for the purpose stated, and analyse the need for legislative amendments in order to ensure that Sweden can comply with that requirement, and
- submit any necessary legislative proposals.

*Does Swedish law need to be amended in order to comply with the resolution's requirement regarding the financing of travel?*

According to paragraph 6(b) of the resolution, the wilful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to finance the travel of individuals who travel to a State other than their States of residence or nationality for the purpose referred to in paragraph 6(a) will constitute a criminal offence.

Under the Financing Act, it is a criminal offence to collect, provide or receive money or other property with the intention that such money or property should be used, or in the knowledge that it is to be used, in order to commit particularly serious crime. Any attempt to commit such a crime (but not the preparation of or conspiracy to commit it) is likewise a criminal offence. The acts whose financing is defined by the resolution as a criminal offence do not fall within the scope of what the Financing Act regards as particularly serious crime. Consequently, the financing of travel constitutes a criminal offence according to the Financing Act only to the extent that it can be demonstrated that the purpose of such financing is to commit particularly serious crime. In addition, the financing of such travel may constitute the preparation of a terrorist offence where it takes the form of providing money or other resources as payment for a criminal offence or in order to cover the costs of perpetrating such an offence.

Consequently, criminalisation under Swedish law may not fully satisfy the requirements laid down by the resolution.

The investigator will therefore:

- determine the extent of the resolution's criminalisation requirement in respect of the financing of travel, and analyse the need for legislative amendments in order to ensure that Sweden can comply with that requirement, and
- submit any necessary legislative proposals.

*Does Swedish law need to be amended in order to comply with the resolution's requirement regarding the facilitation of travel?*

Pursuant to paragraph 6(c) of the resolution, the organisation, or other facilitation, including acts of recruitment, by their nationals or in their territories, of the travel of individuals who travel to a State other than their States of residence or nationality for the purpose referred to in paragraph 6(a) will constitute a criminal offence. In accordance with the general principle on complicity as laid down in Chapter 23, section 4 of the Penal Code, responsibility for a particular act lies not only with the person who perpetrated it, but also with any person who encouraged it. An act should be considered to have been encouraged if a person has taken steps which facilitate or at least are likely to facilitate its perpetration. In order for the requirement laid down in that respect by the resolution to be satisfied by the complicity principle, the acts in question must be independent criminal offences or constitute the preparation of or an attempt or conspiracy to commit an offence. The extent to which that requirement can be satisfied by the provisions concerning complicity therefore depends on the investigator's conclusions regarding travel within the meaning of paragraph 6(a).

Consequently, it is uncertain whether the facilitation of travel pursuant to the resolution is fully reflected in current Swedish law.

The investigator will therefore:

- determine the extent of the resolution's criminalisation requirement in respect of the facilitation of travel, and analyse the need for legislative amendments in order to ensure that Sweden can comply with that requirement, and
- submit any necessary legislative proposals.

### **The mandate to review the Financing Act in the light of the FATF's criminal law requirements**

The FATF has adopted 40 recommendations for measures to combat money laundering, terrorist financing and the proliferation of weapons of mass destruction. It monitors compliance with the recommendations via a mutual evaluation system. Within the framework of the fourth round of mutual evaluations, Sweden will be assessed in 2016.

FATF Recommendation 5 requires member countries to criminalise terrorist financing on the basis of the UN International Convention for the Suppression of the Financing of Terrorism, which was adopted in 1999. In addition, member countries must criminalise not only the financing of terrorist acts but also the financing of terrorist organisations and individual terrorists. The latter applies even in the absence of a link to a specific terrorist act or acts.

Under the Financing Act, it is a criminal offence to collect, provide or receive money or other property with the intention that such money or property should be used, or in the knowledge that it is to be used, in order to commit particularly serious crime (including those types of crime whose financing constitutes a criminal offence under the Convention). In order for criminal liability to be deemed to exist, the act in question must have been perpetrated at least in the knowledge that the property is to be used in order to commit particularly serious crime (see the Supreme Court's judgment of 14 April 2014 in case Ö 386-14).

In the FATF's evaluation of Sweden carried out in 2006, the measures implemented by Sweden to criminalise terrorist financing were judged to be broadly compatible with the recommendation in question. However, the fact that such criminalisation does not explicitly include the collection or provision of money or other property in the knowledge that it is to be used by a terrorist organisation or an individual terrorist (for any purpose) was regarded as a shortcoming.

Sweden was therefore urged to extend criminal liability in such a way as to make it an explicit criminal offence to collect or provide property in the knowledge that it is to be used by a terrorist organisation or an individual terrorist for any purpose.

It is important that Sweden honour its commitments with regard to the FATF. It is therefore appropriate to investigate whether Swedish legislation needs to be amended in order to comply with the requirements laid down in FATF Recommendation 5, and if so, in what way. In that connection, consideration should be given to how the formulation of criminalisation proposals and delimitation of the acts which are to be criminalised affect an individual's ability to contribute to humanitarian activities.

The investigator will therefore:

- determine whether, via the Financing Act, Sweden fulfils the requirements laid down in FATF Recommendation 5, and
- propose any legislative amendments which may be required in order to ensure that Sweden's commitments be honoured.

### **Participation in armed conflict**

In the government's view, consideration should be given to the delimitation of criminal offences in relation to participation in an armed conflict outside Sweden where such participation takes place within the framework of a terrorist organisation. Criminal provisions in that area too could help to forestall, prevent and combat terrorism. However, this involves a number of difficult considerations which will require further analysis before any detailed instructions can be submitted to the investigator. Since it is important that the latter be able to commence work on the resolution's criminalisation requirements immediately, the government intends to come back with an additional directive at a later stage.

## **Working arrangements and report**

Via the national coordinator for the safeguarding of democracy against violent extremism, the investigator will consult with and obtain information from representatives of the relevant bodies and authorities, and in particular the Swedish Security Service, the Swedish Prosecution Authority, the Swedish Bar Association and civil society organisations.

The investigator will keep himself abreast of and pay attention to any relevant work within the Government Offices and within the EU and other international fora.

The investigator will examine the current legislation and any ongoing legislative activity in countries which he considers to be of interest and will draw any international comparisons deemed to be justified, for example in relation to the implementation of UN Security Council resolution 2178 (2014).

Legislation and ongoing proceedings in other Nordic countries will be the subject of particular scrutiny and analysis.

The investigator will report on his findings by no later than 18 June 2015.

(Ministry of Justice)

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SLOVAKIA

In the case of the fight against terrorism, Slovak law is based on the fulfilling of the international commitments undertaken by the UN, Council of Europe and the EU.

Respective provisions of the Resolution of the UN Security Council No. 2178(2014), dealing with the prosecution of traveling for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts, or the providing or receiving of terrorist training, are implemented in Article 419 of the Criminal Code of the Slovak Republic mostly in Para 2 and in Article 297 including the preparation and attempt which provide a substantive legal basis for punishing of the criminal offences of foreign fighters.

In addition, according to our point of view, this text is very similar to the provisions of the Convention of the Council of Europe on the prevention of terrorism (2005), which has been already implemented into the Slovak law.

Nevertheless, the legal analysis is still on-going at interdepartmental level, in order to comprehensively evaluate the possible scope for improving our legal framework. Appendix covers the relevant provisions of the Slovak Criminal Code, which provides the legal basis for the prosecution of such crimes related to this phenomenon.

*Selection of key provisions of the Slovak Criminal Code concerning acts of terrorism  
(current version)*

**Section 13**

***Preparation for an offence***

*(1) "Preparation for an offence" means an action consisting in intentionally organising an offence, procuring or adapting means or instruments for its commission, engaging in conspiracy or assembly with a view to, or instigating, ordering or abetting such an offence or in otherwise intentionally creating the conditions for its commission, where the offence was not committed and no attempt was made to commit it.*

*(2) Preparation for an offence is punishable according to the tariff laid down for the offence at which it aimed.*

*(3) Preparation for a offence ceases to be punishable if the perpetrator has voluntarily*

*(a) desisted from further actions aiming at the commission of the offence and has removed the danger to the interest protected by this Code which arose as a result of the preparation made, or*

*(b) reported the preparation of the offence to a law-enforcement authority or to the police in time for the threat to the interest protected by this Code, which arose as a result of the preparation made, to be removed; to this end, members of the armed forces may inform their superior or service authority and persons serving a prison sentence, or held in custody, may inform the relevant Prison Warders and Court Guards Corps.*

*(4) Notwithstanding the provisions of paragraph 3, any other offence committed by the perpetrator as a result of carrying out this action remains punishable.*



## **Section 14**

### **Attempt to commit an offence**

- (1) *"Attempt to commit an offence" means an action, aiming directly at the commission of an offence, which the perpetrator has carried out with the intention of committing an offence, if that action did not result in the commission of the offence.*
- (2) *An attempt to commit an offence is punishable according to the tariff laid down for the committed offence.*
- (3) *An attempt to commit an offence ceases to be punishable if the perpetrator has voluntarily*
  - (a) *desisted from further actions necessary for the commission of the offence and has removed the danger to the interest protected by this Code which arose as a result of the attempt made, or*
  - (b) *reported the attempt to commit the offence to a law enforcement authority or to the police in time for the danger to the interest protected by this Code, which arose as a result of the attempt made, to be removed; to this end, members of the Armed Forces may inform their superior or service authority and persons serving a prison sentence, or held in custody, may inform the relevant Prison Warders and Court Guards Corps.*
- (4) *Notwithstanding the provisions of paragraph 3, any other offence committed by the perpetrator as a result of carrying out this action remains punishable.*

## **Section 129**

### **Groups of persons and organisations**

- (1) *For the purposes of this Code, "group of persons" means at least three persons.*
- (2) *For the purposes of this Code, "organised group" means an association of at least three persons for the purpose of committing an offence, with a specific distribution of designated tasks among the individual members of the group, so that the group's activity is planned and coordinated, increasing the likelihood of the offence being successfully committed.*

(3) For the purposes of this Act, "extremist group" means an association of at least three persons for the purpose of committing an extremist offence.

(4) For the purposes of this Act, "criminal group" means a structured group of at least three persons which exists for a certain period of time and acts in a coordinated manner with the aim of committing one or more crimes, the offence of money-laundering pursuant to Section 233 or one of the offences of corruption pursuant to Chapter Eight, Part Three of the Specific Part of this Code for the purpose of directly or indirectly obtaining financing or other advantages.

(5) For the purposes of this Act, "terrorist group" means a structured group of at least three persons which exists for a certain period of time for the purpose of committing the offence of terror or the offence of terrorism.

(6) "Activity performed for a criminal group or terrorist group" means intentional participation in such a group or other intentional activity for the purpose of

- (a) maintaining the existence of such a group or
- (b) committing the offences referred to in paragraph 4 or 5 by means of such a group.

(7) "Supporting a criminal group or terrorist group" means intentionally providing financial or other resources, services or cooperation or creating other conditions for the purpose of

- (a) maintaining the existence of such a group or
- (b) committing the offences referred to in paragraph 4 or 5 by means of such a group.

**Section 141**

**Dangerous groupings**

*A "dangerous grouping" means*

- (a) a criminal group, or*
- (b) a terrorist group.*

**Section 297**

**Establishing, planning or supporting a terrorist group**

*Whoever establishes, or plans, a terrorist group, is a member of such a group, acts for it or supports it is liable to a term of eight to fifteen years' imprisonment.*

**Terror**

**Section 313**

*Whoever, with the intention of harming the constitutional order of the Slovak Republic, intentionally kills or attempts to kill another person is liable to a term of 20 to 25 years' imprisonment, or life imprisonment.*

**Section 314**

*(1) Whoever takes a person hostage and threatens to kill, or cause bodily or other harm to, that person with the aim of enforcing the fulfilment of conditions which harm the constitutional order of the Slovak Republic is liable to a term of seven to twelve years' imprisonment.*

(2) *The offender is liable to a term of 12 to 20 years' imprisonment if he commits the act referred to in paragraph 1*

- (a) *and in doing so causes serious bodily harm or death;*
- (b) *against a protected person; or*
- (c) *in an aggravated manner.*

(3) *A custodial sentence of 15 to 25 years' or life imprisonment shall be imposed on an offender who commits an offence referred to in paragraph 1*

- (a) *and causes the death of more than one person;*
- (b) *as a member of a dangerous grouping; or*
- (c) *in a crisis situation.*

#### **Section 419**

##### ***Terrorism and certain forms of participation in terrorism***

(1) *A person who,*

- (a) *with a view to seriously intimidating a population, seriously destabilising or destroying the constitutional, political economic or social order of a state or the structure of an international organisation or forcing the government of a state or an international organisation to act or refrain from acting, threatens to commit a crime or commits a crime that endangers the life or health of persons, their personal freedom or property, or unlawfully makes, obtains, possesses, holds, transports, supplies or otherwise uses explosives, nuclear, biological or chemical weapons, or carries out unauthorised research and development of such weapons or weapons prohibited by law or international agreement;*

*(b) with a view to causing death or serious physical harm or major damage to property or the environment, possesses radioactive material or has or produces nuclear explosive devices or devices that disperse radioactive material or emit radiation which as a result of their radiological properties can cause death, serious physical harm or major damage to property or the environment;*

*(c) with a view to causing death or serious physical harm or major damage to property or the environment or forcing a natural or legal person, international organisation or state to act or refrain from acting, uses radioactive material or nuclear explosive devices or devices that disperse radioactive material or emit radiation which as a result of their radiological properties can cause death, serious physical harm or major damage to property or the environment, or uses or damages a nuclear reactor, including reactors installed on vessels, vehicles, aircraft or spacecraft, that is used as a source of energy for powering such vessels, vehicles, aircraft or spacecraft or for other purposes or operation or transport equipment used for the production, storage, processing or transportation of radioactive materials in a way that releases or can release radioactive material or by such conduct makes a threat in circumstances indicating that the threat is credible, or*

*(d) seeks to obtain radioactive material, nuclear explosive devices or devices that disperse radioactive material or emit radiation which as a result of their radiological properties can cause death, serious physical harm or major damage to property or the environment, or a nuclear reactor, including reactors installed on vessels, vehicles, aircraft or spacecraft, that is used as a source of energy for powering such vessels, vehicles, aircraft or spacecraft or for other purposes or operation or transport equipment used for the production, storage, processing or transportation of radioactive materials, making a threat in circumstances indicating that the threat is credible or using force is liable to a term of 20 to 25 years' imprisonment or life imprisonment.*

- (2) *As referred to in paragraph 1, a person who*
- (a) *himself or by means of another person collects or provides financial or other resources that are intended, even if only partly, to be used or enabled to be used to commit a criminal offence as referred to in paragraph 1;*
  - (b) *provides or attempts to provide or participates in the provision of knowledge of a method or technique for producing or using explosives, nuclear, biological or chemical weapons or other similarly harmful or dangerous materials for the purpose of committing an act as referred to in paragraph 1;*
  - (c) *publicly incites or participates in inciting the commission of an act as referred to in paragraph 1 by defending or justifying such an act in the event that it is carried out and thus creating the danger that it will be carried out;*
  - (d) *requests that a person commit or participate in the commission of an act as referred to paragraph 1 or attempts to make or participate in the making of such a request, or*
  - (e) *plans to commit an act as referred to in paragraph 1 with a view to committing or facilitating the commission of that act.*
- (3) *A sentence of life imprisonment shall be imposed on an offender who commits an act as referred to in paragraph 1*
- (a) *that causes serious physical harm to or the death of more than one person;*
  - (b) *against a protected person;*
  - (c) *against the armed forces or similar groups;*
  - (d) *as a member of a dangerous grouping; or*
  - (e) *in a crisis situation.*
- (4) *A person who commits an act as referred to in paragraph 2(a) and thereby facilitates the use of financial or other resources collected or provided for the purpose of committing or attempting to commit an act as referred to in paragraph 1 or who by such means himself uses such resources or commits an act as referred to in paragraph 2(d) and thereby facilitates the commission or attempt to commit an act as referred to in paragraph 1 is liable to life imprisonment.*

SLOVENIA

We would like to supplement the Compilation on the criminal justice response to the phenomenon of foreign fighters - existing or planned national measures implementing the operative paragraph 6 of the UNSC Resolution 2178(2014) – ST 5206/15.

Please find in the Annex bellow relevant Articles from the General Part of the Criminal Code incriminating attempt (Art. 34), participation in criminal offence (Art. 36.a) and liability of members and leaders of criminal association (Art. 41). Also, please find the relevant provisions from the Special Part of the Criminal Code, namely incriminations of terrorism (Art. 108), financing of terrorism (Art. 109), incitement and public glorification of terrorist acts (Art. 110), recruitment and training for terrorism (Art. 111), criminal association (Art. 294), public incitement to hatred, violence or intolerance (Art. 297).

We would like to draw your attention to provisions regarding punishability of attempt with respect to criminal offences of Terrorism (Art. 108), Financing of Terrorism (Art. 109), Incitement and Public Glorification of Terrorist Acts (Art. 110), Recruitment and Training for Terrorism (Art. 111). Namely, attempt is punishable for these offences, which was explicated, inter alia, also to the European Commission in our reply from 22 September 2014. <sup>1</sup>

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<sup>1</sup> EC doc. no. 13040/14. 10.9.2014, COM(2014) 554 final

*The Republic of Slovenia*

*The Criminal Code<sup>1</sup>*

*(Terrorism and terrorism related criminal offences and relevant criminal law institutes)*

**THE GENERAL PART**

**3. Attempt of Criminal Offence**

*Attempt*

*Article 34*

*(1) Any person, who commenced an intentional criminal offence, but did not complete it, shall be punished for the attempt, provided that such criminal offence allows under the statute<sup>2</sup> the imposition of a punishment of three years or a graver punishment<sup>3</sup>; attempts of other criminal offences shall be punishable only when explicitly prescribed so by the statute.*

*(2) The perpetrator shall be punished for attempt within the limits of the punishment prescribed for the criminal offence, but may be punished also more leniently.*

**4. Participation in Criminal Offence**

*Participant*

*Article 36.a*

*The provisions of this Code that are applicable to the perpetrator shall also apply to a participant, who participates at the criminal offence in the framework of incitement or aid, unless otherwise determined by statute.*

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<sup>1</sup> Official Gazette of the RS, No. 50/12 – Officially Consolidated Text.

<sup>2</sup> The term "statute" as used in this unofficial, non-binding translation of these provisions of the Criminal Code, means (designates) a common term for legislation of a general and abstract nature, passed by the National Assembly of the Republic of Slovenia (the Parliament) and subsequently published in the Official Gazette of the Republic of Slovenia [Courtesy explanation of the Ministry of Justice of the Republic of Slovenia.]

<sup>3</sup> Concerning the issue of punishability of attempt with respect to criminal offences of Terrorism (Article 108), Financing of Terrorism (Article 109), Incitement and Public Glorification of Terrorist Acts (Article 110), Recruitment and Training for Terrorism (Article 111) this general norm on punishability of attempt (...*imposition of a punishment of three years or a graver punishment...*) from the General Part of the Criminal Code makes these offences punishable also in cases of attempts to commit them. [Courtesy explanation of the Ministry of Justice of the Republic of Slovenia.]



## ***Liability of Members and Leaders of Criminal Association***

### ***Article 41***

*(1) A female or male member (hereinafter: the member) of a criminal association with at least three persons shall be punished with a graver punishment prescribed for a criminal offence committed within a criminal association if he commits the criminal offence for the implementation of this association's plan in connection with at least one member that is an accessory or participant.*

*(2) In the case from paragraph 1 of this Article, the leader of the criminal association, who led the implementation of the criminal plan or had at his disposal unlawfully gained property gain at the time of commission of the criminal offence based on the criminal plan, notwithstanding whether he participated at its implementation directly as the perpetrator or participant pursuant to Articles 20 or 37 and 38 of this Code,*

*shall be punished the same as the perpetrator.*

## **THE SPECIAL PART**

### ***Terrorism***

#### ***Article 108***

*(1) Whoever with the intention to destroy or severely threaten the constitutional, economical, social, or political foundations of the Republic of Slovenia or another country or international organisation, to seriously frighten the population and/or force the Government of the Republic of Slovenia or another country or international organisation to commit something or to omit committing it, to commit or threaten to commit one or more of the following acts:*

- assault on life and body or on human rights and freedoms,*
- kidnapping or taking of hostages,*
- considerable destruction of state or public buildings or representations of foreign countries, transport system, infrastructure, information system, public place or private property,*
- occupation or takeover of control of a secured platform in the continental shelf with the use of force or a threat or another form of intimidation, or violent behaviour towards a person on the platform, if such behaviour poses a threat to this person's safety, or the destruction of the secured platform in the continental shelf and/or causing any damage to it that may endanger this person's safety, or the installation of a device in order to destroy the secured platform or endanger safety on it, or injuring or causing death to a person in connection with any of the aforementioned acts,*
- hijacking of an aircraft, ship, means of freight transport or means of public transport,*

*- production, possession, purchase, transport, supply or use of weapons, explosives, nuclear, biological or chemical weapons,*

*- research and development of nuclear, biological or chemical weapons,*

*- endangering security by releasing hazardous substances and/or causing fires, floods or explosions,*

*- disturbance or termination of supply with water, electrical energy or other basic natural resources for human life, which could endanger human life,*

*shall be punished by imprisonment of three up to fifteen years.*

*(2) Whoever wants to achieve the purpose from the previous paragraph by using or threatening to use nuclear or other radioactive substance or device, by damaging a nuclear facility with the release of radioactive substance or enabling its release, or who by threat or use of force demands nuclear or other radioactive substance, device or nuclear facility,*

*shall be punished by imprisonment of up to fifteen years.*

*(3) Whoever prepares or aids to prepare criminal offences from the previous paragraphs by obtaining unlawfully or making available the required material means to commit these criminal offences or by blackmailing prepares another person to participate in these criminal offences, or whoever falsifies official or public documents required to commit these criminal offences,*

*shall be punished by imprisonment of one up to eight years.*

*(4) If the act under paragraphs 1 or 2 of this Article results in death of one or more persons,*

*the perpetrator shall be punished by imprisonment of eight up to fifteen years.*

*(5) If the perpetrator in committing the act under paragraphs 1 or 2 of this Article intentionally takes the life of one or more persons,*

*he shall be punished by imprisonment of at least fifteen years.*

*(6) If the act under paragraphs 1 or 2 of this Article was committed by a criminal association or group, which has the intention to commit criminal offences (hereinafter: terrorist criminal association or group) specified in these paragraphs,*

*shall be punished by imprisonment of eight up to fifteen years.*

*(7) Whoever participates in a terrorist criminal association or group, which has the intention to commit criminal offences under paragraphs 1, 2, 4 or 5 of this Article,*

*shall be punished by imprisonment of up to eight years.*

*(8) Any person who establishes or leads the criminal association from the previous paragraph,*

*shall be punished by imprisonment of at least fifteen years.*

### **Financing of Terrorism**

#### **Article 109**

*(1) Whoever provides or collects money or property with the purpose to be partly or wholly used for commission of acts from Article 108 of this Code,*

*shall be punished by imprisonment of one up to ten years.*

*(2) If the money or property provided or collected with the purpose was not actually used for the commission of the criminal offences specified in the previous paragraph,*

*the perpetrator of the act from previous paragraph shall be punished the same.*

*(3) If the act from the previous paragraphs was committed within a terrorist criminal association or a group for commission of terrorist criminal offences,*

*the perpetrator shall be punished by imprisonment of three up to fifteen years.*

*(4) Money and property from the previous paragraphs shall be confiscated.*

### **Incitement and Public Glorification of Terrorist Acts**

#### **Article 110**

*(1) Whoever incites the commission of criminal offences under Article 108 of this Code by spreading messages or making them available to other persons in some other manner with the purpose to promote terrorist criminal offences and thus causes danger that one or more of such criminal offences would be committed,*

*shall be punished by imprisonment of one up to ten years.*

*(2) Whoever directly or indirectly publicly glorifies or advocates criminal offences under Article 108 or the criminal offence from the previous paragraph in a manner that with the purpose from the previous paragraph spreads messages or makes them available to the public and thereby causes the danger for commission of one or more such criminal offences,*

*shall be punished the same.*

*(3) Prosecution for criminal offences from paragraphs shall be initiated with the permission of the Minister of Justice.*

## **Recruitment and Training for Terrorism**

### **Article 111**

*(1) Whoever recruits for terrorism by encouraging another person to commit criminal offences from Article 108 of this Code, or to participate in ordering of such terrorist criminal offence, or to join a terrorist criminal association or a group to commit terrorist criminal offences, which this criminal association or group commits,*

*shall be punished by imprisonment of one up to ten years.*

*(2) Whoever trains others for criminal offences from Article 108 of this Code by providing instructions to manufacture and use explosives, firearms or other weapons, harmful or hazardous substances, trains them for other special methods or technology for implementation or participation in a terrorist offence,*

*shall be punished in the same manner.*

## **Criminal Association**

### **Article 294**

*(1) Whoever participates in a criminal association which has the purpose to commit a criminal offence, for which a punishment of imprisonment of more than three years, or a life imprisonment may be imposed,*

*shall be punished by imprisonment of three months up to five years.*

*(2) Whoever establishes or leads an association from the previous paragraph,*

*shall be punished by imprisonment of six months up to eight years.*

*(3) The perpetrator of a criminal offence from the previous paragraphs who prevents further performance of these offences or discloses data which are important for the investigation and proving of criminal offences that have already been committed, may have the punishment for these offences reduced, in accordance with Article 51 of this Code.*

## **Public Incitement to Hatred, Violence or Intolerance**

### **Article 297**

*(1) Whoever publicly incites or stirs up hatred, violence or intolerance based on national origin, race, religion or ethnicity, gender, skin colour, origin, property situation, education, social position, political or other belief, disability, sexual orientation, or any other personal circumstance, and commits the offence in a manner that can jeopardise or disturb public order and peace, or uses threat, verbal abuse or insult,*

*shall be punished by imprisonment of up to two years.*

*(2) The same punishment shall be imposed on a person who, in the manner from the previous paragraph, publicly disseminates ideas on the supremacy of one race over another, or provides any kind of aid for racist activity or denies, diminishes the significance of, approves, justifies, ridicule, or advocates genocide, holocaust, crime against humanity, war crime, aggression, or other criminal offences against humanity, as they are defined in the legal order of the Republic of Slovenia.*

*(3) If the act from the previous paragraphs has been committed by publication in media of public information or on the websites, the editor-in-chief or his deputy shall be punished the same as under paragraphs 1 or 2 of this Article, except if this was a live broadcast that he could not prevent or a publication on websites that enable users to publish content in real time or without prior review.*

*(4) If the act from paragraphs 1 or 2 of this Article has been committed by coercion, maltreatment, endangering of security, disparagement of ethnic, national communities, nations or religious symbols, damaging the movable property of another, desecration of monuments, memorial stones or graves,*

*the perpetrator shall be punished by imprisonment of up to three years.*

*(5) If the offences from paragraphs 1 or 2 of this Article have been committed by an official person by abusing his or her official position or rights,*

*he shall be punished by imprisonment of up to five years.*

*(6) Means and objects bearing messages from paragraphs 1 and 2 of this Article, and also instruments intended for their manufacture, multiplication and dissemination, shall be confiscated, or their use shall be adequately disabled.*