

DRAFT
**Comparative research on counter-terrorism laws and
practices
in second-tier priority countries**

*International Commission of Jurists
Human Rights in Practice*

Background research material

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Overview

This study addresses the key developments in counter-terrorism in Tier 2 Member States identified by the project.¹ As such it supplements the detailed country studies that have been provided on first tier states by partner organisations. It is limited by available online information in languages accessible to us (Eng/Fr/Esp.) Each section identifies developments at the national level, where relevant exploring some of the key issues that have arisen in relation to the implementation of various aspects of EU counter-terrorism legislation.

The focus is on measures as they relate to Directive 541 on combatting terrorism (“the Directive”). It should be noted from the outset that a number of the countries included in this report have not yet implemented the Directive in full,² however, in many instances national legislation already includes provisions (likely adopted when the first EU Framework Decision was implemented) that are relevant to discussion of the Directive. The emphasis is therefore on criminal measures which form the core of the Directive. To reflect other studies however, the memo touches on the broader context (eg of emergency) or of other measures (eg the adoption of various administrative measures) to provide a fuller picture of the human rights impact of developments, and where relevant to elaborate on the relationship between these measures and criminal law.

The information provided across Member States is not even, and difficult to compare, given barriers in accessing certain information in English or French. Some countries (such as France) receive more attention than others, which may be due in part to the intensity of developments there, but also to the amount of available information.

The research indicates that across Member States concerns have been raised as to the broad formulation of terrorist crimes and participatory offences. This in turn has had the effect of infringing on fundamental rights and freedoms, in particular freedom of expression. Where administrative measures are employed alongside criminal prosecutions the effect is often magnified and also raises particularly acute concerns with regard to respect for due process rights.

¹ France, Cyprus, Greece, Poland, Portugal, Czechia and Romania.

² See: https://www.ejn-crimjust.europa.eu/ejn/EJN_Library_StatusOfImpByCat.aspx?CategoryId=162

France

National legal framework of counterterrorism laws

In comparison with a number of European Countries, counterterrorism legislation in France is relatively extensive and has been developed comprehensively and reactively in response to each wave of attacks. In 1986 legislation on action against terrorism, was adopted in reaction to the constant series of terrorist incidents linked to conflicts in the Middle East, particularly focussing on attacks by the Palestinian Nationalist Organisation (PLFP), Carlos the Jackal, Abu Nidal Organisation and the Armenian Nationalist Organisation (ASALA).³ Similarly legislation was adopted in 2001⁴ following the 9/11 attacks and again in 2006 following the Madrid and London Bombings.⁵

Following the outbreak of civil war in Syria in 2012, the landscape of terrorism in France transformed. Driving this transformation was the fact that among the 5,000 Europeans travelling to fight with the Islamic State and other jihadist groups active in Syria, up to 1,200 of these were French nationals.⁶ The Charlie Hebdo attacks in 2016 and the Paris attacks in November of the same year prompted the declaration of a state of emergency.⁷ The state of emergency was renewed a total of six times and expired in November 2017.

Key developments include the adoption of Act 2012-1432 in December 2012 on security and action against terrorism. Further legislation was passed in In November 2014, which marked the introduction (and heightened use) of administrative measures including travel bans alongside criminal measures.⁸ In October 2017, a new law (*Projet de loi renforçant la sécurité intérieure et la lutte contre le terrorisme* (SILT)) was enacted, providing various amendments to the criminal code and adding numerous administrative measures that were previously only permissible under the state of emergency. The UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has raised concerns regarding the impact of transposition of exceptional powers into the ordinary law on the enjoyment of fundamental rights.⁹

In particular, the Special Rapporteur has highlighted the “cumulative effects of layered and multifaceted administrative and individual measures taken over several years on specific individuals, the effects on the enjoyment of and protection for freedom of expression in the

³ “EU and Member States policies and laws on persons suspected of terrorism-related crimes” Committee on Civil Liberties and Home Affairs, December 2017 available at: [http://www.europarl.europa.eu/RegData/etudes/STUD/2017/596832/IPOL_STU\(2017\)596832_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2017/596832/IPOL_STU(2017)596832_EN.pdf), p. 74.

⁴ *Ibid.*

⁵ The 2006 law categorised the offence of criminal association offence as a serious felony punishable with up to 20 years in prison “contingent on the basis that the criminal association in question, was ‘formed with the intent of preparing attacks on life and physical integrity, as well as abduction, unlawful detention, and hijacking of planes, vessels, or any other means of transport.’” The law also increased the maximum period of detention in police custody of suspects in terrorism cases from four days (96 hours) to six days (144 hours).

See: [http://www.europarl.europa.eu/RegData/etudes/STUD/2017/596832/IPOL_STU\(2017\)596832_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2017/596832/IPOL_STU(2017)596832_EN.pdf)

⁶ “EU and Member States policies and laws on persons suspected of terrorism-related crimes” Committee on Civil Liberties and Home Affairs, December 2017 available at: [http://www.europarl.europa.eu/RegData/etudes/STUD/2017/596832/IPOL_STU\(2017\)596832_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2017/596832/IPOL_STU(2017)596832_EN.pdf), p. 74.

⁷ *Ibid.*

⁸ “Preliminary findings of the visit: UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism concludes visit to France,” 23 May 2015, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23128&LangID=E>

⁹ *Ibid.*

year 306 sentences were handed down for apology for terrorism, with a one-year prison sentence on average.¹⁸

The offence of apology for terrorism is included in Article 421-2-5 of the Criminal Code.¹⁹ While previously enshrined in the ‘Press Law’ of 29 July 1881, the offence was shifted into the French Criminal Code in November 2014 in order to, *inter alia*, apply different procedural rules to expedite the criminal justice process. The offence of apology consists of publicly presenting or commenting favourably on terrorist acts in general, or on acts already committed. The case law considers that to praise the author of the attack amounts to an apology for the act – glorifying the perpetrator of a terrorist attack is considered to glorify the attack itself. The public nature of speech is assessed in the same way as for insult or defamation.²⁰

The related offence “direct provocation to terrorism” is the direct incitement to commit terrorist acts. It is not necessary that such remarks are made in public, in relation to both offences it is enough that remarks are made accessible by a few friends on a social network or spoken during a private meeting. The penalties for both offences are 5 years imprisonment and a 75,000 euro fine. If the offence is committed online, the penalty is increased to 7 years imprisonment and a 100,000 euro fine.²¹

Any website promoting apology or provoking terrorism is subject to a specific procedure. Any site dedicated to apology or provocation to terrorism may be closed via judicial order. The intervention of a judge however is not always necessary, the Central Office for Combatting Information and Communication Technologies Crime (a police body) may order a website to be blocked without going through a judge.²²

The crimes have been criticised for both a lack of judicial oversight and for the broad array of expression that has led to charges and convictions under these provisions.²³ The Council of Europe Commissioner for Human Rights, has reminded states that violence and the threat to use violence with the intention to spread fear is the defining component of the concept of terrorism, however, “the variety of cases dealt with under provisions criminalising apology of terrorism highlights one potential danger of the use of catch-all label to punish statements that do not contain these elements but incite to other forms of violence or simply are non-consensual, shocking or politically embarrassing.”²⁴

¹⁸ Council of Europe Commissioner for Human Rights, “Misuse of anti-terror legislation threatens freedom of expression” 4 December 2018, available at: <https://www.coe.int/en/web/commissioner/-/misuse-of-anti-terror-legislation-threatens-freedom-of-expression>.

¹⁹ See: Penal Code: Article 421-2-5; Penalty for provocation or apology for terrorism; Code of Criminal Procedure: Article 706-23 to 706-25-2; Judicial Closure of Sites Promoting Terrorism; Law No. 2004-575 of 21 June 2004 on Confidence in the Digital Economy: Article 6; Judicial blocking of sites promoting terrorism; Law No. 2004-575 of 21 June 2004 on Confidence in the Digital Economy: Article 6-1; Administrative blocking of sites advocating terrorism Decree n ° 2015-125 of February 5th, 2015 relative to the blocking of sites provoking acts of terrorism or by making the apology; Administrative blocking procedure for sites promoting terrorism Circular of 12 January 2015 on offenses committed following the terrorist attacks of 7, 8 and 9 January 2015.

²⁰ <https://www.service-public.fr/particuliers/vosdroits/F32512>

²¹ Ibid.

²² Ibid.

²³ Helen Duffy and Kate Pitcher, ‘Inciting Terrorism? Crimes of Expression and the Limits of the Law’ available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3156210

²⁴ Council of Europe Commissioner for Human Rights, “Misuse of anti-terror legislation threatens freedom of expression” 4 December 2018, available at: <https://www.coe.int/en/web/commissioner/-/misuse-of-anti-terror-legislation-threatens-freedom-of-expression>.

For example, the comedian Dieudonné M'Bala M'Bala who posted the message 'Je me sens Charlie Coulibaly' on Facebook was charged,²⁵ as was an inebriated 34 year old who made comments supportive of the Charlie Hebdo shooters following a car accident, a 21-year-old who made similar drunken comments when discovered using public transport without a valid ticket, and a 27-year-old man who published photos of jihadists described as the 'brothers in Marseille' on Facebook.²⁶

More recently, a vegan activist was also given a seven-month sentence by the court of correction of Saint-Gaudens (Haute-Garonne) under this law following the terrorist attack on Trebes after the following tweet: "Well what, does it shock you an assassin who is killed by a terrorist? Not me, I have zero compassion for him, there is still a justice." She had posted on Facebook three days after the fact, targeting the butcher of the Super U, who was among the victims.²⁷

In May 2018, the French Constitutional Court rejected a challenge to the law which attempted to argue that scope of the law was too vague thereby violating freedom of expression. The case was brought by Jean-Marc Rouillan who was sentenced to 18 months imprisonment for remarks made on a radio show about jihadists who attacked France in 2015. Rouillan had stated that the men who carried out the attacks had "fought courageously knowing that there were 2,000 to 3,000 cops around them." He was clear in expressing his hostility to the attackers' ideology and did not call for violence. The court held the offence was sufficiently precise to avoid arbitrary application, that the punishment is not disproportionate and that public order necessitates the measure despite infringement on freedom of expression.²⁸

Regular Consultation of Terrorist Websites:

In 2016 parliament passed a law that made "habitual" accessing of a website containing messages, images or representations deemed to "incite" or "glorify" terrorism an offence.²⁹ In February 2017, the Constitutional Court issued a decision repealing the provision finding it to excessively infringe on the freedom of communication.³⁰ It found that: "*the contested provisions do not require that the individual habitually accessing online public communication services intend to commit terrorist acts, nor do they require proof that this access is accompanied by the desire to adhere to an ideology expressed by these services. Thus these provisions punish by a two-year prison term the simple act of accessing several times an online public communication service, no matter the intention of the individual,*

²⁵ AFP and Reuters, 'Dieudonné M'Bala M'Bala condamné à deux mois de prison avec sursis' Le Monde (18 March 2015) accessed 18 September 2017: 'I feel like Charlie Coulibaly'.

²⁶ Louis Imbert, 'Apologie d'actes terroristes : des condamnations pour l'exemple' Le Monde (13 January 2015) accessed 18 September 2017.

²⁷ Nadim Houry, "France's Creeping Terrorism Laws Restricting Free Speech" Just Security, 30 May 2018, available at: <https://www.justsecurity.org/57118/frances-creeping-terrorism-laws-restricting-free-speech/>

²⁸ *Ibid.*

²⁹ Law No. 2016-731 "which reinforces the fight against organized crime, terrorism and their financing and which improves efficiency and guarantees of criminal procedure" amending Article 421-2-5-2 of the criminal code, 4 June 2016 (Law No. 2016-731 du 3 juin 2016 renforçant la lutte contre le crime organisé, le terrorisme et leur financement, et améliorant l'efficacité et les garanties de la procédure pénale) <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000032627231&categorieLien=id>

³⁰ <https://www.conseil-constitutionnel.fr/decision/2017/2016611QPC.htm>

*when this access does not fall within normal professional activity that has the objective of informing the public, conducting scientific research, or for use as evidence in court.*³¹

It appears that a modified version of the provision was introduced in February 2018. Although it does specific criminal intent, it was again struck down for falling short of requiring terrorist content. The progress of this may deserve further follow-up.

Other Measures

Administrative measures:

In addition to criminal law measures, the SILT law³² enacted in 2017 brought into normal legislation administrative measures adopted under the state of emergency. These include, control orders and restrictions of movement. The measures have been criticised by civil society for the lack of legal safeguards available. Aside from house searches, none of the administrative measures included in the SILT law provide for judicial involvement before the issuing and application of the measure. This precludes a judge from having the opportunity to stop an order from being applied on the basis of an independent and impartial evaluation of the necessity and proportionality of the proposed control measure.³³

Control can be applied *“for the sole purpose of preventing the commission of terrorist acts, where there are serious reasons to believe that the individual’s behaviour constitutes a serious threat for security and public order”* and where the individual is, in some manner, in alleged association *“with persons or organizations inciting, supporting or participating in acts of terrorism”* or where the individual is supporting, spreading or adhering to statements inciting terrorist acts or apologizing them.³⁴ This does not meet the normal criminal standard of reasonable suspicion. The Council of State, the highest administrative court in France, insisted in a 2017 advisory opinion on the need to limit the use of the law to *“the fight against terrorism.”*³⁵ Amnesty international have further criticised the lack of any meaningful review of these measures before a court, and the reliance on *“note blanches”* containing secret intelligence to administer such orders (which those subject to the measures often do not have access to until they challenge the measure before a court).³⁶ Furthermore, administrative measures are sometimes applied pre or post criminal proceedings (judicial orders) or often concurrently. There is very little legal authority that directly addresses the phenomenon of administrative control orders in the counter-terrorism context and their implications for an individual’s human rights.³⁷

Stripping of Citizenship:

³¹ *Ibid* para. 14

³² <https://www.legifrance.gouv.fr/affichLoiPreparation.do?idDocument=JORFDOLE000034990290&type=general&typeLoi=proj&legislature=14>

³³ *“ Punished Without Trial The Use Of Administrative Control Measures In The Context Of Counter-Terrorism In France”* Amnesty International, 2018, p. 10, available at: <https://www.amnesty.org/download/Documents/EUR2193492018ENGLISH.PDF>

³⁴ 14 Articles L228-1 à 7 of the Code on internal security created by the Article 2 of the Law n° 2017-1510 of October 30th https://www.legifrance.gouv.fr/eli/loi/2017/10/30/INTX1716370L/jo/Article_3_15

³⁵ *“ Punished Without Trial The Use Of Administrative Control Measures In The Context Of Counter-Terrorism In France”* Amnesty International, 2018, p. 12, available at: <https://www.amnesty.org/download/Documents/EUR2193492018ENGLISH.PDF>

³⁶ *Ibid*, p. 16.

³⁷ *Ibid*, p. 9.

The law in France directly references national security as a ground for stripping of citizenship. Four French-Moroccan Nationals convicted of terrorism related offences were stripped of citizenship in 2015 and are challenging the legitimacy of this measure.³⁸ Appealing to the ECtHR in 2015, they contend that the decision to revoke their citizenship infringed their right to identity. They also argue the measure constitutes a “disguised penalty” aimed at punishing the acts of which they were convicted in 2007 (conspiracy to commit a terrorist offence) – the case is pending.³⁹

Mapping implementation of the Directive

The French definition of a “terrorist offence” is in line with that of the Directive (Article 3) in that it provides a list of offences that constitute a terrorist offence when committed with a terrorist aim. The intention required however, is somewhat less specific than that provided for in the Directive and requires only the intention to “*seriously to disturb the public order by intimidation or terror.*”

Offences relating to a terrorist group, found in Article 4 of the Directive, are included in Articles 421-2-1 and 421-2-6 of the Criminal Code. The relevant provisions require that participation is done “with the knowledge that the aim is to seriously disturb public order by intimidation of terror.” This intention must also be accompanied by one or more material act to that end.

Public provocation to commit a terrorist offence (contained in Article 5 of the Directive) is dealt with in Article 421-2-5, amended in 2014. Worryingly, the provision does not include any reference to a requirement of intent as included in the Directive.

The offer of promises/gifts/advantages threatening or exerting pressure on someone to participate in a grouping or agreement is criminalised in in Article 421-2-4 of the Criminal Code. While Article 6 of the Directive dictates that recruitment for terrorism requires terrorist intention, this does not appear in the criminal code which states that making offers or promises to any person, offering gifts, presents or advantages, threatening or exerting pressure on them to participate in or commit a terrorist offence is punishable with a € 150,000 fine and 10 years imprisonment even where no offence has been committed.

Articles 7 and 8 of the Directive require the criminalisation of the provision and receipt of training respectively. The Directive states that both must be undertaken intentionally, the relevant provision in the French Criminal Code (Article 421-2-6) deals with a number of preparatory offences of which training and receipt of training are a part. The chapeau states that preparation of an offence (in any of the ways listed) constitutes an act of terrorism since it is related to an act intended to seriously disturb public order by intimidation or terror. Travelling with a terrorist purpose provided for in Article 9 of the Directive is also captured in this provision. Article 10 of the Directive on organizing or otherwise facilitating travelling for

³⁸ “French court upholds stripping of nationality for terrorism”, RFI, 8 June 2016, <http://en.rfi.fr/france/20160608-french-court-upholdsstripping-nationality-terrorism>.

³⁹ Ghoumid v. France (no. 52273/16), Charouali v. France (no. 52285/16), Turk v. France (no. 52290/16), Aberbri v. France (no. 52294/16) and Ait El Haj v. France (no. 52302/16).

the purpose of terrorism is not specifically included however would arguably also be covered by Article 421-2-6.

Financing terrorism (Article 11 of the Directive) is penalized in Articles 421-2-2 and 421-2-3 and like the Directive is defined broadly. Having the intention to finance terrorism, or having knowledge that this will lead to the commission of crimes or contribute to the commission of crimes suffice to be punished.

Regarding preparation of terrorist attacks or activities in relation to terrorist offences (contained in Article 13 of the Directive), there is no specific provision in French legislation, however, no offence requires that the specific act happened. Instead, the incriminated act is punishable if committed with the general objective of the commission of a terrorist offence, meaning one of the offences listed together with one of the aims necessary to make such offence a terrorist offence.

Lastly, regarding the support to victims (Articles 25 and 26 of the Directive, France has established a Guarantee Fund for victims which compensates all injured victims, as well as the beneficiaries of deceased victims of terrorism. Beneficiaries include: children, parents, grandparents, grandchildren, and siblings of the deceased.⁴⁰

EU Directive 2017/541	French Criminal Code (Code pénal)
<p>Definition of a Terrorist Offence (Article 3) The Directive requires states to criminalize certain intentional acts as well as threats to commit those acts when committed with the aim of one or more of the following aims: <i>(a) seriously intimidating a population; (b) unduly compelling a government or international organisation to perform or abstain from performing any act; and (c) seriously destabilising or destroying the fundamental political, constitutional, economic or social structures of a country or an international organisation.</i></p>	<p>In line with the Directive, Article 421-1 includes a list of ordinary offences that constitute acts of terrorism <i>“when committed intentionally in relation to an individual or collective undertaking the purpose of which is seriously to disturb the public order by intimidation or terror.”</i> These include <i>“willful attacks on life, willful attacks on the physical integrity of persons, abduction and unlawful detention and also as the hijacking of planes, vessels or any other means of transport [...] theft, extortion, destruction, defacement and damage, and also computer offences, [...] the production or keeping of machines, dangerous or explosive devices [...] the production, sale, import or export of explosive substances [...] the purchase, keeping, transport or unlawful carrying of explosive substances or of devices made with such explosive substances, [...] the detention, carrying, and transport of weapons and ammunition [...] the offences defined by Articles 1 and 4 of the Act no. 72-</i></p>

⁴⁰ <https://www.fondsdegarantie.fr/en/act-of-terrorism-in-france/>

	<p><i>467 of 9 June 1972 forbidding the designing, production, keeping, stocking, purchase or sale of biological or toxin-based weapons; the offences referred to under Articles 58 to 63 of the Act no. 98-467 of 17 June 1998 on the application of the Convention of the 13 January 1993 on the prohibition of developing, producing, stocking and use of chemical weapons and on their destruction”</i></p> <p>Article 421-2 also criminalises <i>“The introduction into the atmosphere, on the ground, in the soil, in foodstuff or its ingredients, or in waters, including territorial waters, of any substance liable to imperil human or animal health or the natural environment is an act of terrorism where it is committed intentionally in connection with an individual or collective undertaking whose aim is to seriously disturb public order through intimidation or terror.”</i></p>
<p>Offences Relating to a Terrorist Group (Article 4)</p> <p>The Directive requires states to criminalize <i>a) directing a terrorist group and b) participating in the activities of a terrorist group, including by supplying information or material resources, or by funding its activities in any way, with knowledge of the fact that such participation will contribute to the criminal activities of the terrorist group.</i></p>	<p>Article 421-2-1 of the Criminal Code establishes criminal liability for <i>“the participation of any group or association established with a view to the preparation, marked by one or more material actions, of any of the acts of terrorism provided for in previous Articles shall in addition be an act of terrorism.”</i> The offer of promises/gifts/advantages threatening or exerting pressure on someone to participate in a grouping or agreement provided for in Article 421-2-1 is also criminalised.</p> <p>Where a person has parental authority over a minor, and involves the minor in a group formed, or in an agreement drawn up for the preparation characterized by one or more material facts of an act of terrorism, this is punishable by 15 years of imprisonment and a fine of 225,000 euros (Article 421-2-4-1).</p> <p>Article 421-2-6 criminalises the preparation of terrorist offences contained in the criminal code with the knowledge that the aim is to seriously disturb public order by intimidation of terror and includes: 1) possessing,</p>

	<p>procuring or attempting to procure or manufacture objects or substances likely to create a danger for others and 2) any of the following material facts: a) gathering information about people or places to enable or to allow the carrying out of an action to harm them b) training or receiving training in the handling of weapons or any form of combat, in the manufacture or use of explosive, incendiary, nuclear, radiological, biological or chemical substances or in the operation of aircraft or ships c) frequent consultation of one or more online public communication services or possession of documents directly inciting or apologizing terrorism d) staying abroad in the theatre of operation of terrorist groups.</p>
<p>Public Provocation to Commit a Terrorism Offence (Article 5) The Directive requires states to criminalise <i>“the distribution, or otherwise making available by any means, whether on or offline, of a message to the public, with the intent to incite the commission of one of the offences listed in Article 3(1)(a) to (i), where such conduct, directly or indirectly, such as by the glorification of terrorist acts, advocates the commission of terrorist offences, thereby causing a danger that one or more such offences may be committed.”</i> It requires such acts are punishable when committed intentionally. A very low threshold is set by considering an act punishable when it causes danger that an offence may be committed and criminalizes conduct directly or indirectly advocating terrorist offences.</p>	<p>Article 421-2-5 of the Criminal Code criminalises the direct provocation of acts of terrorism or public apology for such acts, with 5 years of imprisonment and a fine of 75,000 euros. Where this occurs on an online public communication service, the penalties are increased to 7 years imprisonment and a fine of 100,000 euros.</p>
<p>Recruitment for terrorism (Article 6) The Directive requires States to criminalise <i>“soliciting another person to commit or contribute in the commission of”</i> offences listed as a terrorist offence or offences relating to a terrorist group. The Directive explicitly states that recruitment is punishable only when committed</p>	<p>The offer of promises/gifts/advantages threatening or exerting pressure on someone to participate in a grouping or agreement is criminalised in in Article 421-2-4.</p>

intentionally.	
<p>Providing Training for Terrorism (Article 7)</p> <p>The Directive requires states to criminalise instruction on the “making of explosives, firearms or other weapons or noxious or hazardous substances, or on other specific methods or techniques, for the purpose of committing, or contributing to the commission of ... [terrorist offences] knowing that the skills provided are intended to be used for this purpose” when committed intentionally.</p>	<p>Article 421-2-6 criminalises the training in the handling of weapons or any form of combat, in the manufacture or use of explosive, incendiary, nuclear, radiological, biological or chemical substances or in the operation of aircraft or ships.</p>
<p>Receiving Training for Terrorism (Article 8)</p> <p>The newly introduced Article 8 requires states to criminalize the receipt of instruction, from another person, “<i>in the making or use of explosives, firearms or other weapons or noxious or hazardous substances, or in other specific methods or techniques</i>”, for the purpose of committing a terrorist offence (excluding the threat to commit a terrorist offence). The training must be undertaken intentionally.</p>	<p>Article 421-2-6 criminalises the receipt of training in the handling of weapons or any form of combat, in the manufacture or use of explosive, incendiary, nuclear, radiological, biological or chemical substances or in the operation of aircraft or ships</p>
<p>Travelling Abroad for the Purpose of Terrorism (Article 9)</p> <p>Article 9 of the Directive introduces another new offence which requires States to criminalize “<i>travelling to a country other than that Member State for the purpose of the commission or contribution to a terrorist offence referred to in Article 3, for the purpose of the participation in the activities of a terrorist group with knowledge of the fact that such participation will contribute to the criminal activities of such a group as referred to in Article 4, or for the purpose of the providing or receiving training for terrorism referred to in Articles 7 and 8</i>”. Subparagraph (a) of paragraph 2 requires states to criminalize travelling to their territories for the above purposes.</p>	<p>Article 421-2-6 criminalises travelling abroad and staying in “the theatre of operations of terrorist groups.”</p>

<p>Subparagraph (b) punishes “<i>preparatory acts undertaken by a person entering that Member State with the intention to commit or contribute to a terrorist offence, as referred to in Article 3</i>”. For all these acts to be punished, they must be committed intentionally.</p>	
<p>Financing of terrorism (Article 11) In a newly introduced provision, the Directive requires States to criminalize ‘<i>providing and collecting funds, by any means, directly or indirectly, with the intention that they be used, or in the knowledge that they are to be used, in full or in part, to commit or to contribute to any of the offences referred to in Articles 3 to 10.</i>’ There is no requirement that the funds in fact be used, in full or in part, to commit or to contribute to a terrorist offence, nor that the offender knows for which specific offence(s) the funds are to be used.</p>	<p>Article 421-2-2 and 421-2-3 deal with the criminalisation of terrorist financing: “<i>It also constitutes an act of terrorism to finance a terrorist organisation by providing, collecting or managing funds, securities or property of any kind, or by giving advice for this purpose, intending that such funds, security or property be used, or knowing that they are intended to be used, in whole or in part, for the commission of any of the acts of terrorism listed in the present chapter, irrespective of whether such an act takes place. Being unable to account for resources corresponding to one's lifestyle when habitually in close contact with a person or persons who engage in one or more of the activities provided for by Articles 421-1 to 421-2-2 is punishable by 7 years' imprisonment and by a fine of €100,000.</i>”</p>
<p>Relationship to Terrorist Offences (Article 13) In a newly introduced provision, the Directive states that preparatory / non-principle offences (membership of a terrorist group, travelling, financing, provocation, facilitating travel) it is not necessary that a principle offence be actually committed.</p>	<p>French legislation does not contain a specific provision but does not require that a specific terrorist offence actually happened. Instead, the incriminated act is punishable if committed with the general objective of the commission of a terrorist offence, meaning one of the offences listed together with one of the aims necessary to make such offence a terrorist offence.</p>
<p>Support to Victims (Title V Articles 25-26) The Directive includes a whole section on the rights of victims of terrorism and the support services that should be available. This builds on the Victims Directive 2012/29/EU which details the provision of victim support services. Member states had until 2015 to implement the Victims Directive but as many states had limited services in place, it is likely</p>	<p>France established a Guarantee Fund for victims which compensates all injured victims, as well as the beneficiaries of deceased victims of terrorism. Beneficiaries include: children, parents, grandparents, grandchildren, and siblings of the deceased.⁴¹</p>

⁴¹ <https://www.fondsdegarantie.fr/en/act-of-terrorism-in-france/>

that effective implementation will take some time.	
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Cyprus

National legal framework of counterterrorism laws

Counterterrorism measures in Cyprus are governed by The Combating Terrorism Act of 2010 (Number 110(I)/2010).⁴² The act adopts many aspects of the European Council Framework Decision on Combating Terrorism. As of March 2019, Cyprus has not yet implemented the Directive,⁴³ however, a number of provisions adopted in 2010 are relevant to discussion of the directive.

Mapping implementation of the Directive

Article 2 of the Combating Terrorism Act of 2010 (Number 110(I)/2010) defines a terrorist organisation as *“a structured group of two or more people established and operating for some time to commit terrorist offenses and are included in the lists,”* a structured group is considered to be a group that *“has not been set up randomly, with the intent of an immediate commission of an offense and does not need to have formally defined roles for its members, continuity of its membership or a complex structure.”* The definition is largely in line with the Directive however also includes the requirement that the group be formally listed as a terrorist organisation. Similarly, elements of Article 3 of the Directive are already reflected in Article 5 of the Combating Terrorism Act. Article 13(2) criminalises that attempts to commit an offence. Article 6 criminalises threats to commit offences.

Article 4 of the Directive is reflected in Article 7 which criminalises “knowing participation” in terrorist offences. Provocation to commit a terrorism offence, contained in Article 5 of the Directive was included in Article 12 of the Combating Terrorism Act which criminalises distribution of material to the public causing the risk of committing a terrorist offence regardless of whether the offence is materialised.

Lastly, provision of training for terrorism (Article 7 of the directive) is criminalised in Article 8(2) which also requires intention or knowledge of the fact that any training is contributing the commission of an offence.

EU Directive 2017/541	The Combating Terrorism Act of 2010 (Number 110(I)/2010)
<p>Definition of a Terrorist Group (Article 2)</p> <p>The Directive defines a ‘terrorist group’ as ‘a structured group of more than two persons,</p>	<p>Article 2 defines a terrorist organization as <i>“a structured group of two or more people established and operating for some time to commit terrorist offenses and are included in</i></p>

⁴² For a full description of legal instruments applicable see: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680640f00>

⁴³ See: https://www.ejn-crimjust.europa.eu/ejn/EJN_Library_StatusOfImpByCat.aspx?CategoryId=162

<p><i>established for a period of time and acting in concert to commit terrorist offences.’ A ‘structured group’ means ‘a group that is not randomly formed for the immediate commission of an offence and that does not need to have formally defined roles for its members, continuity of its membership or a developed structure.’</i></p>	<p><i>the lists,” a structured group is considered to be a group that “has not been set up randomly, with the intent of an immediate commission of an offense and does not need to have formally defined roles for its members, continuity of its membership or a complex structure”</i></p>
<p>Definition of a Terrorist Offence (Article 3) The Directive requires states to criminalize certain intentional acts as well as threats to commit those acts when committed with the aim of one or more of the following aims: <i>(a) seriously intimidating a population; (b) unduly compelling a government or international organisation to perform or abstain from performing any act; and (c) seriously destabilising or destroying the fundamental political, constitutional, economic or social structures of a country or an international organisation.</i></p>	<p>Article 5 stipulates <i>“that a person, who intentionally commits an act which may critically damage any country or international organisations with the intention: to seriously intimidate the public or sections of the public, or to unjustifiably force public authorities or international organizations to do or abstain from doing any act, or of seriously destabilizing or destroying the fundamental political, constitutional, economical or social structures of a country or an international organization and the act constitutes:</i></p> <p><i>Murder, manslaughter, written threats to commit murder, conspiracy to commit murder, roaming in a situation of inability to resist in order to commit a felony, roaming in a state of narcosis with the intention of committing a felony, actions with the intention to cause grievous bodily harm or to avoid arrest, causing grievous bodily harm, attempt to cause grievous bodily harm with explosive material, malicious granting of poison with the intention to cause grievous bodily harm , wounding and similar acts, kidnapping, burglary and commission of felony, arson, attempted arson , causing a wreck.</i></p> <p><i>taking hostages according to the Law 244/90, seizure of aircraft according to the Law 30/72, offences against the safety of civil aviation according to the Law 33(III)/2001, offences against internationally protected persons according to the Law 63/75, offences according to the Law 3(III)/98 and offences according to the Law 17(III)/1999,</i></p>

	<p><i>construction or acquisition or possession or transfer or supply or use of firearms or radiological weapons or any explosive substance or other lethal devices or nuclear or biological weapons or research and development of biological and chemical weapons,</i></p> <p><i>the cause of a widespread destruction in Government or public facility, public transport system, infrastructure, including information systems, facilities or other property of consular authorities or diplomatic missions, fixed platform in continental shelf, space for public use, private property, and that may endanger human life or cause serious economic damage,</i></p> <p><i>interference or disturbance or disruption of water supply power, or other fundamental natural resource resulting putting human lives at risk, constitute the offence of terrorism and upon conviction is liable to a life imprisonment.”</i></p>
<p>Offences Relating to a Terrorist Group (Article 4)</p> <p>The Directive requires states to criminalize <i>a) directing a terrorist group</i> and <i>b) participating in the activities of a terrorist group, including by supplying information or material resources, or by funding its activities in any way, with knowledge of the fact that such participation will contribute to the criminal activities of the terrorist group.</i></p>	<p>Article 7 criminalises knowing participation in any way, in a terrorist organization and upon conviction, the accused will be liable to imprisonment not exceeding 8 years. Article 8(1) criminalizes the act of any person to knowingly support, in any way (including funding), either a terrorist organization, or member of a terrorist organization or persons included on the lists and upon conviction will be liable to imprisonment not exceeding eight years. Article 10 states that the withholding of any information regarding a terrorist act will constitute a terrorist offence. The sentence for such an offence shall not exceed two years. Article 13(2) stipulates that attempting to commit an offense (as referred to in Article 5(c) (relating to construction/acquisition/possession of weapons), Articles 6 (threat to commit offences listed in Article 5), 7 (knowing participation), 8 (funding), 11 (organisation)</p>

	and 12 (distribution of material) and instigation to commit the offenses set forth Article 2 and Articles 12 and 13, do not constitute an offense under the Act.
<p>Public Provocation to Commit a Terrorism Offence (Article 5)</p> <p>The Directive requires states to criminalise <i>“the distribution, or otherwise making available by any means, whether on or offline, of a message to the public, with the intent to incite the commission of one of the offences listed in Article 3(1)(a) to (i), where such conduct, directly or indirectly, such as by the glorification of terrorist acts, advocates the commission of terrorist offences, thereby causing a danger that one or more such offences may be committed.”</i> It requires such acts are punishable when committed intentionally. A very low threshold is set by considering an act punishable when it causes danger that an offence may be committed and criminalizes conduct directly or indirectly advocating terrorist offences.</p>	Article 12 criminalises the distribution or making available to the public any material, causing the risk of committing a terrorist offence regardless if such an offence has been committed. It is an offence under Article 13(1), for a person to attempt or incite another person to commit any offence provided in the Act, regardless of whether that person consents or not to commit it.
<p>Providing Training for Terrorism (Article 7)</p> <p>The Directive requires states to criminalise instruction on the “making of explosives, firearms or other weapons or noxious or hazardous substances, or on other specific methods or techniques, for the purpose of committing, or contributing to the commission of ... [terrorist offences] knowing that the skills provided are intended to be used for this purpose” when committed intentionally.</p>	In addition, Article 8(2) specifies that support also includes providing guidance: a) for the construction or use of explosives firearms or other weapons or noxious or hazardous substances or b) for any other specific methods or techniques with intent to perform or contribute to committing terrorist crimes knowing that these guidelines are intended to be used by a person or an organization.

Greece

National legal framework of counterterrorism laws

As of March 2019, Greece has not yet implemented the Directive,⁴⁴ however, a number of provisions adopted already are relevant to discussion of the Directive. The Greek Constitution

⁴⁴ See: https://www.ejn-crimjust.europa.eu/ejn/EJN_Library_StatusOfImpByCat.aspx?CategoryId=162

subjects its citizens to international law concerning terrorism laws in Articles 28(1), 28(2), and 28(3) of the Greek Constitution.⁴⁵ The most pertinent legislation is however contained in the Greek Criminal Code.

The first major legislative development was the amendment of the Criminal Code and Criminal procedure in 2001 with Law 29828/2001. The Criminal Code was amended to criminalise the participation in and formation of a terrorist organisation, and threat to participate in or prepare such an attack. The criminal procedural code was amended to replace jurors in terrorism-related cases with a three-judge panel.⁴⁶ In anticipation of the Olympic Games in 2004, an additional anti-terrorism law was adopted - law 3251/2004 "European Arrest Warrant and Confrontation of Terrorism." This altered the definition of terrorism included in the 2001 law, sanctioned lone terrorists, increased the statute of limitations on terrorism-related crimes from 20-30 years, increased prison terms and sanctioned those who threatened to prepare or commit a crime.⁴⁷

The law was amended again in 2010. Law 3875 set a minimum punishment of two years imprisonment for serious threats to cause terror. It also included further provisions relating to terrorist financing.

Unlike other EU Member States, Greece has not adopted legislation that allows for the use of administrative measures in relation to those suspected of having committed terrorism-related crimes, instead relying purely on criminal procedure.⁴⁸ Another positive feature of Greece's counter-terrorism framework is the number of safeguards present to ensure the rights of suspects. For example, the use of surveillance measures or covert operations without prior authorisation from a supervising public prosecutor is not permitted. Similarly, while there is provision in the criminal code for the right to access to a case file to be curtailed in criminal proceedings related to terrorist crimes on the grounds of national security, this is very rarely invoked.⁴⁹

Mapping Implementation of the Directive

Terrorist offences are defined in Article 187a) as offences already included in the criminal code committed in such a way "to such an extent or under such conditions, that it is possible to seriously harm a country or an international organization, along with the purpose of seriously intimidating a population or illegally forcing a public authority or an international organization to perform or to abstain from performing an action or with the purpose of seriously harming or destroying the fundamental constitutional, political and economic structures of a country or of an international organization."⁵⁰ Serious threats to commit terrorist acts are punishable along with the "formation, integration as a member and the directing of a structured and continuously active organization, consisting of three or more

⁴⁵ "EU and Member States policies and laws on persons suspected of terrorism-related crimes" Committee on Civil Liberties and Home Affairs, December 2017 available at: [http://www.europarl.europa.eu/RegData/etudes/STUD/2017/596832/IPOL_STU\(2017\)596832_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2017/596832/IPOL_STU(2017)596832_EN.pdf), p. 95.

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*

⁴⁸ *Ibid.*, p. 100.

⁴⁹ *Ibid.*

⁵⁰ Georgios Triantafyllou, in Kent Roach (ed) *Comparative Counter-terrorism Law* (CUP, 2015), 346. See also: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168064101c>

persons acting together with the aim to committing terrorist acts.” This appears to be in line with Article 3 of the Directive.

The actus reus of the crime includes: the commission of one of these offences (even a sole terrorist may commit an offence, it does not require a group) “in a way or in an extent or under circumstances that may seriously damage a country or an international organisation.” This qualifying element has been criticised for its vagueness. Regarding mens rea, the law requires intention and the additional aim of seriously intimidating a population etc.

Exempted from the scope of terrorist offences are exercises of fundamental rights and freedoms, namely the struggle to establish or restore democracy as well as any action supporting freedom or aiming at the exercise of any fundamental right, political or trade union freedom or any right protected in the ECHR (Article 187A section 8).⁵¹

The Criminal Code also penalizes the “provision of any kind of assets, tangible or intangible, movable or immovable or any kind of financial means, regardless of their mode of acquisition, to a terrorist organization or an individual terrorist or for setting up a terrorist organization or for someone to become a terrorist or the reception, collection or management of any such assets or means with reference to the above, irrespective of the commission of any of the terrorist offences.” This is in-line with Article 11 of the Directive.

The Criminal Code further punishes the “provision of substantial information being used in the future, to facilitate or support the commission by a terrorist organisation or an individual terrorist of any of the terrorist actions constituting a felony, as well as theft, robbery, blackmail, forgery of public documents, carried out with the view to perpetrating a terrorist action.”⁵²

Furthermore, in the field of prevention, it should be noted that the Greek Criminal Code penalizes public incitement to commit an offence (Article 184) as found in Article 5 of the Directive as well as the public glorification, in any way, of an offence that has been committed, thus endangering public order (Article 185).

EU Directive 2017/541	Criminal Code
<p>Definition of a Terrorist Group (Article 2)</p> <p>The Directive defines a ‘terrorist group’ as ‘a structured group of more than two persons, established for a period of time and acting in concert to commit terrorist offences.’ A ‘structured group’ means ‘a group that is not randomly formed for the immediate commission of an offence and that does not need to have formally</p>	<p>The Greek Criminal Code defines the “a structured group with a continuous activity, consisting of three or more persons acting jointly and with the purpose of committing [a terrorist offence]”.</p>

⁵¹ Georgios Triantafyllou, in Kent Roach (ed) Comparative Counter-terrorism Law (CUP, 2015), 347.

⁵² *Ibid.* See also: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168064101d>

<p><i>defined roles for its members, continuity of its membership or a developed structure.'</i></p>	
<p>Definition of a Terrorist Offence (Article 3) The Directive requires states to criminalize certain intentional acts as well as threats to commit those acts when committed with the aim of one or more of the following aims: <i>(a) seriously intimidating a population; (b) unduly compelling a government or international organisation to perform or abstain from performing any act; and (c) seriously destabilising or destroying the fundamental political, constitutional, economic or social structures of a country or an international organisation.</i></p>	<p>Article 187(a) defines terrorist offenses as offences already included in the criminal code committed in such a way “to such an extent or under such conditions, that it is possible to seriously harm a country or an international organization, along with the purpose of seriously intimidating a population or illegally forcing a public authority or an international organization to perform or to abstain from performing an action or with the purpose of seriously harming or destroying the fundamental constitutional, political and economic structures of a country or of an international organization.” Possible terrorist offences include: intentional homicide; causing severe physical injury; causing fatal injury; abduction and kidnapping of minors; causing significant damage to a third party’s property; arson; arson in forests; causing a flood; causing an explosion; violations with regard to explosives; commonly dangerous damage (intentional damage to any public or private property that could affect others); revocation of security installations; causing a shipwreck; contamination of water supplies and food; adulteration of food; disruption of transport safety; disruption of the safety of railways, ships and airplanes; the actions provided for by paragraph 1 of Article 8 of Legislative Decree 181/1974 “on the protection from ionizing radiation.”</p>
<p>Offences Relating to a Terrorist Group (Article 4) The Directive requires states to criminalize <i>a) directing a terrorist group and b) participating in the activities of a terrorist group, including by supplying information or material resources, or by</i></p>	<p>The integration and the directing of a structured and continuously active organization, consisting of three or more persons acting together with the aim of committing terrorist acts is criminalised. The Criminal Code also penalizes the provision of any kind of assets, tangible</p>

<p><i>funding its activities in any way, with knowledge of the fact that such participation will contribute to the criminal activities of the terrorist group.</i></p>	<p>or intangible, movable or immovable or any kind of financial means, regardless of their mode of acquisition, to a terrorist organization or an individual terrorist or for setting up a terrorist organization or for someone to become a terrorist or the reception, collection or management of any such assets or means with reference to the above, irrespective of the commission of any of the terrorist offences.⁵³</p> <p>The Criminal Code also penalizes the provision of substantial information, with knowledge of such information being used in the future, to facilitate or support the commission by a terrorist organisation or an individual terrorist of any of the terrorist actions constituting a felony, as well as theft, robbery, blackmail, forgery of public documents, carried out with the view to perpetrating a terrorist action.</p>
<p>Public Provocation to Commit a Terrorism Offence (Article 5)</p> <p>The Directive requires states to criminalise <i>“the distribution, or otherwise making available by any means, whether on or offline, of a message to the public, with the intent to incite the commission of one of the offences listed in Article 3(1)(a) to (i), where such conduct, directly or indirectly, such as by the glorification of terrorist acts, advocates the commission of terrorist offences, thereby causing a danger that one or more such offences may be committed.”</i> It requires such acts are punishable when committed intentionally. A very low threshold is set by considering an act punishable when it causes danger that an offence may be committed and criminalizes conduct directly or indirectly advocating terrorist offences.</p>	<p>Public incitement to commit an offence is criminalised in Article 184. Public glorification in any way, of an offence that has been committed, thus endangering public order (Article 185). There is however no specific law for the incitement of a terrorism-related crime.</p>

⁵³ See: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168064101c>

<p>Financing of terrorism (Article 11) In a newly introduced provision, the Directive requires States to criminalize <i>‘providing and collecting funds, by any means, directly or indirectly, with the intention that they be used, or in the knowledge that they are to be used, in full or in part, to commit or to contribute to any of the offences referred to in Articles 3 to 10.’</i> There is no requirement that the funds in fact be used, in full or in part, to commit or to contribute to a terrorist offence, nor that the offender knows for which specific offence(s) the funds are to be used.</p>	<p>Law 3875/2010 provides that the provision or management of “tangible or intangible assets” to a terrorist organisation or an individual terrorist is also punishable by 10 years’ incarceration.</p>
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Poland

National legal framework of counterterrorism laws

The Ministry of Foreign Affairs in Poland has stated that Poland is not a country directly threatened by terrorism. Instead, the threat pertains rather to organized crime. However, with the “evolution of the refugee crisis, armed right-wing and nationalist paramilitary movements have begun to develop, posing an increased domestic terror threat in Poland.”⁵⁴

Acts of a terrorist nature were originally addressed in Article 258 of the Criminal Code under the Law of 6 June 1997. Article 258 penalised the “establishment, management and participation in an organised criminal group or association aimed at committing terrorist offences.”⁵⁵ Under this system, terrorist offences were treated as ordinary offences with “no possibility of applying aggravated punishment to the perpetrator of a terrorist act.”⁵⁶ Accession to the EU required the introduction of the concept of terrorist offences, and the Criminal Code was therefore amended by the Law of 16 April 2004 to include the concept of terrorist offences. A new group of terrorist offences was added to the Criminal Code, introducing a broad concept of a terrorist offence that expanded the list of offences under the Framework Decision of 13 June 2002 on Combatting Terrorism.⁵⁷ Heavier custodial sentences were imposed for offences committed with terrorist intent. In 2009 the Code was further amended to address the “financing of terrorism-related activities, introducing for the first time, the offence of giving support to the perpetrator of a terrorist offence.”⁵⁸ In 2011, Article 255a was added to “penalise those who would publicly present or disseminate instruction on committing terror offences.”⁵⁹

⁵⁴ “EU and Member States policies and laws on persons suspected of terrorism-related crimes” Committee on Civil Liberties and Home Affairs, December 2017 available at: [http://www.europarl.europa.eu/RegData/etudes/STUD/2017/596832/IPOL_STU\(2017\)596832_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2017/596832/IPOL_STU(2017)596832_EN.pdf), p. 119.

⁵⁵ *Ibid.*

⁵⁶ *Ibid* 120.

⁵⁷ *Ibid.*

⁵⁸ *Ibid.*

⁵⁹ *Ibid.*

Civil Society organisations have raised concerns about a number of measures introduced in Poland (2016-2017) in the context of counter terrorism – these include: Increased extraordinary surveillance powers granted to the ISA (Internal Security Agency) that lack any form of meaningful judicial review.⁶⁰ Including the targeting of foreign nationals for surveillance, the authorization for the detention of terrorism suspects for up to two weeks without charge, and the blocking of websites without judicial authorization and the increase in the number of exceptions under which improperly obtained evidence can be admitted at criminal trials. Authorities can also ban public assemblies and public protests if a terror alert system established under the counterterrorism law reaches “high.” Some of these concerns, and the judicial response are discussed below.

Criminal Law

Terrorist acts are penalised under the Polish Criminal Code on the basis of general criminal provisions (e.g. crimes against peace, humanity and war crimes, crimes against the Republic of Poland, crimes against defence, crimes against life and health, crimes against public security, crimes against safety of transportation, crimes against public order etc.)⁶¹

The Polish Penal code provides for the possibility of more severe sanctions for the perpetrator of an offence of a terrorist nature (Article 65(1)) and the code may be applied to “aliens who have committed an offence abroad which is against the interests of the Republic of Poland, Polish citizens, Polish legal persons and entities not having legal status as well as to aliens who have committed an offence of a terrorist character abroad (Article 110(1) of the Penal Code)⁶²

Dissemination of Terrorist Content:

The penal code was changed in 2011 to criminalise the “public presentation and dissemination of terrorist content constituting an instruction for persons committing offences of a terrorist nature with up to 5 years imprisonment.”⁶³ The counterterrorism law and the Act on the Internal Security Agency allow the ISA director to block websites for five days before seeking judicial authorization. After five days a court must confirm that the Internal Security Agency’s order was justified under Polish law. The Internal Security Agency and Prosecutor General can appeal if the court rules that the order was not justified, however, practice indicates that the appeal can be based on vague national security grounds and it is not evidently clear what evidence would need to be disclosed to win the appeal. The law is silent on whether any other person or organization can appeal the blocking of a website.⁶⁴

⁶⁰ “Eroding Checks and Balances Rule of Law and Human Rights Under Attack in Poland” Human Rights Watch, 24 October 2017, available at: <https://www.hrw.org/report/2017/10/24/eroding-checks-and-balances/rule-law-and-human-rights-under-attack-poland>

⁶¹ Piotr Daranowski, in Kent Roach (ed) Comparative Counter-terrorism Law (CUP, 2015), 434.

⁶² See: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168064101d>

⁶³ Article 255(a).

⁶⁴ “Dangerously Disproportionate The Ever-Expanding National Security State In Europe” Amnesty International, 2017, available at: <http://g8fip1kp1yr33r3krz5b97d1.wpengine.netdna-cdn.com/wp-content/uploads/2017/01/CounterTerrorReport.pdf>, p. 41.

Targeting of foreign nationals for surveillance:

Under amendments to the Police Act, and Poland's Code of Criminal Procedure, the ISA can now target foreign nationals for surveillance, including tourists, business visitors, and residents based solely on a "fear" that they may be involved in terrorism-related activities. The ISA can wire-tap and monitor their electronic communications for up to three months without judicial review. Upon expiration of this three-month period the ISA can seek a court order to continue the surveillance for a further three months.⁶⁵ This has raised valid concerns regarding discrimination.

The use of illegally obtained evidence at criminal trial:

In 2016 the ruling PiS party amended the Criminal Procedural Code to ensure that evidence could not be excluded on the basis that it was illegally obtained (this was in spite of Supreme Court jurisprudence and legislation prohibiting this). Amendments to the Police Act adopted in 2016, give state agencies the power to gain access to internet data, including the contents of communications. Courts can now authorize secret surveillance for up to three months – which can be extended to a maximum of 18 months – on the basis of a broad list of suspected crimes and without a requirement to consider whether the surveillance request is necessary or proportionate in the context. The amendments also allow for metadata to be accessed directly by the police without a court order. Confidentiality of information covered by professional privilege is also compromised. For example, the amendments do not bar surveillance of communications between clients and their criminal defense lawyers.

Push back in Domestic Courts:

In July 2016, Polish Human Rights Commissioner Bodnar challenged the counterterrorism law before the Constitutional Tribunal. However, in the wake of the constitutional crisis in Poland – the Commissioner withdrew these challenges in 2018 when the Tribunal announced (under a new presidency) that the panel adjudicating the case would be changed from a full bench to a five-person bench. This five-person bench included judges that had been controversially appointed in a procedure contrary to the Constitution. The Commissioner drew attention to the lack of a legal basis to change the composition of the court - and in 2018 – when the composition was changed again to include another "anti-judge" the Commissioner withdrew the application.⁶⁶

Other Measures

Enhanced powers of detention:

The law provides that a court can order detention for up to 14 days before a person is charged if they demonstrate "the commitment, attempt or preparation to carry out acts of a

⁶⁵ "Eroding Checks and Balances Rule of Law and Human Rights Under Attack in Poland" Human Rights Watch, 24 October 2017, available at: <https://www.hrw.org/report/2017/10/24/eroding-checks-and-balances/rule-law-and-human-rights-under-attack-poland>, p. 20.

⁶⁶ Agnieszka Grzelak, "Choosing between two Evils: the Polish Ombudsman's Dilemma" Verfassungsblog, 6 May 2018, available at: <https://verfassungsblog.de/choosing-between-two-evils-the-polish-ombudsmans-dilemma/>

terrorist nature.” The accompanying regulation however, “sets out an extraordinary and dangerously broad and vague list of what kind of information can be used to determine if the person may be justifiably suspected of involvement in “terrorist” acts under the law.”⁶⁷ This includes, the expression by religious groups of sentiments perceived under the law to be fundamentalist slogans, information about the intent of a foreign national arriving in Poland for academic studies or training; information about foreign nationals attending conferences, meetings or seminars in Poland; plans to establish Islamic universities in Poland; the activity of Polish nationals on “radical extremist websites” or social media platforms; and visits by Islamic clerics or representatives of Muslim organizations to detention or prison facilities.⁶⁸

The expulsion of foreigners on the grounds of national security:

The Council of Europe Commissioner on Human Rights has criticised the lack of due process in cases of deportations where national security grounds have been invoked. For example, an Iraqi student was deported to Iraq after the Refugee Board rejected his asylum application alleging that he represented a “threat to national security”. The evidence against him, collected by the Internal Security Agency, was not made available to his legal representatives. The NGO Helsinki Foundation for Human Rights argued that the denial of access to the case files had effectively prevented the applicant from knowing the detailed grounds for the rejection of his asylum claim. In August, the Foundation appealed against the decision.⁶⁹ Many similar cases have come before the higher Courts in Poland and ultimately before the CJEU.⁷⁰

Mapping Implementation of the Directive

As of March 2019, Poland has yet to implement the Directive, however, numerous provisions of the Criminal Code as it stands are relevant to discussion of the Directive. The definition of an offence is contained in Article 115 (20) and has been criticised as a result of the fact that it does not enumerate a list of the particular kinds of crimes (like the EU directive or framework decision), instead it adopts a formal criterion of “any prohibited act” committed with the purpose. The scope of the offence is therefore much wider.⁷¹

In 2016 the government listed incidents that could be of a “terrorist” nature in the regulation that accompanied the new Counter-terrorism Law. The list enumerated activities that, taken alone, could hardly be thought of as credible and sufficient evidence that a person was involved in terrorist activity, including a Polish citizen “coming into contact” with a person “feared” to be involved in terrorism-related activity, and a Polish citizen losing their ID documents abroad.”⁷²

⁶⁷ “Eroding Checks and Balances Rule of Law and Human Rights Under Attack in Poland” Human Rights Watch, 24 October 2017, available at: <https://www.hrw.org/report/2017/10/24/eroding-checks-and-balances/rule-law-and-human-rights-under-attack-poland>, p. 20.

⁶⁸ “Eroding Checks and Balances Rule of Law and Human Rights Under Attack in Poland” Human Rights Watch, 24 October 2017, available at: <https://www.hrw.org/report/2017/10/24/eroding-checks-and-balances/rule-law-and-human-rights-under-attack-poland>, p. 20.

⁶⁹ “Amnesty International Report 2017/2018” Poland, available at: <https://www.amnesty.org/en/countries/europe-and-central-asia/poland/report-poland/>

⁷⁰ <https://www.asylumlawdatabase.eu/en/journal/equality-arms-use-classified-information-return-cases-poland>

⁷¹ Piotr Daranowski, in Kent Roach (ed) *Comparative Counter-terrorism Law* (CUP, 2015), 434.

⁷² “Dangerously Disproportionate The Ever-Expanding National Security State In Europe” Amnesty International, 2017, available at: <http://g8fip1kp1yr33r3krz5b97d1.wpengine.netdna-cdn.com/wp-content/uploads/2017/01/CounterTerrorReport.pdf>, p. 25.

Offences relating to a terrorist group (Article 4 of the Directive) were added in 2004 to bring Polish legislation in-line with EU Law. Article 258 “penalizes the establishment, management and participation in an organised criminal group or association aimed at committing terrorist offence.”

Public provocation to commit an offence (Article 5 of the Directive) is dealt with under Article 255a, which states that the provocation of others to commit a crime, including a terrorist act leading to this end “training or seeking to recruit for terrorist organisations” is criminalised. Unlike the Directive, however, there is no requirement that the provocation or incitement is intentional.

Recruitment and training for terrorism dealt with in Articles 6 and 7 of the Directive, are also covered in Article 255 of the Criminal Code which states that the provocation of others to commit a crime leading to “training or seeking to recruit for terrorist organisations” is criminalised.

Lastly the financing of terrorism, dealt with in Article 11 of the Directive is covered in Article 165a of the Criminal Code, under which the Inspector General of Financial Information can suspend transactions or block accounts of suspects.

EU Directive 2017/541	Polish Criminal Code
<p>Definition of a Terrorist Offence (Article 3) The Directive requires states to criminalize certain intentional acts as well as threats to commit those acts when committed with the aim of one or more of the following aims: <i>(a) seriously intimidating a population; (b) unduly compelling a government or international organisation to perform or abstain from performing any act; and (c) seriously destabilising or destroying the fundamental political, constitutional, economic or social structures of a country or an international organisation.</i></p>	<p>The definition of an offence is contained in Article 115 (20): An offence of a terrorist nature is a prohibited act, subject to imprisonment with the upper limit of at least five years, committed in order to: 1) seriously intimidate many persons; 2) to compel the public authority of the Republic of Poland or of the other state or of the international organisation to undertake or abandon specific actions; 3) cause serious disturbance to the constitutional system or to the economy of the Republic of Poland, of the other state or international organisation and a threat to commit such an act.</p>
<p>Offences Relating to a Terrorist Group (Article 4) The Directive requires states to criminalize <i>a) directing a terrorist group and b) participating in the activities of a terrorist group, including by supplying information or material resources, or by funding its activities in any way, with knowledge of the fact that such participation will contribute to the criminal activities of the terrorist group.</i></p>	<p>Article 258 “penalizes the establishment, management and participation in an organised criminal group or association aimed at committing terrorist offence.” Whoever participates in an organisation of which the objective is to commit an offence of a terrorist nature, shall be punished with between 6 months’ and 8 years’ imprisonment. Whoever forms or leads such an organisation is subject to a minimum of 3</p>

	years' imprisonment. ⁷³
<p>Public Provocation to Commit a Terrorism Offence (Article 5)</p> <p>The Directive requires states to criminalise <i>“the distribution, or otherwise making available by any means, whether on or offline, of a message to the public, with the intent to incite the commission of one of the offences listed in Article 3(1)(a) to (i), where such conduct, directly or indirectly, such as by the glorification of terrorist acts, advocates the commission of terrorist offences, thereby causing a danger that one or more such offences may be committed.”</i> It requires such acts are punishable when committed intentionally. A very low threshold is set by considering an act punishable when it causes danger that an offence may be committed and criminalizes conduct directly or indirectly advocating terrorist offences.</p>	<p>Under Article 255a, the provocation of others to commit a crime, including a terrorist act leading to this end “training or seeking to recruit for terrorist organisations” is criminalised.</p> <p>Article 255a specifies: “ <i>Whoever disseminates or publicly presents content that could facilitate the commitment of an offence of a terrorist nature is punishable by 3 months' to 5 years' imprisonment.</i>”</p>
<p>Recruitment for terrorism (Article 6)</p> <p>The Directive requires States to criminalise “soliciting another person to commit or contribute in the commission of” offences listed as a terrorist offence or offences relating to a terrorist group. The Directive explicitly states that recruitment is punishable only when committed intentionally.</p>	<p>Under Article 255, the provocation of others to commit a crime, including a terrorist act leading to this end “training or seeking to recruit for terrorist organisations” is criminalised.</p>
<p>Providing Training for Terrorism (Article 7)</p>	<p>Under Article 255, the provocation of others to commit a crime, including a terrorist act leading to this end “training or seeking to recruit for terrorist organisations” is criminalised.</p>
<p>Financing of terrorism (Article 11)</p> <p>In a newly introduced provision, the Directive requires States to criminalize <i>‘providing and collecting funds, by any means, directly or indirectly, with the intention that they be used, or in the knowledge that they are to be used, in full or in part, to commit or to contribute to any of the offences referred to</i></p>	<p>Article 165a deals with the issue of terrorist financing. Under this clause, the Inspector General of Financial Information can suspend transactions or block accounts of suspects.</p>

⁷³ See: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168064101d>

<p><i>in Articles 3 to 10.</i> There is no requirement that the funds in fact be used, in full or in part, to commit or to contribute to a terrorist offence, nor that the offender knows for which specific offence(s) the funds are to be used.</p>	
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Portugal

National legal framework of counterterrorism laws

As of March 2019 the Directive has not been fully implemented in Portugal.⁷⁴ Terrorist acts are penalised by Law 52/2003 (transposing the EU Framework Decision) which replaced parts of the Criminal Code. criminalises “all acts that aim to facilitate, either directly or indirectly, any act committed for terrorism purposes.”⁷⁵ The law covers domestic terrorism (Article 4), international terrorism (Article 5), and also punishes individual acts of terrorism. An innovative aspect of the law is that it envisages the criminal liability of legal persons (or their equivalent) for offences of Articles 2 (terrorist offences) and 5 (international terrorism) “when carried out on their behalf and in the interest of their organs or representatives, and that such liability does not exclude their respective individual liability.” Sanctions for this offence include fines and dissolutions, the fines range from “a minimum of 100 to a maximum of 1000 and amount to from 5 to 5,000 Euros per day.”

The law was updated in 2015 to include new offences to bring it in line with EU standards:⁷⁶

- (i) the recruitment or to be recruited for the commission of terrorism and international terrorism acts,
- (ii) the providing of training or instructing to other persons on the manufacture or use of explosives, firearms or other weapons and noxious or hazardous substances or on other specific methods or techniques for the commission of terrorism acts,
- (iii) the rewarding or praising another person, group or association for the commission of terrorism acts,
- (iv) the travelling or attempt to travelling to a different territory of their State of residence or nationality, in order to provide training, logistical support or instruction to other person for the commission of terrorism acts and

⁷⁴ See: https://www.ejn-crimjust.europa.eu/ejn/EJN_Library_StatusOfImpByCat.aspx?CategoryId=162.

⁷⁵ Jose Francisco de Faria Costa, in Kent Roach (ed.) *Comparative Counter-terrorism Law* (CUP, 2015), 326. See also: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680641022>

⁷⁶ Resolution 31/30, adopted by the Human Rights Council on 24 March 2016 *Effects of terrorism on the enjoyment of all human rights Contribution of Portugal*, available at: <https://www.ohchr.org/Documents/Issues/RuleOfLaw/NegativeEffectsTerrorism/Portugal.pdf>

(v) the travelling or attempt to travel to a different territory of their State of residence or nationality, in order to joining a terrorist organization or for the commission of terrorism acts as well as

(vi) the organization, financing or facilitating mentioned travel or attempt to travel.

The use of internet and other means of information and communication constitute aggravating circumstances of the commission of these crimes.

Other Measures

Citizenship Stripping:

In 2015 Portugal amended its Nationality Act by Organic Law 8/2015 allowing the Public Prosecutor to reject nationality acquisition if the person represents a threat to national security. The same applies to acquisition of citizenship via naturalisation where, until then, you could not acquire the Portuguese citizenship if the person was convicted for having especially serious criminal offence. Under the revised law, a person does not acquire the Portuguese citizenship either if he or she represents a threat to the national security or is involved in terrorist activities.

Czechia

National legal framework of counterterrorism laws

Czechia implemented the Directive in 1 February 2019,⁷⁷ and all relevant provisions are contained in the Criminal Code.⁷⁸

Mapping implementation of the Directive

The definition of a terrorist offence contained in Section 311 of the Criminal Code is in line with Article 3 of the Directive, and also includes relevant provisions pertaining to participation in terrorist offences (Article 4 of the Directive), public provocation (Article 5 of the Directive) and financial support (Article 11 of the Directive).

EU Directive 2017/541	Criminal Code
Definition of a Terrorist Offence (Article 3) The Directive requires states to criminalize certain intentional acts as well as threats to commit those acts when committed with the aim of one or more of the following aims: (a) seriously intimidating a population; (b) unduly compelling a	Section 311 defines a terrorist offence as follows: <i>(1) Whoever with the intention to impair the constitutional system or defence capabilities of the Czech Republic, disrupt or destroy the base political, economic or social structure of the Czech Republic or an international</i>

⁷⁷ For implementation measures (available only in Czech) see here: <https://eur-lex.europa.eu/legal-content/EN/NIM/?uri=CELEX:32017L0541&qid=1553025947916>

⁷⁸ <http://www.ejtn.eu/PageFiles/6533/Criminal%20Code%20of%20the%20Czech%20Republic.pdf>

<p><i>government or international organisation to perform or abstain from performing any act; and (c) seriously destabilising or destroying the fundamental political, constitutional, economic or social structures of a country or an international organisation.</i></p>	<p><i>organisation, seriously terrify the population or illegally make the government or another public authority or an international organisation to act, omit or tolerate something,</i></p> <p><i>a) performs an attack threatening human life or health with the intention to cause death or grievous bodily harm,</i></p> <p><i>b) seizes hostages or commits kidnapping,</i></p> <p><i>c) destroys or damages in larger extent a public facility, transportation or communication system including an information system, a fixed platform on continental shelf, energetic, water-work, medical or other important facility, public area or property with the intention to jeopardise human lives, security of such a facility, system or area or to expose property to risk of extensive damage,</i></p> <p><i>d) disrupts or interrupts supply of water, electricity or other fundamental natural resource with the intention to jeopardise human lives or to expose property to risk of extensive damage,</i></p> <p><i>e) hijacks an aircraft, ship or another means of personal or cargo transportation or exercises control over it, or destroys or seriously damages navigation device or in larger extent interferes with its operation or communicate a false important information by which he/she jeopardises life or health of people, security of such means of transportation, or exposes property to risk of extensive damage,</i></p> <p><i>f) wrongfully manufactures or otherwise obtains, handles, imports, transports, exports or otherwise supplies or uses explosives, nuclear, biological, chemical or other weapon or means of combat or explosives prohibited by law or international treaty, or</i></p>
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g) exposes people to general risk of death or grievous bodily harm or property of another to risk of extensive damage by causing fire or flood or detrimental effect of explosives, gas, electricity or other similarly dangerous substances or powers or commits other similarly dangerous conduct, or increases such a risk or aggravates its aversion or mitigation, shall be sentenced to imprisonment for five to fifteen years, eventually in parallel to this sentence also to confiscation of property.

(2) The same sentence shall be imposed to anyone who threatens with conduct referred to in Sub-section (1), whoever publicly instigates commission of such conduct or whoever financially, materially or otherwise supports a terrorist or a member of a terrorist group.

(3) An offender shall be sentenced to imprisonment for twelve to twenty years, eventually in parallel to this sentence also to confiscation of property, or to an exceptional sentence of imprisonment, if he/she

a) commits the act referred to in Sub-section (1) as a member of an organised group,

b) causes grievous bodily harm or death by such an act,

c) causes that a larger amount of people remained without shelter by such an act,

d) causes disruption of transportation in larger extent by such an act,

e) causes extensive damage by such an act,

f) gains for him/herself or for another extensive profit by such an act,

g) by such an act seriously jeopardises the international position of the Czech Republic or position of an international organisation

	<p><i>which the Czech Republic is a member of, or</i></p> <p><i>h) commits such an act in a state of national peril or state of war.</i></p> <p><i>(4) Preparation is criminal.</i></p>
<p>Offences Relating to a Terrorist Group (Article 4)</p> <p>The Directive requires states to criminalize <i>a) directing a terrorist group</i> and <i>b) participating in the activities of a terrorist group, including by supplying information or material resources, or by funding its activities in any way, with knowledge of the fact that such participation will contribute to the criminal activities of the terrorist group.</i></p>	<p>Section 311(2) criminalises support (financial or material) of a terrorist group of a member of a terrorist group.</p>
<p>Public Provocation to Commit a Terrorism Offence (Article 5)</p> <p>The Directive requires states to criminalise <i>“the distribution, or otherwise making available by any means, whether on or offline, of a message to the public, with the intent to incite the commission of one of the offences listed in Article 3(1)(a) to (i), where such conduct, directly or indirectly, such as by the glorification of terrorist acts, advocates the commission of terrorist offences, thereby causing a danger that one or more such offences may be committed.”</i> It requires such acts are punishable when committed intentionally. A very low threshold is set by considering an act punishable when it causes danger that an offence may be committed and criminalizes conduct directly or indirectly advocating terrorist offences.</p>	<p>Section 311(2) criminalises public instigation of terrorist conduct.</p>
<p>Financing of terrorism (Article 11)</p> <p>In a newly introduced provision, the Directive requires States to criminalize <i>‘providing and collecting funds, by any means, directly or indirectly, with the intention that they be used, or in the knowledge that they are to be used, in full or in part, to commit or to contribute to any of the offences referred to in Articles 3 to 10.’</i> There is no requirement</p>	<p>Section 311(2) criminalises the acts of financially, materially or otherwise supporting a terrorist or a member of a terrorist group.</p>

that the funds in fact be used, in full or in part, to commit or to contribute to a terrorist offence, nor that the offender knows for which specific offence(s) the funds are to be used.	
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Romania

National legal framework of counterterrorism laws

Law no 535/2004 on preventing and combatting terrorism contains the relevant provisions implementing EU standards. As of March 2019, the Directive has however not been fully implemented.⁷⁹ Terrorist crimes are complex offences built on ordinary crimes if they are committed with special intention and a certain purpose. There are however, three situations in which they are characterised as a simple offence:

- Acts relating to potential means of obtaining or producing weapons of mass destruction and other types of weapons designed to harm life on a large scale
- The use of these weapons against the population or environment
- Interference with or disruption of the water support, power or any other fundamental natural resource that endangers human life.

The law contains an exhaustive list of offences that constitute terrorist acts if committed with the requisite aim and purpose (see Article 33).⁸⁰

Concerns regarding terrorist financing laws

The draft law approved by the Romanian Government for the transposition of Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing was challenged before the constitutional court for its provisions with regards to civil society organisations.⁸¹

Under the law, associations, foundations and federations are bound to communicate all personal data of their beneficiaries. As such, without any reasonable argument, civil society is placed in the same category of financial risks as banks and gambling services for example. NGOs raised concerns that the law would lead to the complete closure of organizations working for the most vulnerable groups: abused individuals, people whose human rights have been violated, people affected by extreme poverty; a drastic decrease in the number of citizens turning to non-governmental organizations; NGOs no longer being able to enter into partnerships without sharing complete lists of data on their beneficiaries, including individuals, with names, surnames and all data included in their identity cards.⁸²

⁷⁹ https://www.ejn-crimjust.europa.eu/ejn/EJN_Library_StatusOfImpByCat.aspx?CategoryId=162

⁸⁰ Rauca-Ioana Mocanu and George Antoniu, in Kent Roach (ed.) *Comparative Counter-terrorism Law* (CUP, 2015), 483.

⁸¹ 23 Jan. 2019: In Early December, the Constitutional Court declared that the draft law is partially unconstitutional. The law is back in the Parliament.

⁸² "Under Guise of Fighting Terrorism, Romania Aims to Silence NGOs by Drowning Them in Paperwork" Liberties 2 July 2018, available at: <https://www.liberties.eu/en/news/romania-fighting-terrorism-by-drowning-ngos-in-bureaucracy/15203>

Mapping implementation of the Directive

EU Directive 2017/541	Law 535/2004 on preventing and combatting terrorism
<p>Definition of a Terrorist Offence (Article 3) The Directive requires states to criminalize certain intentional acts as well as threats to commit those acts when committed with the aim of one or more of the following aims: <i>(a) seriously intimidating a population; (b) unduly compelling a government or international organisation to perform or abstain from performing any act; and (c) seriously destabilising or destroying the fundamental political, constitutional, economic or social structures of a country or an international organisation.</i></p>	<p>Terrorism is defined as: <i>“the assembly of actions and/or threats which represent a public risk and affect national security, having the following characteristics:</i></p> <p><i>a) they are committed in a premediated manner by terrorist entities, motivated by extremist conceptions and attitudes, hostile towards other entities against which they act through violent and/or destructive ways. b) are following specific political objectives c) aim to hit human and/or goods from public authorities, public institutions, civilians, or other segments of those sectors, d) intend to produce a powerful psychological impact on the population meant to draw attention to their purposes.</i></p>