



EUROPEAN  
COMMISSION

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2015/0131 (NLE)

Proposal for a

**COUNCIL DECISION**

**on the signing, on behalf of the European Union, of the Council of Europe Convention  
on the Prevention of Terrorism (CETS No. 196)**

## **EXPLANATORY MEMORANDUM**

### **1. CONTEXT OF THE PROPOSAL**

The Council of Europe Convention on the Prevention of Terrorism, adopted by the Committee of Ministers at its 925<sup>th</sup> meeting and opened for signature on 16 May 2005 in Warsaw, aims to take effective measures to prevent terrorism while respecting in particular the rule of law and democratic values, human rights and fundamental freedoms.

Such measures include in particular criminal offences of a preparatory nature having the potential to lead to the commission of terrorist acts, i.e. public provocation to commit a terrorist offence, recruitment and training for terrorism. These measures are complemented by in particular provisions on prevention and international cooperation in criminal matters. There is a large body of EU instruments governing the various areas covered by the Convention.

The Convention entered into force on 1 June 2007 and has been ratified by 32 countries.

The Convention is open for signature by the European Union (Article 23 of the Convention). The Union has competence to sign the Convention and can become party to the Convention alongside the Member States to the extent that the Convention falls within Union competence.

On 19 May 2015 the Council of Europe Committee of Ministers adopted the Additional Protocol supplementing the Council of Europe Convention on the Prevention of Terrorism (CETS No. 196). The Commission has submitted, together with the present proposal, a proposal for a Council Decision authorising the signing of the Additional Protocol on behalf of the European Union.<sup>1</sup>

### **2. LEGAL ELEMENTS OF THE PROPOSAL**

#### **2.1. The aim and content of the Convention on the Prevention of Terrorism**

The purpose of the Council of Europe Convention on the Prevention of Terrorism is to enhance the efforts of the parties in preventing terrorism and its negative effects on the full enjoyment of human rights, in particular the right to life, both by measures taken at national level and through international co-operation (Article 2). The Convention thus criminalises the following acts when committed intentionally: public provocation to commit a terrorist offence (Article 5), recruitment for terrorism (Article 6), training for terrorism (Article 7) as well as aiding and abetting, inciting and attempting the aforementioned offences (so-called "ancillary offences" as defined in Article 9). Article 1 defines the notion of "terrorist offence" referring to acts as listed in the Appendix I to the Convention.

These provisions defining criminal offences are complemented by provisions establishing the liability of legal entities for the aforementioned offences (Article 10) and setting out conditions for sanctions and penalties (Article 11). The establishment, implementation and application of the criminalisation of these offences is subject to the conditions and fundamental rights safeguards as stipulated in Article 12. The Convention lays down jurisdictional rules for the Convention offences (Article 14). It establishes an obligation to investigate (Article 15) and to prosecute or extradite (Article 18). These measures are

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accompanied by rules on the protection, compensation and support for victims of terrorism (Article 13), national prevention policies (Article 3) and, international co-operation on prevention (Article 4). The Convention also contains several provisions aiming at strengthening international co-operation in criminal matters through mutual legal assistance, including the spontaneous information exchange (Articles 17 and 22) and extradition (Articles 19, 20 and 21), being subject to a non-discrimination clause (Article 21).

The Convention provides that it is open for signature to the European Union (Article 23 paragraph 1). In addition, it includes a "disconnection clause" ensuring that in relations between European Union Member States EU rules apply (Article 26 paragraph 3).

## **2.2. The legal basis for the proposed decision**

It is established case-law that the choice of legal basis for an EU measure must rest on objective factors that are amenable to judicial review; these include the aim and the content of the measure.<sup>2</sup> If examination of a European Union measure reveals that it pursues a twofold purpose or that it has a twofold component and if one of those is identifiable as the main or predominant purpose or component, whereas the other is merely incidental, the measure must be founded on a single legal basis, namely that required by the main or predominant purpose or component.<sup>3</sup> Where it is established that the measure pursues several objectives which are inseparably linked without one being secondary and indirect in relation to the other, the measures must be founded on the various corresponding legal bases, unless the procedures laid down for each legal basis are incompatible with each other.<sup>4</sup> The following provisions are considered as the appropriate legal bases:

- (a) Article 83(1) TFEU on the establishment of criminal offences, including related offences.
- (b) Article 84 TFEU on prevention of crime.
- (c) Articles 82 and 87(2) TFEU as regards police cooperation and judicial cooperation in criminal matters.

The procedures laid down for these legal bases are compatible with each other.

## **2.3. The necessity of the proposed decision**

The Commission has submitted, together with the present proposal, a proposal for a Council Decision authorising the signing of the Additional Protocol on behalf of the European Union. Article 10 of the Additional Protocol provides that the Additional Protocol shall be open for signature by Signatories to the Convention.

The adoption of a Council Decision authorising the signing of the Convention on behalf of the European Union is thus a necessary requirement for the adoption of a Council Decision authorising the signing of the Additional Protocol on behalf of the European Union.

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<sup>2</sup> See, for instance, Case C-490/10 Parliament v Council, EU:C:2012:525, paragraph 44, and the case-law cited.

<sup>3</sup> Case C-490/10 Parliament v Council, paragraph 45.

<sup>4</sup> Case C-490/10 Parliament v Council, paragraph 46.

### **3. TERRITORIAL APPLICATION**

In accordance with Protocol 22 of the Treaty of the European Union, the Additional Protocol signed and eventually concluded by the European Union is binding upon and applies in all EU Member States with the exception of Denmark.

In accordance with Protocol 21 of the Treaty of the European Union, the Additional Protocol signed and eventually concluded by the European Union is binding upon and applies in the United Kingdom only insofar as this Member State notifies the Council of its wish to take part in the adoption and application of this instrument.

Proposal for a

## **COUNCIL DECISION**

### **on the signing, on behalf of the European Union, of the Council of Europe Convention on the Prevention of Terrorism (CETS No. 196)**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 82, Article 83(1), Article 84 and Article 87(2) in conjunction with Article 218(5) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) Article 23 of the Council of Europe Convention on the Prevention of Terrorism (CTS No. 196; ‘the Convention’) provides that that Convention shall be open for signature by the European Union.
- (2) On 1 April 2015 the Council authorised the Commission to open negotiations on the Additional Protocol to the Convention (‘the Additional Protocol’).
- (3) On 19 May 2015 the Council of Europe Committee of Ministers adopted the Additional Protocol. The Commission has submitted to the Council a proposal for a Council Decision authorising the signing of the Additional Protocol on behalf of the European Union.
- (4) Article 10 of the Additional Protocol provides that the Additional Protocol shall be open for signature by signatories to the Convention.
- (5) The Convention should therefore be signed on behalf of the European Union.
- (6) [In accordance with Article 3 of Protocol (No 21) on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, the United Kingdom has notified its wish to take part in the adoption and application of this Decision.]
- (7) OR: [In accordance with Articles 1 and 2 of Protocol (No 21) on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, the United Kingdom is not taking part in the adoption of this Decision and is not bound by it or subject to its application]
- (8) In accordance with Articles 1 and 2 of Protocol (No 22) on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Decision and is not bound by it or subject to its application,

HAS ADOPTED THIS DECISION:

*Article 1*

The signing of Council of Europe Convention on the Prevention of Terrorism (CETS No. 196) is hereby approved on behalf of the European Union, subject to the conclusion of the said Convention.

The text of the Agreement to be signed is attached to this Decision.

*Article 2*

The Council Secretariat General shall establish the instrument of full powers to sign the Convention, subject to its conclusion, for the person(s) indicated by the European Commission.

*Article 3*

This Decision shall enter into force upon its adoption.

Done at Brussels,

*For the Council  
The President*