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Terrorism Convictions Monitor

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Based on open sources information

Issue 10



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I. Introduction

Why a Terrorism Convictions Monitor

The Terrorism Convictions Monitor (TCM) is intended to provide a regular overview of the terrorism-related developments throughout the EU area. The Monitor has been developed on the basis of **open sources information** available to the CMU and methodologies such as individual case studies and comparative analysis. There is a link provided to each of the convictions and acquittals found on the EUROJUST Intranet External News and/or the Internet. **In addition, the current TCM includes also information exclusively provided to Eurojust by the national authorities of one EU Member State by virtue of Council Decision 671/JHA/2005 with no links to open sources.**

Issue 10 of the TCM covers the period **January-April 2011**. It contains also a judicial analysis chapter pertaining to a case from the recent past and a chapter that deals with a topic of interest.

The general objective of the TCM is to inform and kindly invite the National Members to review, confirm, and if possible, complete the information retrieved from various open sources. In the cases where such a confirmation and/or follow-up is needed, a special icon  will appear. The respective National Desks will be further contacted for specific details. In cases where the information has already been provided, it will be noted by a .

National correspondents on terrorism are still encouraged to provide information for 2011 on an ongoing basis to Eurojust, in conformity with Council Decision 671.

II. Terrorism Convictions Overview

1. Terrorism Convictions/Acquittals by Member State January - April 2011



Belgium

February 2011

The Correctional Tribunal in Brussels convicted a man to five years in prison and 5000 Euros fine for participation to **al-Qaeda** terrorist activities in Iraq and in Afghanistan. The decision was pronounced in absentia, as the condemned person had been at large since September 2007. His immediate arrest was ordered.

Source: [levif.be](#)



Denmark

February 2011

A Danish court convicted a 29-year-old Somali man of attempted terrorism and attempted murder for attacking a Danish cartoonist who caricatured the Prophet Mohammed.

The court ruled that the convicted person not only tried to kill the cartoonist when he broke into his home, wielding an axe and a knife, but that the attack also amounted to an act of terrorism. The Somali had threatened police with his axe and knife before being shot twice and placed under arrest. The court handed down a sentence of nine years in jail followed by deportation.

Source: [France24.com](#)



France

January 2011

The Paris Assize Court handed down jail terms to eight men on charges including financing terrorism. Of the eight, a French-Algerian man, believed to be the head of a gang that financed **al-Qaeda** through robbing, and a Tunisian man, got the longest imprisonment term of 15 years. The gangsters, who were arrested during police raids last December, pleaded guilty to several robbery charges in Paris, but not guilty to any financial links with terrorist activities across Europe.

Source: [Xinhua News Agency](#).



April 2011

In a trial against a former leader of the Basque separatist organisation, the Paris

Assize Court sentenced the accused to 17 years imprisonment and permanent interdiction from entering French territory. The former member of the executive committee, responsible for the military structure of the organisation, had been charged for setting up a criminal association with the aim of preparing terrorism acts, as well as extortion and financing of a terrorist organisation.

Source: france3.fr


Italy**January 2011**

A former Guantanamo detainee, who was transferred to Italy under a deal with the United States, was convicted of criminal association with the aim of terrorism and sentenced to six years in prison. Prosecutors believe the convicted individual was a member of a terror group with ties to **al-Qaeda** that recruited fighters for Afghanistan. They said he frequented an Islamic centre in Milan in the 1990s which a U.S. Treasury report at the time labelled "the main al-Qaeda station house in Europe."

Source: The Canadian Press.


Spain¹**January 2011**

In a trial against ██████████ together with other unidentified persons, the Court² issued a conviction of 6 years imprisonment. The defendant placed Molotov cocktails under two vehicles in the village of Villalba but eventually the explosive material was not detonated. The prosecutor qualified the facts as possession of explosives with terrorist purposes (articles 568 and 573 of the Spanish Criminal Code) and requested a conviction of imprisonment of 8 years.

Source: Information transmitted to Eurojust by virtue of Council Decision 671/JHA/2005



In a report drew up by the Public Prosecutor's Office in order to clarify the street attacks committed by the "KALE BORROKA" (organisation belonging to **ETA**), the following individuals were identified as suspects: ██████████

██████████ ██████████
They used to meet in a tavern of San Sebastián which was operated by the association "CULTURAL HERRIA". In addition, two other suspects, ██████████ and ██████████ were identified. No evidence was found regarding their association in a criminal group. After a search order, the authorities found ETA anagrams, money, accounting documents, an ETA banner and Molotov cocktails, etc. No evidence was found in relation to the knowledge or consent given by the members of the CULTURAL HERRIA's management. The Public Prosecutor's Office brought the following charges: participation in a terrorist organisation (articles 515.2^o and 516), allegedly committed by ██████████

██████████; support to storing of

¹ In some cases the conviction included an accessory penalty of temporary deprivation of certain civil rights. Sometimes the conviction might be accompanied by a pecuniary fine to be paid on a monthly basis for a certain period of time.

² The Court is the Audiencia Nacional.

explosives (article 568 CP), committed by [REDACTED] complicity to the criminal acts mentioned above, allegedly committed by [REDACTED] [REDACTED]

The Court issued an acquittal judgment for all the defendants.

Source: Information transmitted to Eurojust by virtue of Council Decision 671/JHA/2005



The Public Prosecutor's Office issued an indictment for membership of a terrorist organisation (ETA), included in art 515.2 and 516 CP, against: [REDACTED]

Furthermore, the seizure of goods and money and the permanent dismantling of UDALBILTZA, the CONSORCIO UDALBILTZA and the FONDO VASCO DE COHESIÓN Y DESARROLL were requested.

The Court issued an acquittal judgment for all the defendants.

Source: Information transmitted to Eurojust by virtue of Council Decision 671/JHA/2005



As a consequence of the execution of a search warrant in a garage in the town of San Sebastián, a large amount of explosive and electric material was found. The Public Prosecutor's Office qualified the facts as possession of arms with terrorist purposes punished by article 573 CP, with a conviction request for [REDACTED] I. of 8 years imprisonment.

The Court acquitted the defendant.

Source: Information transmitted to Eurojust by virtue of Council Decision 671/JHA/2005



The Public Prosecutor's Office brought charges against [REDACTED]. for participation in a terrorist organisation (articles 515. 2º and 516. 1º), with a conviction request of 8 years imprisonment, due to some evidence found regarding his membership to the organisation called EKIN (ETA command).

The Tribunal sentenced the defendant to 7 years and 1 day imprisonment. [REDACTED]

[REDACTED] has issued a judicial review of the Court's decision.

Source: Information transmitted to Eurojust by virtue of Council Decision 671/JHA/2005



The Court conducted a trial against [REDACTED] accused of participating in the organisation ASKATASUNA, which is part of the terrorist organisation ETA. The Public Prosecutor's Office requested a conviction of 12 years imprisonment. Her participation was proved by her knowledge of all the plans of the group, as she was in the possession of preparatory documents and materials of demonstrations linked with the mentioned organisation.

The Court found the accused guilty and handed down a verdict of 8 years imprisonment. The defendant lodged a judicial review on 28 February 2011.

Source: Information transmitted to Eurojust by virtue of Council Decision 671/JHA/2005



February 2011

Following a forbidden demonstration in Bilbao, in August 2010, where some participants were singing and shouting **ETA** slogans, ██████████ was arrested after throwing a beer to one of the policemen. The Public Prosecutor's Office qualified the facts as glorification of terrorism (article 578 CP), with a conviction request of 18 months imprisonment. The Tribunal issued an acquittal judgment due to the lack of evidence. The decision became a final judgment on 15 February 2011.

Source: Information transmitted to Eurojust by virtue of Council Decision 671/JHA/2005



On 24th of December of 2007, ██████████, alias "████████", placed an explosive device next to the central office of the Socialist Euskadi Party in the town of Vizcaya. The explosion caused important damages to the office and nearby properties. The Public Prosecutor's Office qualified the facts as terrorist motivated damages, offence under article 571, with a conviction request of 17 years imprisonment and the compensation for damages.

The Tribunal found him guilty of terrorist motivated damages and issued a sentence of 15 years imprisonment and the obligation of compensation for the damages caused.

The defendant lodged a judicial review on 7 March 2011.

Source: Information transmitted to Eurojust by virtue of Council Decision 671/JHA/2005



As a consequence of the execution of a search warrant in the residence of ██████████, members of the **ETA** command "MIKELATS", three boxes containing explosive and IT materials were seized. The facts were qualified as participation in a terrorist organisation, included in articles 515. 2 and 516 CP, and illicit possession of explosives, included in articles 568 and 573.

Furthermore, ██████████ was accused of cooperating with an armed group (articles 576.1 and 2).

The Tribunal delivered an acquittal judgment to ██████████ and the other individuals were convicted to: 6 years imprisonment for illicit possession of explosives and 6 years imprisonment for participation in terrorist organisation. The decision became final on 3 March 2011.

Source: Information transmitted to Eurojust by virtue of Council Decision 671/JHA/2005



Three members of the terrorist organisation **GRAPO**, ██████████, ██████████, were accused of committing in June 1998 terrorist motivated damages and two attempted terrorist motivated homicides (article 572.1.2). The Public Prosecutor's Office requested a conviction of 15 years imprisonment for the first offence, and 20 years imprisonment for each attempted homicide, as well as the prohibition to approach the crime scene for 5 years after serving the sentence and compensation to the injured parties.

The Audiencia Nacional acquitted all the defendants. The decision became final on 8 March 2011.

Source: Information transmitted to Eurojust by virtue of Council Decision 671/JHA/2005



In 2000, a member of the central command of the terrorist organisation **GRAPO** placed a timed explosive device in the vicinity of the facilities of the Parit Socialista de Catalunya in Barcelona. The alleged author of the facts, [REDACTED], was arrested in Paris. The Court found him guilty of terrorist motivated damages and sentenced him to 3 years imprisonment and the obligation of compensation to the injured parties.

The case is currently under judicial review.

Source: Information transmitted to Eurojust by virtue of Council Decision 671/JHA/2005



March 2011

Spain's Supreme Court acquitted five men convicted by a lower court of recruiting fighters for the Iraqi insurgency and ordered a probe into the allegations they were tortured. The court said it had doubts that the testimony by one of the accused, which led to the convictions, had been obtained "freely and voluntarily". The National Court sentenced the five to jail terms of up to nine years in January. It said they belonged to a cell that also helped suspects in the 2004 Madrid bombings to evade police detection and flee Spain.

The trial, held late last year, heard that among those recruited was [REDACTED] an Algerian who killed 19 Italians and himself in a suicide attack at a military base in Iraq in 2003. The five had claimed that after being arrested in 2006 they were humiliated, insulted and threatened. In its ruling, the Supreme Court asked state prosecutors to investigate the claims. The allegations were initially investigated and discarded by the lower courts. Three of the five — two Moroccans and a Turk — were originally sentenced to between seven and nine years for membership in a terrorist group, while another Moroccan and an Algerian were sentenced to five years in prison for collaboration.

Source: [The Canadian Press](#)



[REDACTED] were charged with membership of the SEGI command (**ETA**) and for setting on fire a ticket machine in the train station in the city of Victoria-Gasteiz. The Public Prosecutor's Office requested a conviction of 9 years imprisonment for the first offence and 5 years imprisonment and a fine to be paid over a period of 24 months for the second one.

The Court acquitted [REDACTED] due to the lack of evidence and sentenced [REDACTED] to 6 years imprisonment for membership of ETA, and 1 year, 6 months and 1 day imprisonment for setting a fire with terrorist purposes.

Source: Information transmitted to Eurojust by virtue of Council Decision 671/JHA/2005



The Court conducted a trial against [REDACTED] for placing an explosive device in a cash machine in Bilbao. The ordnance never exploded. The Public Prosecutor's Office brought charges of membership of **ETA** and placing explosives with terrorist purposes.

All the defendants were partially acquitted for membership of ETA and were convicted to 6 years imprisonment for possession and setting of explosives with terrorist purposes.

Source: Information transmitted to Eurojust by virtue of Council Decision 671/JHA/2005



████████████████████ were brought before a trial for terrorist motivated damages (articles 577.1 y 579.2 CP), after impeding a tram way in Vizcaya and making graffiti on the wagons. They were wearing masks to hide their face. The Court issued an acquittal judgment to ██████████, due to the lack of evidence regarding his participation, and sentenced the other two individuals to a 18 monthly fine of 10 euro and compensation to the railway company.

Source: Information transmitted to Eurojust by virtue of Council Decision 671/JHA/2005

R

A member of the terrorist organisation **ETA**, ██████████ was brought before the Court for membership of ETA and possession of explosive devices with terrorist purposes (under article 573). The Public Prosecutor's Office requested a sentence of 10 years imprisonment for membership of a terrorist organisation, and another 10 years imprisonment for the second offence.

The court partially acquitted the defendant for membership of ETA, since he had been sentenced for the same offence by the Criminal Court in Paris. Regarding the second offence committed, the defendant was convicted to 9 years imprisonment.

Source: Information transmitted to Eurojust by virtue of Council Decision 671/JHA/2005

R

████████████████████ were charged for committing terrorist motivated damages, after setting an explosive device in a bank in the Navarra region. The explosion caused extensive damages and endangered people's lives. The Public Prosecutor's Office requested a sentence of 15 years imprisonment and compensation to the injured parties.

The Court acquitted ██████████ due to lack of evidence, and sentenced ██████████ to 3 years imprisonment and compensation to the injured parties.

Source: Information transmitted to Eurojust by virtue of Council Decision 671/JHA/2005

R

The Court convicted ██████████ to 4 years and 1 day imprisonment for possession and setting explosive devices with terrorist purposes after preparing and placing an explosive device in front of a bank in Pamplona.

Source: Information transmitted to Eurojust by virtue of Council Decision 671/JHA/2005

R

████████████████████ were brought before the Court for committing 20 intended terrorist homicides under article 472.1.1º CP and for terrorist motivated damages (article 571). The facts happened in the town of Portugalete where the defendants placed a bomb in the path of the Deputy Mayor. The explosion caused several injuries and material damages to property and vehicles.

Both defendants were convicted to 18 years imprisonment for each intended assassination and 17 years imprisonment for terrorist motivated damages.

Furthermore, they were sentenced with a special prohibition of approaching Portugalete for 5 years after serving the sentence and compensation for injuries and damages.

Source: Information transmitted to Eurojust by virtue of Council Decision 671/JHA/2005

R

The Court conducted a trial against ██████████ for placing and detonating an explosive device inside the vehicle of a lieutenant of the National Police. As a consequence of the explosion, the policeman lost an arm, both legs and his hearing. There were material damages as well.

The defendant was convicted for an intended terrorist motivated assassination to 23 years imprisonment and the prohibition of approaching the crime scene for 10 years after serving the sentence. Furthermore, the court ordered compensation for the injuries and damages caused.

Source: Information transmitted to Eurojust by virtue of Council Decision 671/JHA/2005



The Public Prosecutor's Office brought the following charges against ██████████: membership of **ETA**, possession and storing of explosives and conspiracy to commit terrorist motivated assassinations. At the same trial ██████████ were charged with cooperation to terrorist activities.

The Court issued an acquittal judgment for ██████████. ██████████ were partially acquitted regarding conspiracy to commit terrorist motivated assassinations, but both were sentenced to 10 years imprisonment for membership of ETA, 8 years imprisonment for possession of military weapons and 8 years imprisonment for possession of explosives.

Source: Information transmitted to Eurojust by virtue of Council Decision 671/JHA/2005



April 2011

The Public Prosecutor's Office brought charges against ██████████. and ██████████. for membership of a terrorist organisation. ██████████ was charged with possession of materials to forge identity documents (article 574 CP) and ██████████ with collaboration to a terrorist organisation (article 576 CP).

The Court convicted ██████████ to 10 years imprisonment for membership of a terrorist organisation and ██████████ B. to 6 years imprisonment for the same offence. ██████████ was convicted for possession of materials to forge identity documents.

The Court issued an acquittal judgment for ██████████ L. due to lack of evidence and a partial acquittal for ██████████. regarding the crime of membership of a terrorist organisation.

Source: Information transmitted to Eurojust by virtue of Council Decision 671/JHA/2005



In 1983, following the kidnapping of a policemen and his pregnant wife, the two victims were shot dead in a garage. The offenders, members of **ETA**, drove away in a stolen car.

The Court issued a conviction judgment against ██████████ of 29 years of imprisonment for terrorist motivated assassination and to 10 years and 1 day of prison for concurrent offences of car theft and illegal possession of a vehicle. Furthermore, ██████████. was convicted to 29 years imprisonment for concurrent offences of assassination and to 17 years imprisonment for terrorist motivated homicide.

Source: Information transmitted to Eurojust by virtue of Council Decision 671/JHA/2005



The Court issued against [REDACTED] a conviction of 8 years and 11 months imprisonment for membership in terrorist group, and to 3 years imprisonment and a 12 monthly fine for forgery of official documents with terrorist purposes. [REDACTED] were also convicted for the last offence.

Furthermore, [REDACTED] was also convicted together with [REDACTED] to 7 years imprisonment for possession and storage of explosive material. [REDACTED] were also sentenced to 2 years imprisonment for possession of weapons with terrorist purposes.

Source: Information transmitted to Eurojust by virtue of Council Decision 671/JHA/2005



The Court conducted a trial in relation to an attack committed in 2009, when two men placed and detonated explosive devices in Álava. [REDACTED] was convicted to 3 years imprisonment for terrorist motivated damages and to 6 years imprisonment for planting explosive materials. [REDACTED] was convicted to 1 year imprisonment for possession and storage of explosive materials.

Source: Information transmitted to Eurojust by virtue of Council Decision 671/JHA/2005



The Court convicted [REDACTED] to 9 years imprisonment for membership of **ETA**, to 8 years for possession of explosives, 3 years for possession of weapons and 3 years for forgery of official documents. Furthermore, [REDACTED] were convicted for membership of ETA and possession of explosives. [REDACTED] were sentenced in the same trial to 7 and 5 years imprisonment respectively, for collaboration with a terrorist group.

Source: Information transmitted to Eurojust by virtue of Council Decision 671/JHA/2005



In 2008, [REDACTED] placed and detonated a suitcase with explosives next to the central office of the Partido Socialista of Euskadi in Bilbao. The Court convicted the accused to 17 years, 6 months and one day imprisonment for terrorist motivated damages and 10 years imprisonment plus 2 months fine for each assault and violence committed.

Source: Information transmitted to Eurojust by virtue of Council Decision 671/JHA/2005





United Kingdom

February 2011

A terrorist who created extremist videos and uploaded them onto the Internet was jailed for five years on 25 February 2011, following an investigation by the Metropolitan Police Service's Counter Terrorism Command [REDACTED], 23, posted movies he had created, as well as existing extremist videos, on YouTube. He also made a compilation video on his laptop by editing footage of attacks on coalition soldiers together with logos of terrorist groups and extremist commentary. He then used the family computer to put the clip on the web before posting links to it on an online chat room. [REDACTED] was found guilty of five counts of dissemination of terrorist publications contrary to Section 2 of the Terrorism Act 2006. The jury found him not guilty of one count of dissemination of terrorist publications contrary to Section 2 of the Terrorism Act 2006. [REDACTED] was sentenced to five years in prison for each count to run concurrently. He is also subject to a 15 year notification order under the Counter Terrorism Act 2008 for 15 years.

Source: [Metropolitan Police](#)



A man convicted of serious terrorism offences in the UK who claimed the UK was complicit in his torture in Pakistan has lost his appeal. [REDACTED] 34, was convicted of membership of al-Qaeda and directing terrorism in December 2008. He alleged he was unlawfully held and beaten, and his conviction should be quashed because the UK was complicit. But his conviction was declared safe by three judges at the Court of Appeal. A second man, [REDACTED] who was sentenced to a total of 10 years in prison - nine for being a member of the terror group and an additional one year for possessing a document for terror-related purposes - also had his conviction appeal dismissed.

Source: [BBC News](#)



March 2011

A former British Airways software engineer has been jailed for 30 years for plotting to blow up a plane. [REDACTED] 31, used his job to access information for an al-Qaeda preacher based in Yemen to target BA's flights in the US. He and his brother had contacted the radical preacher, a key figure within al-Qaeda in the Arabian Peninsula, saying they wanted to fight jihad overseas. But the US-born preacher persuaded [REDACTED] to stay at BA and find a way of getting a bomb on a plane, saying the IT worker could be the breakthrough al-Qaeda was looking for. [REDACTED] agreed to work with him and said he would also look at whether he could crash BA's computer systems, bringing chaos to international travel. He was found guilty of four counts of preparing acts of terrorism. [REDACTED] pleaded guilty to further terrorism offences before the trial began, admitting he was involved with extremists who wanted to overthrow Bangladesh's government.

Source: [BBC News](#)



A man has been jailed for three years for publishing a "terrorist handbook" that explained how to make bombs. ██████████ 47, made CDs at his home containing thousands of pages of information on topics such as "how to make a letter bomb". He said he only made them to make money but he was convicted of nine terrorism-related charges and a further count relating to the proceeds of crime. During the three-week trial, the court heard that he set up a website based on the 1970s book the Anarchist's Cookbook, selling CDs containing information compiled from an al-Qaeda training manual, the Mujahideen Poisons Book and other sources. He told the jury he never thought the information would be used by terrorists and had only done it to make money. The venture, run from his terraced home in Portsmouth, was estimated to have generated tens of thousands of pounds.

Source: [BBC News](#)



2. Other Rulings and Judgments of Interest January-April 2011



**Court of Justice
of the EU**

January 2011

In a reference for a *preliminary ruling* submitted by the Bundesverwaltungsgericht – Germany, the Court of Justice of the European Union (Grand Chamber - joined cases C-C-57/09 and C-101/09) gave an interpretation of Articles 3 and 12(2)(b) and (c) of Council Directive 2004/83/EC of 29 April 2004³. The Directive deals with the minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted.

The German cases involved a national of a third state who in his country of origin actively supported the armed struggle of an organisation included in the list of terrorist organisations (annex to Council Common Position 2002/462/CFSP of 17 June 2002). The individual had been tortured and twice sentenced to life imprisonment in that country.

The question raised to the Court referred to the application of the provisions of Directive 2004/83/EC excluding the grant of refugee status to a person who has carried on terrorist activity in his country of origin. The power of the Member States to grant refugee status on the basis of their constitutional provisions in the face of a ground of exclusion from that status under that directive was examined.

The Court ruled that Article 12(2)(b) and (c) of Council Directive 2004/83/EC must be interpreted as meaning that:

- the fact that a person has been a member of a group listed as terrorist organisation and has actively supported the armed struggle waged by that organisation does not automatically constitute a serious reason for considering that that person has committed 'a serious non-political crime' or 'acts contrary to the purposes and principles of the United Nations';
- the finding, in such a context, that there are serious reasons for considering that a person has committed such a crime or has been guilty of such acts is conditional on an assessment on a case-by-case basis of the specific facts, with a view to determining whether the acts committed by the organisation concerned meet the conditions laid down in those provisions and whether individual responsibility for carrying out those acts can be attributed to the person concerned.

Exclusion from refugee status pursuant to Article 12(2) (b) or (c) of Directive 2004/83 is not conditional on the person concerned representing a present danger to the host Member State.

³ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:304:0012:0023:EN:PDF>

The exclusion of a person from refugee status pursuant to Article 12(2) (b) or (c) of Directive 2004/83 is not conditional on an assessment of proportionality in relation to the particular case.

Article 3 of Directive 2004/83 must be interpreted as meaning that Member States may grant a right of asylum under their national law to a person who is excluded from refugee status pursuant to Article 12(2) of the directive, provided that that other kind of protection does not entail a risk of confusion with refugee status within the meaning of the directive.

Source: [Official Journal of the EU](#).



Spain

March 2011

Spain's Supreme Court has denied legal status to a newly-formed Basque political party, Sortu. The Spanish government asked the court to rule against legitimising the party, saying it has not fully distanced itself from the armed Basque separatist group, ETA. The court's decision means Sortu will not be allowed to take part in Basque regional elections in May.

Basques regard Sortu as the successor to the outlawed political party, Batasuna.

Source: [Jurist](#)

3. Comparative Analysis Terrorism Convictions January-April 2011

Member States with convictions/acquittals

Terrorism related trials in several EU Member States have resulted in convictions/acquittals in the period January – April 2011 (*please see map below*).



Figure 1 EU Member States with terrorism convictions/acquittals in the period January-April 2011

- Member States with terrorism-related convictions/acquittals
- Member States without terrorism-related convictions/acquittals

Based on the information available in the open sources, several comparative charts have been drawn to illustrate some facts of particular interest. By exception, the numbers for Spain contain also information provided to Eurojust in implementation of Council Decision 671 of 2005.

Number of convictions/acquittals in terrorism trials per Member State

Member State	Convicted	Acquitted	Total	Acquitted (%)
Belgium	1	-	1	0%
Denmark	1	-	1	0%
France	9	-	9	0%
Italy	1	-	1	0%
Spain	40	52	92	57%
UK	5	-	5	0%
TOTAL	57	52	109	48%

Figure 2 Number of convictions/acquittals per Member State

The chart contains the information regarding the number of convictions/acquittals per Member State over the period January-April 2011.

Length of sentences

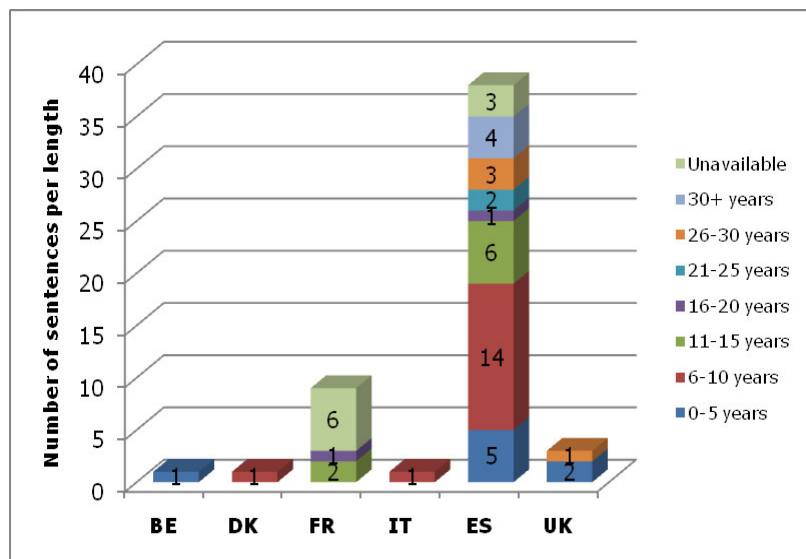


Figure 3 Length of sentences per Member State

The chart illustrates the information regarding the length of terrorism related sentences per Member State over the period January-April 2011.

Affiliation of tried individuals

Member State	Islamist	Left wing	Separatist	Total
Belgium	1	-	-	1
Denmark	1	-	-	1
France	8	-	1	9
Italy	1	-	-	1
Spain	9	10	73	92
UK	3	-	-	3
TOTAL	23	10	74	107

Figure 4 Affiliation of tried individuals

The chart illustrates the information regarding the affiliation of convicted individuals, in cases when it was expressly stated, over the period January-April 2011.

Age of convicted individuals

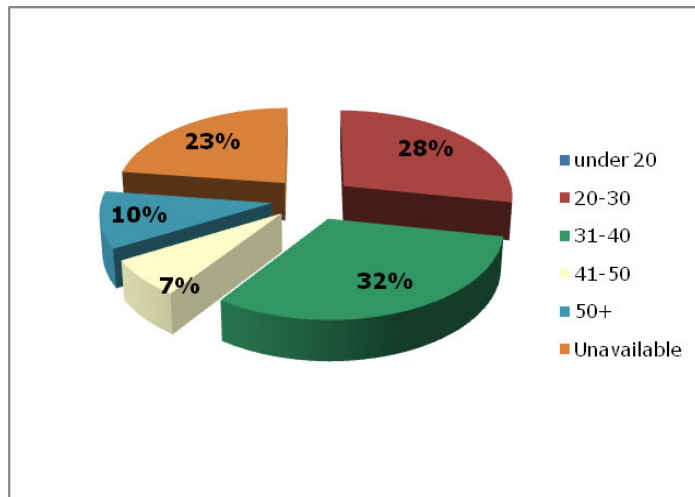


Figure 5 Age of convicted individuals

The chart illustrates the information regarding the age of convicted individuals in the EU Member States over the period January-April 2011.

Gender of convicted individuals

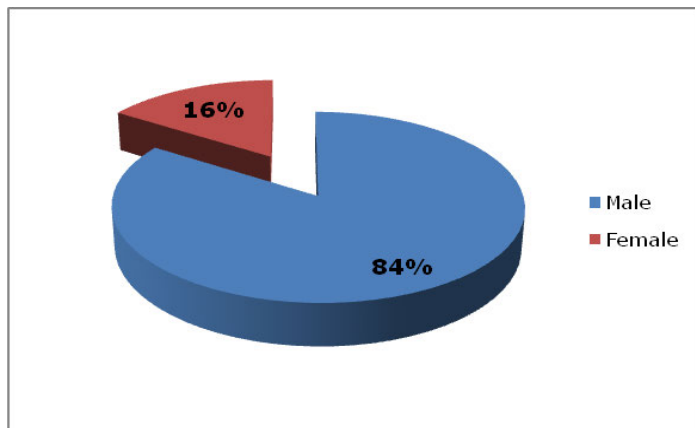


Figure 6 Gender of convicted individuals

The chart illustrates the information regarding the gender of convicted individuals in the EU Member States over the period January-April 2011.

III. Legal Update

1. EU



January 2011

Commission Regulation (EU) No 36/2011 of 18 January 2011 amending for the 143rd time Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with ██████████ ██████████ the Al-Qaida network and the Taliban.

Source: [Official Journal of the EU](#)

Council Regulation (EU) No 83/2011 of 31 January 2011 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism and repealing Implementing Regulation (EU) No 610/2010

Source: [Official Journal of the EU](#)

Council Decision 2011/70/CFSP of 31 January 2011 updating the list of persons, groups and entities subject to Articles 2, 3 and 4 of Common Position 2001/931/CFSP on the application of specific measures to combat terrorism.

Source: [Official Journal of the EU](#)

Corrigendum to Commission Regulation (EU) No 36/2011 of 18 January 2011 amending for the 143rd time Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with ██████████ ██████████, the Al-Qaida network and the Taliban.

Source: [Official Journal of the EU](#)

February 2011

Commission Regulation (EU) No 98/2011 of 3 February 2011 amending for the 144th time Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with ██████████ ██████████ the Al-Qaida network and the Taliban.

Source: [Official Journal of the EU](#)

Opinion of the European Data Protection Supervisor on the Communication from the Commission to the European Parliament and the Council — 'The EU Counter-Terrorism Policy: main achievements and future challenges'

Source: [Official Journal of the EU](#)

Commission Regulation (EU) No 178/2011 of 24 February 2011 amending for the 145th time Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with ██████████ ██████████, the Al-Qaida network and the Taliban.

Source: [Official Journal of the EU](#)

April 2011

On 18 April 2011 the European Commission adopted an **evaluation report** of the **Data Retention Directive** outlining the lessons learned since its adoption in 2006. The Directive established data retention as a response to urgent security challenges, following major terrorist attacks in Madrid in 2004 and in London in 2005. The report concludes that retained telecommunications data play an important role in the protection of the public against the harm caused by serious crime. They provide vital evidence in solving crimes and ensuring justice is served. However, transposition of the Directive has been uneven and the remaining differences between the legislations of Member States create difficulties for telecommunication service providers. The Directive also does not in itself guarantee that data are stored, retrieved and used in full compliance with the right to privacy and protection of personal data and this has led courts to annul the legislation transposing the Directive in some Member States. The Commission will review the current data retention rules, in consultation with the police and the judiciary, industry, data protection authorities, and civil society with a view to proposing an improved legal framework.

Source: [Europa](#)

2. EU Member States Overview



France

March 2011

A Decree published in the French Official Journal on 1 March 2011 (Decree 2011-219 of 25 February 2011) requires 'subjects who offer access to online communications services' to retain for a year users' accounts passwords - as well as users' full names, addresses and telephone numbers - in a bid to promote the fight against terrorism.

Source: [dataguidance.com](#)



Netherlands

April 2011

On 20 April 2011 a "National 2011-2015 Counterterrorism Strategy" has been presented to the Lower House. The aim of this national Counterterrorism Strategy is to reduce the risk of a terrorist attack and the fear thereof, as well as to limit the possible damage after a possible attack.

According to the document, the four main strategic choices the Cabinet will make in the coming five years in counterterrorism operations are: a continued sharp focus on international jihadism as main terrorist threat against the Netherlands, measures to reduce risks of migration and travel movements, optimal attention for the opportunities and threats of technological innovation and further development of the Surveillance and Security System. The strategic choices arise logically from the expected terrorist threat for the coming five years. The choices each find their place within five pillars of national counterterrorism strategy: the **Acquisition** of information; the **Prevention** of attacks and violent extremism; the **Defence** of vital objects, agencies and persons; being **Prepared** for a possible attack and its consequences; and the **Prosecution** of suspects with terrorist motives.

Source: [justitie.nl](#)



March 2011

The Terrorism Act 2000 (Remedial) Order 2011 (SI 2011/631) replaced sections 44 to 47 of the Terrorism Act 2000. It will cease to have effect on the coming into force of the similar provisions in the Protection of Freedoms Bill.

The new section - 47A - removes the incompatibility of sections 44 to 46 of the Terrorism Act 2000 with the European Convention of Human Rights in the light of the European Court of Human Rights' judgment in the case of **■**. and **■** which became final in June 2010."

Section 47A now gives police officers the power to stop-and-search pedestrians in a specified area or place if they "reasonably suspects that an act of terrorism will take place; and considers that the authorisation is necessary to prevent such an act."

However, while under Section 44 a senior police officer had to request the stop-and-search powers from the Home Office, with Section 47A, that requirement has been lifted. In effect, a senior police officer will be able to issue the powers orally to its subordinates, and then "must inform the Secretary of State of it as soon as reasonably practicable," the emergency legislation reads. Failure to do so will result in the powers expiring after 48 hours.

According to the new legislation, a senior police officer is defined as an officer "who is of at least the rank of assistant chief constable."

Source: bjp-online.com

IV. The Way Ahead

The CMU has been following the current developments in several trials and/or upcoming trials where decisions are expected within the next few months. They include *inter alia*⁴:



A trial against a spokesman for the Liberation Tigers of Tamil Eelam (LTTE) on a charge of membership in a foreign terrorist organisation and breaching of German export laws. The defendant was spokesman in Germany for the Tamil Coordination Committee, a front for the LTTE, from 2004 to the end of 2009 and oversaw its public relations. The charge relates to his allegedly purchasing equipment worth 370,000 Euros from group funds to outfit LTTE fighters and sent this gear to Sri Lanka.



An appeal against a verdict condemning 20 individuals to prison in a case involving charges of extortion, ransom collection under duress and threat, money laundering and funding of a terrorist organisation.

In another case, the Attorney General is accusing four members of the Basque group ETA's armed cells of: membership of a terrorist organisation, falsifying documentation, falsification of title deeds and using false number plates. They have been arrested in a joint raid by French and Spanish police in northern France's Pas-de-Calais region. One of the four arrested was identified as the head of ETA's "military apparatus." Another is the alleged logistics chief.



A trial against two French nationals charged with membership of an al-Qaeda cell which was allegedly preparing an attack on France's main international airport. The defendants were active in propaganda campaigns for Muslim extremists and running recruitment rings for jihad fighters.



Following a wide-ranging investigation and searches of 16 homes and office premises, which led to the arrest of seven people suspected of raising money for the Sri Lankan rebel group, the Tamil Tigers, the Dutch public prosecution department laid terrorism related charges against five of the suspects. The trial is expected to start later this year, in September.

⁴Ongoing trials in Belgium, Germany, Greece, Hungary and UK, reported in the previous TCM issue, continue to be monitored and their outcome will be presented in the next edition(s) of the report.

**UK**

A trial against three men charged in connection with the discovery of guns and ammunition in south Armagh. They are accused of possession of firearms, preparation for committing acts of terrorism and possession of articles likely to be of use to terrorists.

A trial of a 30-year-old man in connection with a suicide bombing in Sweden. The defendant faces three charges under the Terrorism Act and five others under immigration laws and banking regulations.

Any further developments, resulting in convictions in the above-mentioned or any other trials, will be presented in the next edition(s) of the Terrorism Convictions Monitor.

V. Judicial Analysis on Selected Cases

Foreword

The present analytical chapter has been produced in an attempt to provide a different insight on terrorist judgments throughout the EU area. It is intended to help practitioners and offer relevant case studies and comparative analyses.

The judgments to be analysed have been purposefully selected. In order to ensure a unified approach to the analysis, it has been conducted following a special methodology. The main categories analysed in a 1st instance judgment include: brief description of the facts, peculiarities in the investigation phase, the offences accused, the offences convicted, the sentence handed down, etc. In case of an appeal judgment, the grounds for appeal are also studied as well as the decision of the appeal judges on the charges and sentences.

The analysis of judgments could identify several lines of comparison. They include, for example: brought charges vs. convicted offences (within a judgment), 1st instance judgment vs. appeal judgment (within the same case), judgments of different accomplices in the terrorist enterprise/organisation brought to trial together and judgments for relatively comparable criminal offences in different trials (within 2 or more judgments).

The latter line of comparison is of a particular interest from an analytical point of view in order to identify similarities and differences in the Member States. The deliberate selection of judgments for similar offences will help shed some light on the respective type of terrorist phenomenon as well as the outcome of criminal proceedings/trials in one or more EU Member States. In order to ensure relativity and comparability, judgments from one and the same instance should be selected for comparison e.g. 1st instance judgments should be compared with 1st instance judgments, appeal judgments with appeal judgments, etc.

Introduction

The case selected illustrates the reasoning and the grounds for sentencing a person for participation in activities of a terrorist group, within a particular EU criminal justice system, i.e. Belgium.

A detailed analysis of the judgment follows below.

Procedure: Ruling of the 54th Chamber of the Court of First Instance in Brussels (Tribunal Correctionnel de Bruxelles)

Date of decision: 16 February 2011

The charges:

Participation to activities of a terrorist group, including providing of information or materials to a terrorist group or any kind of form of financing of the activities of a terrorist group, knowing that this participation contributes to the committing of a crime or offence by a terrorist group

The Position of the Federal Prosecution's Office: the existence of a terrorist group and the participation of the accused in such a group

Article 139 of the Penal Code defines a terrorist group as "every structured association of more than 2 persons, which exists for some time and, in consultation with each other, acts to commit terrorist offences as described in article 137⁵".

The FPO considers that an association as defined in article 139 exists and bases this reasoning on several facts, namely:

- The accused went to Zaventem airport (Brussels) on 7 August 2006 in order to take a flight to Damas (Syria) via Budapest. The persons who were accompanying him could be linked to terrorism or had already been convicted in the past for similar facts.
- The accused said himself that he would travel to Damas with the intent to study the Koran and Arab language; this is a well known modus operandi which serves as a starting point for 'transfer networks' which bring persons to countries where they can become fighters for Jihad.
- The accused has frequently had contact during his journey to Syria or Iraq with a group of persons, which share revolutionary ideas and of which some were convicted in France (judgement of the Correctional Tribunal in Paris of 9 July 2009) for participation in a terrorist organisation. Two of these convicted persons, with whom the accused had contact, had been arrested in December 2006 as member of a cell, part of the Al Qaida group.
- The accused had opened two email addresses with code names, serving as communication tools with friends or families; a well known 'procedure' used by future 'fighting' candidates.
- The investigation has shown that the accused had crossed the border from Syria to Iraq with one of the convicted persons mentioned above, who has links with terrorism.
- In October 2007, a raid by coalition forces took place along the Iraqi – Syrian border. During this operation aimed at a cell of Al Qaida, several members of the cell were killed and arms, bullet proof vests and lists were seized. These lists contained names of foreigners, among others also the name of the accused.

⁵ Article 137 of the Penal Code defines in §1 a terrorist offence as "an offence as described in §§2 and 3, which by its nature or context, can seriously harm a country or international organisation and which is committed deliberately with the intent to seriously frighten a population or to force a government or an international organisation in an unlawful way, to do or abstain from doing an act, or to seriously disrupt or destroy political, constitutional, economic or social basic structures of a country or international organisation."

Article 137, §§2 and 3 describe the type of offences which can be considered as terrorist offences under the conditions mentioned in §1.

- Having such lists is one of the essential elements of the Al Qaida group. It identifies the military basis as well as the basis for information and illustrates the used procedure within the terrorist movement.
- The accused has contacted, in Belgium as well as Syria, before his integration in military forces of Al Qaida in Iraq, a certain number of persons, who undoubtedly have links with terrorism.

The Court: identification of the terrorist group

The Court concluded that the FPO rightly considered that the armed group named 'Islamic State of Iraq', which the accused supported, could be identified as a terrorist group, more specifically Al Qaida.

The circumstances and precise elements of the facts, constitute enough presumptions to confirm with certainty that the accused has participated in a terrorist group in the sense of article 139§1 of the Penal Code.

This group is:

a. a structured association of more than 2 persons, for the following reasons:

- Statements made by persons who had close contact with the accused, more specifically ■■■ who has already been convicted for similar facts.
- Numerous contacts, before and after the departure of the accused to Damas and Iraq, with persons known for their close ties with Islamic extremist cells or their active participation in those cells.
- Clear commitment of the accused to the fight in Iraq as part of an Al Qaida cell, named 'Islamic State of Iraq', dismantled by the coalition forces on 11 September 2007.

b. which exists for some time, for the following reasons:

- Already in 2003, the accused made radical statements during holidays, which were video taped
- In 2005, ■■■ confirmed that he himself was directly influenced by the accused and through that became more radical and convinced by jihadist themes preached by the accused
- In 2006, the accused left for Syria to follow, as he said himself, a course on the Koran and Arabic language. He undoubtedly regularly had contact in Damas with members who had ties with terrorism.
- In December 2006, he infiltrated a cell of Al Qaida in Iraq with the aim of participating in the armed fight.

c. in consultation with each other, acts to commit terrorist offences, for the following reasons:

- The goal of the groups with whom the accused had regular contact, and more specifically 'Islamic State of Iraq' which is closely associated with Al Qaida, is to destroy by violence fundamental political, constitutional, economic and social structures in Iraq with the aim of establishing the 'Islamic State of Iraq'.
- Their goal is also to start the holy war against the enemies of Islam, to resort to the armed fight, to organise violent operations (military type) and especially suicide operations, to reach the aims mentioned above, and to contribute to the creation in Iraq of general chaos, which would worsen the inter-religious and inter-ethnic fights which existed in Iraq at that time.

- The intention to resort, in consultation with one another, to the armed fight in order to reach abovementioned aims, is confirmed by the already illustrated elements of the case and the enrolment of the accused in a organisation which was already being observed and was subject to a raid by the coalition forces.
- The accused has thus definitely participated in the activities of the cell of Al Qaida in the sense of article 140 §1 of the Penal Code, while knowing that this participation contributed to the committing of a crime or an offence by the terrorist group.
- The used methodology, the modus operandi, the recruitment networks, the keeping of lists of fighters are particularly demonstrative and typical for the usual methods of terrorist groups with close links to Al Qaida.

The sentence

The Court: There is no doubt that the accused was engaged in a network of fighters, willing to participate with Al Qaida, in the Iraqi conflict with the pro-governmental or foreign forces with the aim of imposing by force an 'Islamic State of Iraq'.

Moreover, the accused seemed to be very fanatic, which makes it very unlikely that he will change his ideology.

From previous contacts in the past of a rebellious nature and the objective elements of the case, it is clear that the accused took part in fights in Iraq as well as the rebellion against the Iraq authorities and the coalition forces.

All these considerations and the ones mentioned earlier, impose the pronouncement of the maximum imprisonment sentence and the maximum fine.

The Court convicted the defendant to **5 years imprisonment** and a fine of **5000 Euro**.

VI. Topics of interest

Introduction

*On 2 February 2011, the European Commission adopted its proposal for a **Directive of the European Parliament and Council on the use of Passenger Name Record data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime**⁶.*

This chapter provides a summary of the background information, state of play with the legislative procedure and core provisions of the proposed Draft Directive, as well as a brief overview of EU legal instruments currently existing in the area of the proposal. The summary is based on the relevant information available in open sources.

Background information

The current Commission proposal is a follow up to the Commission proposal for a Council Framework Decision on the use of Passenger Name Record (PNR) for law enforcement purposes adopted in November 2007⁷. Discussions on that proposal in the Council working groups allowed reaching consensus on most of the provisions, and the progress made in the discussions was endorsed by the Justice and Home Affairs Council in January, July and November 2008.⁸

However, the proposal of 2007 did not receive support of the European Parliament which, by its Resolution adopted in November 2008, criticized the proposal for leaving many legal uncertainties with respect to compatibility of the proposed measure with the ECHR and the EU Charter of Fundamental Rights and requested for better justifications regarding the necessity and proportionality of the proposed measure.⁹ Similar concerns were also expressed by the European Data Protection Supervisor, the Article 29 Working Party on Data Protection and the Fundamental Rights Agency in their issued opinions regarding the proposed measure.¹⁰

The proposal of 2007 was further extensively discussed in the Council working groups. But eventually, upon entry into force of the Treaty of Lisbon on 1 December 2009, the draft Framework Decision proposal, not yet adopted by the Council by that date, became obsolete.¹¹

⁶ European Commission, Proposal for a Directive of the European Parliament and Council on the use of Passenger Name Record data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime http://ec.europa.eu/home-affairs/news/intro/docs/com_2011_32_en.pdf

⁷ European Commission, Proposal for a Council Framework Decision on the use of Passenger Name Record (PNR) for law enforcement purposes <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52007PC0654:EN:NOT>

⁸ Explanatory Memorandum to the EC Proposal for a Directive of the European Parliament and Council on the use of Passenger Name Record data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime http://ec.europa.eu/home-affairs/news/intro/docs/com_2011_32_en.pdf

⁹ European Parliament, Resolution of 20 November 2008 on the proposal for a Council Framework Decision on the use of Passenger Name Record (PNR) for law enforcement purposes <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2008-0561+0+DOC+XML+V0//EN>

¹⁰ EC Staff Working Paper "Impact Assessment – Accompanying Document to the Proposal for a Directive of the European Parliament and Council on the use of Passenger Name Record data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime" http://ec.europa.eu/governance/impact/ia_carried_out/docs/ia_2011/sec_2011_0132_en.pdf

¹¹ Explanatory Memorandum to the EC Proposal for a Directive of the European Parliament and Council on the use of Passenger Name Record data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime

The adoption of a proposal for use of PNR data to prevent, detect, investigate and prosecute terrorism and serious crime was envisaged in "The Stockholm Programme"¹² of 2009 – the Council framework for polices to be developed in the area of Justice and Home Affairs in the period from 2010 to 2014.

The necessity of using PNR data, in a limited manner and subject to strict data protection guarantees, is supported by information from third countries as well as Member States that already use such PNR data for law enforcement purposes. The experience of those countries shows that the use of PNR data has led to critical progress in the fight against, in particular, drug trafficking, human trafficking and terrorism, and a better understanding of the composition and operations of terrorist and other criminal networks.¹³

On 2 February 2011 the Commission published the current proposal. This new proposal replaces the 2007 proposal and is based on the provisions and procedures of the Treaty on the Functioning of the European Union (TFEU), it reflects the latest state of discussions reached in the Council working groups on the draft Framework Decision by 2009 and it takes into account the recommendations of the European Parliament and opinions of the EU European Data Protection Supervisor, the Article 29 Working Party on Data Protection and the Fundamental Rights Agency.¹⁴

Legislative procedure

The current proposal falls within the form of legislative competence stipulated in Article 4(2) TFEU ("shared competence") and it follows the legislative procedure provided by Article 294 TFEU ("ordinary legislative procedure"). After submission of the proposal by the Commission on 2 February 2011, adoption by the European Parliament and Council, publication in the Official Journal of the EU and entry into force are the next steps for the proposal to go through.

The entire negotiation process in the Parliament and in the Council is expected to take around two years.¹⁵ The European Commission Directorate General Home Affairs, the European Parliament Civil Liberties, Justice and Home Affairs Committee and the Council Justice and Home Affairs are the agents responsible for the proposal. Currently, after being submitted by the Commission to the Council and to the European Parliament (and to the national parliaments of the Member States for opinion), the proposal is pending the first reading by the European Parliament for adoption the Parliament's position on it.¹⁶

Core provisions of the draft Directive

Subject matter, purpose and scope of the draft Directive

The proposal requires air carriers operating flights into and out of the EU (but not between the EU Member States) to transfer PNR data of their passengers to national authorities of the Members State of departure or arrival.

¹² Council of the EU, The Stockholm Programme – An open and secure Europe serving and protecting the citizens <http://register.consilium.europa.eu/pdf/en/09/st17/st17024.en09.pdf>

¹³ European Commission, Proposal for a Directive of the European Parliament and Council on the use of Passenger Name Record data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime

¹⁴ Explanatory Memorandum to the EC Proposal for a Directive of the European Parliament and Council on the use of Passenger Name Record data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime

¹⁵ "Commission's proposal for PNR Directive files to impress MEP's" by Raegan MacDonald, EDRI-gram - Number 9.3, 9 February 2011 <http://www.edri.org/edriagram/number9.3/commission-pnr-directive>

¹⁶ European Parliament Procedure File COD/2011/0023 <http://www.europarl.europa.eu/oeil/file.jsp?id=5897382>

The proposed collection and processing of Passenger Name Record (PNR) data will serve to support criminal investigations of persons that may have committed a terrorist offence or serious crime (Article 1(2) of the draft Directive).

Compared to the previous proposal, the scope of purposes for use of PNR data is widened by the new draft Directive. While in the 2007 document the purpose was preventing and combating terrorist offences and organized crime¹⁷, now the purpose includes "serious crime" (defined as offences referred to in the Council Framework Decision 2002/584/JHA on the EAW and surrender procedures between Member States, if they are punishable by a prison sentence of at least 3 years and have a cross-border aspect) (Article 2 of the draft Directive).

The draft Directive regulates data processing (collection, retention and analysis) by national authorities, data exchange between the Member States and the data transfer to third countries.

PNR data content

PNR data is the term used to describe passenger information collected by air carriers for their own commercial purposes during flight booking, check-in and departure control procedures. It includes up to 19 different pieces of passengers' personal information, such as name, home address, telephone number, e-mail address, credit card details and information on other forms of payment used, travel dates and itinerary, seat number, baggage information and number and names of accompanying passengers¹⁸.

Transfer of PNR data

The proposal requires the Member States to set up national "Passenger Information Units" for collection, retention and analysis of PNR data (Article 3(1) of the draft Directive). Air carriers must enter PNR data electronically into the database of the Passenger Information Units of those Member States in which the flight concerned will land or depart ("push" method) (Article 6(1)). The transfer must be carried out within 24 to 48 hours before the scheduled time for departure and again immediately after boarding time (Article 6(2)).

In the case of a specific and actual threat emanating from a terrorist offence or serious crime, Passenger Information Units may request PNR data from air carriers ("pull" method) (Article 6(4)).

The Member States must provide for dissuasive penalties (incl. financial penalties) against air carriers which infringe their obligations regarding data transfer (Article 10).

Competent authorities

Each Member State will draw a list of competent authorities entitled to request or obtain PNR data or the results of PNR data processing from Passenger Information Units in order to further examine the information or take appropriate action. Competent authorities will consist of national authorities engaged in preventing, detecting, investigating and prosecuting terrorist offences and serious crime (Article 5(1)).

Data retention, anonymisation and deletion

Passenger Information Units will retain the transmitted PNR data first for a period of 30 days (Article 9(1)), then for a further period of 5 years, for which the data will be anonymised by separating it from any identification features, and only a limited number of staff will have access to such data. In exceptional circumstances, the Passenger Information Unit may reverse the said separation in order to access the non-anonymised PNR data in full form if requested by an authority to do so in order to

¹⁷ Article 1, EC Proposal for a Council Framework Decision on the use of Passenger Name Record (PNR) for law enforcement purposes

¹⁸ Annex to the EC Proposal for a Directive of the European Parliament and Council on the use of Passenger Name Record data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime

avert a specific danger or an acute threat or if this is necessary to carry out a specific investigation or prosecution (Article 9(2)).

Upon expiry of the period of five years and 30 days, PNR data must be deleted. Data which has been transmitted to the competent authorities is excluded from this rule (Article 9(3)).

Processing PNR data

The Passenger Information Units may use PNR data to prevent, detect, investigate and prosecute terrorist offences and serious crime as follows:

They may compare PNR data of passengers prior to their scheduled arrival and/or their departure against relevant international or national databases in order to identify suspicious persons (Article 4(2) (b)). They may, in the case of a duly reasoned request, provide PNR data to competent authorities and, in specific cases also process data and transmit the results of such processing (Article 4(2) (c)).

Moreover, in the case of terrorist offences and serious transnational crime the Passenger Information Units may use PNR data as follows:

They may process PNR data against pre-determined criteria in order to assess passengers prior to their scheduled arrival or departure (Article 4(2) (a)).

Furthermore, the Passenger Information Units may analyze PNR data for the purpose of updating or creating new criteria to assess passengers (Article 4(2) (d)).

The Passenger Information Units will transfer the PNR data of the persons identified to the competent authorities for further examination on a case-by-case basis (Article 4(4)).

Member States will ensure that each positive match resulting from such automated processing of PNR data against databases or pre-defined criteria is reviewed by non-automated means (Articles 4(2)(a) and 4(2)(b)).

Exchange of PNR data

The Passenger Information Unit of a Member State may request, if necessary, anonymised PNR data and also the results of the processed data from Passenger Information Units of any other Member State (Article 7(2)).

In the case of a specific threat or a specific investigation, the Passenger Information Unit of any other Member State may also request the identification features in addition to anonymised PNR data, so that the identity of a passenger can be determined (Article 7(3)).

Member States may transfer PNR data and the results of the processing of these data to a third country on a case-by-case basis. However, in doing so the purpose of the transfer must be in line with the purpose of this draft Directive and the conditions laid down in the Article 13 of Council Framework Decision 2008/977/JHA on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters must be fulfilled (Article 8).

Protection of personal data

While applying the proposed measure, the Member States must ensure protection of personal data in compliance with the Council Framework Decision 2008/977/JHA on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters (Article 11(1)).

All processing of PNR data pursuant to the proposed Directive must be carried out in a non-discriminatory manner and without using sensitive data, e.g. race, ethnic origin or religious belief (Article 11(3)).

Possible extension of the scope in the future

The current proposal relates only to PNR data of passengers travelling into and out of the EU. A review of the necessity of extending the scope of the Directive to include internal European flights will be carried out within 4 years following the Directive's entry into force (Article 17(a)).

Overview of existing EU legal instruments in the area of the proposal

A number of databases for use of travellers' information for law enforcement purposes are already in existence in the EU, such as the Schengen Information System (SIS and SISII), the Visa Information System (VIS) and the Advanced Passenger Information System (API), API being the most related to the area of the current proposal as it also deals with transfer of travellers' personal data by air carriers to competent national authorities. Additionally, the currently existing legal instruments in the area of the proposal include national provisions on use of PNR data adopted in several Member States (the United Kingdom, France, Denmark, Belgium, Sweden and the Netherlands) and agreements on exchange of PNR data between the EU and some third countries (the United States, Canada and Australia).

API Directive

The Council Directive 2004/82/EC on the obligation of carriers to communicate passenger data¹⁹ regulates use of Advanced Passenger Information (API) data by competent national authorities (known as "API Directive"). API data is passengers' personal data containing biographic information from the machine-readable parts of passports and some additional information on travel routes and means of transport. Like PNR data, API data is collected and used by air carriers, but it is less extensive (PNR data usually include all the information available as API data).²⁰

This Directive requires air carriers to transmit API data to competent national authorities with the purpose of improving border controls and combating illegal immigration.²¹ Data is used for identities verification purposes and must be deleted after a limited period of retention period of 24 hours.²²

The API Directive remains unaffected by the proposal on use of PNR data. However, it is not clear how the API and PNR systems are expected to relate to one another upon adoption of the proposed Directive.²³

National PNR data systems

Most of the EU Member States currently do not systematically collect and analyze PNR data; they do use PNR data for prevention and combating terrorist offences and serious crime, but only in a non-systematic way under general powers granted to police and judicial authorities. Only six Member States have adopted a systematic approach: the United Kingdom already has set up a PNR system, while France, Denmark, Belgium, Sweden and the Netherlands have either adopted the relevant legislation and/or are currently testing their PNR data systems. However, the legal framework adopted by these countries for use of PNR data indicates divergences in the purpose, period of retention of data, structure of the system, geographical scope and modes of transport which are covered.²⁴

¹⁹ Council Directive 2004/82/EC on the obligation of carriers to communicate passenger data <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:261:0024:0027:EN:PDF>

²⁰ Article 3, Council Directive 2004/82/EC on the obligation of carriers to communicate passenger data

²¹ Article 1, Council Directive 2004/82/EC on the obligation of carriers to communicate passenger data

²² Article 6, Council Directive 2004/82/EC on the obligation of carriers to communicate passenger data

²³ "Transatlantic Cooperation on Travellers' Data Processing: From Sorting Countries to Sorting Individuals" by Paul De Hert and Rocco Bellanova, Migration Policy Institute, Washington DC <http://www.migrationpolicy.org/pubs/dataprocessing-2011.pdf>

²⁴ EC Staff Working Paper "Impact Assessment – Accompanying Document to the Proposal for a Directive of the European Parliament and Council on the use of Passenger Name Record data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime"

Agreements with third countries

The EU has signed Agreements for the transfer of PNR data with the United States²⁵, Canada²⁶ and Australia²⁷. These Agreements regulate transfer of PNR data by air carriers operating flights from the EU to these countries for the purpose of fight against terrorism and transnational serious crime. The Agreements deal with transfer of data to the authorities of these third countries, but not with transfer of data to the authorities of the EU Member States, as the EU does not have yet a PNR data system in place; they only provide that the authorities of these third countries share some analytical information with the Member States' authorities.²⁸

The Agreement with Canada has expired in 2009 and therefore needs to be renegotiated; the Agreements with the United States and Australia are only provisional and have not yet been officially concluded by the EU.²⁹ Therefore, on 2 December 2010, the Council adopted negotiating directives for agreements on transfer and use of passenger name records (PNR) data with Australia, Canada and the United States of America. This allowed the Commission to start negotiating with these three countries.³⁰ Pending conclusion of new international agreements with these three countries, the latest Agreements are still applied on a provisional basis.³¹

²⁵ Agreement between the European Union and the United States of America on the processing and transfer of Passenger Name Record (PNR) data by air carriers to the United States Department of Homeland Security (DHS) (2007 PNR Agreement) http://eur-lex.europa.eu/LexUriServ/site/en/oj/2007/l_204/l_20420070804en00180025.pdf

²⁶ Agreement between the European Community and the Government of Canada on the processing of Advance Passenger Information and Passenger Name Record data http://www.canadainternational.gc.ca/eu-ue/assets/pdfs/031005PNR_eng.pdf

²⁷ Agreement between the European Union and Australia on the processing and transfer of European Union sourced passenger name record (PNR) data by air carriers to the Australian customs service <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:213:0049:0057:EN:PDF>

²⁸ EC Staff Working Paper "Impact Assessment – Accompanying Document to the Proposal for a Directive of the European Parliament and Council on the use of Passenger Name Record data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime"

²⁹ Ibid.

³⁰ Press Release 3051st Council meeting Justice and Home Affairs Brussels, 2-3 December 2010 <http://www.statewatch.org/news/2010/dec/eu-council-jha-press-release-2-3-dec-10.pdf>

³¹ "Transatlantic Cooperation on Travelers' Data Processing: From Sorting Countries to Sorting Individuals" by Paul De Hert and Rocco Bellanova, Migration Policy Institute, Washington DC

Appendix: Contact and Analysis Team

Contact

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Analysis Team

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
