



EUROJUST Report

# Terrorism Convictions Monitor

Issue 13 May 2012





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## Introduction

**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 Case Analysis Unit (CAU) and methodologies such as individual case studies and comparative analysis. There is a link provided to each of respective articles found on 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 2005/671/JHA with no links to open sources.**

Issue 13 of the TCM covers the period **January-April 2012**. Additionally, it contains a judicial analysis of a court decision on a case from 2011 as well as reference to concluded or ongoing trials related to violent single issue extremism (VSIE) and/or animal rights extremism (ARE) in the first months of 2012. A detailed study of a topic of interest is also included.

The present report introduces certain changes in the TCM's format and contents, which have been brought forth on the basis of the input received from the Eurojust national correspondents for terrorism matters (*for details, please see the annex*). Special attention is given to the type of convicted terrorist offences, which constitutes a new aspect of the analysis provided. Some further focus areas will be introduced in the next issues of the report as well. Navigation through the chapters is also made easier through clickable cross-references on top of every odd page.

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 the 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 .

The Eurojust national correspondents for terrorism matters are invited to provide information on an ongoing basis to Eurojust, in conformity with Council Decision 2005/671/JHA.

## I. Court Decisions

### 1. Convictions/Acquittals per Member State January – April 2012

#### Belgium

##### February 2012

The court in Antwerp sentenced the spokesman of the radical organisation Sharia4Belgium to two years in prison and ordered him to pay a fine of five hundred and fifty Euros. A one-year sentence was pronounced against a British co-defendant for whom the court issued an arrest warrant. The two were tried in connection with a press conference and videos posted on the Internet in which they called for an armed fight against non-Muslims. Additional to the charges of **incitement of hatred and violence**, the spokesman of Sharia4Belgium was convicted for comments he had made in relation to the death of a Belgian politician. Several affected persons as well as the Belgian anti-racism centre were awarded one Euro in moral damages. An appeal was submitted and the decision of the court is expected in May 2012.

Source: [De Morgen](#).



#### France

##### January 2012

A Paris court convicted three individuals and sentenced them to nine, eight and seven years' imprisonment respectively. They were accused of several offences, including **belonging to a terrorist organisation, possession and transportation of explosives**. As part of ETA's "Elurra" command, the three were arrested in 2007 in France when allegedly preparing an attack against La Guardia Civil. According to the prosecution, the material found in the car they used was enough to produce 236 kilograms of explosives. Apart from the prison sentences, the court ordered also a definite ban from French territory after the prison terms are served. The arrest warrants issued by the Spanish authorities against two of the convicted individuals were given a green light by the French court.

Source: [ABC](#).



In a trial against five alleged members of ETA's logistic apparatus, the court pronounced guilty verdicts and sentences of between four and eight years' imprisonment. The court ordered also a definite ban from French territory after the prison terms are served. It was considered proven that the five were **linked to an ETA safe house** discovered in 2007 in France, in which a substance used to make explosives was produced. The main defendant, who had previous convictions of seventeen, nine and seven years, was handed down a sentence of eight years, which would be merged with the previous ones making the total prison term of twenty years. A second defendant was given a six-year

sentence to be merged with previous sentences to the total amount of nine years, and a third individual was sentenced to four years in prison. Two defendants, tried in absentia, received sentences of seven and six years respectively.

Source: [El Mundo](#).



A French court found three individuals guilty of **belonging to a terrorist organisation** and sentenced them to prison terms of respectively six years, four years with one year suspended and two years with six months suspended. The three were arrested in December 2008 for allegedly planning to carry out a car bomb attack on the offices of a national police investigation body in the centre of Paris, near the Eiffel Tower. The ring leader had tried to obtain large quantities of fertiliser to make a bomb. He posted calls on a fundamentalist website for France to be attacked because of its participation in the war in Afghanistan. A fourth defendant, tried for related acts, was handed down a sentence of eighteen months.

Source: [Liberation](#).



## March 2012

A court in Toulouse found one individual guilty of **provoking racial hatred and praising terrorism** and sentenced him to three months in prison. The man was arrested a few hours after an extremist gunman was shot dead by the police following his killings of three soldiers and three children and a teacher at a Jewish school. The convicted man, arrested for praising the crimes of the gunman, denied the charges. According to the prosecutors, the conviction was a signal that authorities would not tolerate any statements supporting those crimes.

Source: [Expatica](#).



At a trial in Paris three former members of the Palestinian group led by ██████████ were sentenced in absentia to thirty years in prison. They were convicted for their role in the **shooting** that took place on board of a ship transporting hundreds of tourists, which was on its way to Athens in July 1988. Three of the nine victims were French nationals. The group is believed to be responsible for a series of attacks, which claimed at least nine hundred lives, notably in Europe, between 1970 and 1988. It was for years on the U.S. State Department list of terrorist organisations.

Source: [Expatica](#).



## April 2012

At a trial at the Special Criminal Court in Paris nine individuals were handed down sentences of between two and thirteen years' imprisonment for their role in a number of **attacks**. One defendant, considered as "leader" of a cell of the National Corsican Liberation Front, FLNC-22 October, was sentenced to thirteen years' imprisonment for his role in ten attacks between 2004 and 2006. He was arrested in January 2006 following a **bomb attack** in which the bomber himself died. At the trial, the defendant assumed "moral and criminal responsibility" for the attack and acknowledged he failed to

prevent it. Together with two co-defendants, he had already been convicted for a murder in 2005. These two, one of whom was a close follower and the other was the owner of a restaurant used to make explosives, were sentenced by the court to seven and five years respectively. Two other co-defendants were sentenced to seven and six years' imprisonment.

Source: [France 3](#).



### Germany

#### March 2012

The Higher Regional Court in Frankfurt convicted again one individual for his **participation (amongst other) in PKK** and sentenced him to one year in prison. The convict is of Turkish-Kurdish origin. He had already been sentenced to two years and ten months for taking part in a criminal organisation but this sentence had been revised and recalled by the Federal Court of Justice. The convict admitted he had been a local leader of the PKK from July 2005 to June 2006 in Mainz, and then until June 2007 in Darmstadt. The decision of the court is not final.

Source: [Hessisches Ministerium der Justiz, für Integration und Europa](#).



The Higher Regional Court in Koblenz found one individual guilty of 44 counts of **publishing online propaganda for foreign terrorist groups** like Al Qaida and sentenced him to five years' imprisonment. The prosecution had asked for a sentence of five-and-a-half years, as he was believed to be one of the main people responsible for "jihadist propaganda on the Internet in the German language", who on numerous occasions, mainly between 2007 and 2009, had disseminated and commented on text, audio and video messages promoting holy war against non-Muslims. The messages included German-language translations of messages and propaganda from Al Qaida, some containing sermons by [REDACTED] or encouraging Muslims to donate money to or join the jihad as martyrs for organisations like Al Qaida, the Islamic Jihad Union and the Islamic Movement of Uzbekistan.

Source: [Spiegel](#).



One defendant was convicted and sentenced to three years and three months' imprisonment for **distributing videos on the Internet** in support of the Al Qaida-linked "Islamic State of Iraq" and the "Islamic Movement of Uzbekistan". The man operated a website called "Islamic Hacker Union". He posted videos that encouraged participation in jihad, glorified suicide bombings and showed brutal executions. He was arrested in June 2011.

Source: [Hurriyet Daily News](#).



The Higher Regional Court of Frankfurt sentenced one defendant to three years and three months' imprisonment for **recruiting supporters of a terrorist organisation abroad** on nineteen cases. The man, who is an Afghan citizen, operated a website which he used for jihadist recruitment and



propaganda. He committed thirteen of the mentioned offences before he turned twenty-one. The court however applied the general criminal law and not the law for minors as his actions were not typical youth offenses. Following the prison term he will most likely be deported back to Afghanistan. The decision of the court is not final.

Source: [Hessisches Ministerium der Justiz, für Integration und Europa](#).



## Ireland

### February 2012

The Special Criminal Court found two defendants guilty of **possession of explosive substances** on 22 May 2010. The two had been investigated as part of an operation against alleged manufacture of vehicle-borne improvised explosive devices by members of the IRA. A sentence of eight years and six months was handed down to one of them. (*No information on the penalty of the second convicted individual could be found on the Internet.*)

Source: [Irish Times](#).



One defendant pleaded guilty to the **unlawful possession of a Smith Wesson .41 Magnum revolver and ammunition** in 2011 and was sentenced to five years' imprisonment by the Special Criminal Court. He was arrested after a Garda investigation into the activities of dissident republicans. According to the court, it was a very serious offence, which carried out a maximum sentence of fourteen years, but it found that the imposed sentence was appropriate as the convicted had just one previous conviction.

Source: [Irish Times](#).



The Special Criminal Court found one defendant guilty in relation to the dissident republican **murder** of a man in February 2008 and sentenced him to life imprisonment. He was also handed down a sentence of eight years for a **firearms offence**.

Source: [Irish Times](#).



### April 2012

The Special Criminal Court sentenced one defendant to six years' imprisonment after he pleaded guilty to **membership of an unlawful organisation** (IRA) in 2011. The man was arrested after a surveillance operation. According to the police, he extorted more than a quarter of a million Euro from a fish and chip shop owner by threatening him with the Real IRA.

Source: [Irish Times](#).



## Italy

### February 2012

The Appeals Court in Milan overturned the conviction of one individual who had been found guilty of **terrorist association** by a lower Italian court. The man is one of the Guantánamo prisoners accepted for legal proceedings by Italy and had spent almost eight years in the U.S. military prison in Cuba. The court's written reasoning was expected to be released a month after the court's decision was announced. The court released also another former Guantánamo prisoner for time served; a third individual still remains in prison.

Source: [Miami Herald](#).



The Cassation Court overturned the convictions of thirteen defendants whose 2009 1<sup>st</sup> instance guilty verdicts had been confirmed by the Assize Court of Appeal in 2010. The Cassation Court ordered a new trial that began on 15 May 2012 and will consider whether the group was willing and able to use terrorist methods to achieve its programme. According to the Cassation Court the defendants should have been prosecuted for banditism and not for terrorism. The defendants were arrested in 2007 as alleged members of the new Red Brigades – Partito Comunista Politico-Militare (PCPM). In 2009 they were sentenced to prison terms of up to fourteen years and seven months for a number of offences, including **promoting, establishing, organising, directing or financing associations aimed to violently subvert the economic or social order, or the political and judicial order of the state through the execution of terrorist acts**. Following the appeal filed by them against the charges, the Assize Court of Appeal concluded that the existence of an association with subversive and terrorist aims was completely confirmed. The decision of the court was important also with a view to the ongoing trial in Belgium against four individuals who allegedly participated in the activities of the PCPM (*please see also chapter The Way Ahead, information from Belgium and from Italy*).

Source: [il Giornale](#), [De Morgen](#).



## Portugal

### January 2012

The court of Caldas da Rainha found an alleged Basque militant guilty of **belonging to a terrorist organisation, possession of explosives, document falsification, vehicle theft and resisting arrest** and sentenced him to twelve years in prison. The court considered it proven that he had hidden 1 500 kilograms of explosives at an ETA hideout and bomb-making factory in Portugal. This was one of the largest hauls ever linked to ETA. He was arrested in 2010 when he tried to escape to Venezuela with falsified documents.

Source: [eitb](#).





## Spain

### January 2012

The Audiencia Nacional sentenced one individual to a total of thirty-six years and three months in prison as it found him guilty of **terrorist assassination against members of the Armed Forces and Security Services of the state, of terrorist ravage and of theft of a vehicle with a terrorist purpose**. The court considered it proven that he, together with others, carried out a car-bomb attack on the barracks of Guardia Civil in Durango in 2007 as a result of which officers were injured and material damage was caused. The man was acquitted of **storing explosives** for which had also been charged by the prosecution. Later in the same month the court decided to incorporate an additional text in the sentence, ordering him to compensate three victims for the damages caused on their property. The decision of the court is final.

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



Three defendants were tried at the Audiencia Nacional as they were allegedly part of ETA's reserve forces and were in a position to carry out terrorist acts both on Spanish [REDACTED]. Various materials attributed to ETA, as well as explosive-making instructions were found during a house search [REDACTED] in April 2007 in execution of a Letter of Request of the Spanish authorities. The three were surrendered to Spain in January 2008. Two of them were found guilty of **participation in a terrorist organisation** and of **forgery of an official document with a terrorist purpose** and were handed down sentences of eleven years' imprisonment and a fine. The defence of the two submitted an appeal. The third defendant was convicted of forgery of an official document, for which a prison term of six months and a fine were ordered by the court, and was acquitted of participation in a terrorist organisation and of forgery of an official document with a terrorist purpose.

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



Seventeen individuals were brought to trial as the police discovered documents and other materials related to the illegal organisations Askatasuna, Ekin and SEGI. Eleven of the defendants were acquitted by the court, whilst the remaining six were found guilty of **participation in a terrorist organisation** and were handed down sentences of between six years and six-and-a-half years' imprisonment. The decision of the court became final in February 2012 with regard to the eleven acquitted individuals. The six convicted ones appealed.

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



The Audiencia Nacional found one individual guilty of **praising terrorism** and sentenced him to one year' imprisonment. He was accused of having made comments on a webpage in relation to the assassination of two Guardia Civil officers who passed away after an explosive device was detonated on 30 July 2009 in Palmanova. The decision of the court is final.

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



The Audiencia Nacional sentenced one defendant to twenty-nine years and six months' imprisonment and ordered him to pay compensation for the injuries, moral and material damages caused as it found him guilty of **terrorist ravage, illegal detention with a terrorist purpose, intended violent robbery with a terrorist purpose and perpetrated violent robbery**. In December 2008, the man, together with some others, intercepted a van, abducted the driver and tied him to a tree in a forest area. Later, they left the van with an explosive device in it in front of the seat of the Basque public television Euskal Televisa. The convicted man then called the police informing them about the bomb and the driver tied in the forest. The explosion that followed caused injuries to one victim as well as material damage. The decision of the court is final.

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



### February 2012

Three defendants were acquitted and one was found guilty of **causing terrorist damage and public disorder** in relation to a fire set on a public bus owned by the company Tranvia de San Sebastian and on an ATM of Banco Guipuzcoano. The court considered it not proven that the three took part in those activities. The fourth individual was sentenced to a total of four years and three months. His defence submitted an appeal in March 2012.

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



The Audiencia Nacional found one defendant guilty of two offences of **robbery with intimidation with a terrorist purpose** and ordered a prison sentence of a total of thirteen years and compensation for the affected bank. The defendant was brought to court for the alleged bank robberies, committed together with others, in April and May 2002 in Madrid with the purpose of obtaining funds to finance the activities of GRAPO. The defence submitted an appeal.

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



One defendant was sentenced to serve a total of thirteen years and two months in prison after the Audiencia Nacional found him guilty of **belonging to an armed group, possession of weapons or ammunitions with a terrorist purpose and forgery of official documents with a terrorist purpose**. He was arrested by the police in February 2010 when he was on the train from Paris to Cartagena, allegedly tasked by ETA to go to Spain and set up a laboratory for the production of explosives. The police managed to seize a lot of material, including a weapon, identification documents on various names, a computer, a hard disc and a USB. Some contained explosive-making manuals used by ETA as well as encryption and hacking software. The decision of the court is final.

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



The Audiencia Nacional found three defendants guilty of **attempted terrorist assassination** and of **causing terrorist injuries** and sentenced each of them to serve a total of thirty-one years in prison and pay compensation to their victims. The three planned to murder one individual who was in charge of the security of a councillor of the town of Galdácano in October 2007. They placed an explosive device

on a vehicle which exploded and caused injuries to the victim. Another individual was also hurt and material damage was caused. The decision of the court became final in March 2012.

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



At a trial at the Audiencia Nacional one defendant was acquitted of **belonging to a terrorist organisation**. He was arrested in May 2008 by the French authorities at the Paris airport on his way to Venezuela in execution of a European Arrest Warrant issued by Spain. He was surrendered in February 2011. Allegedly, he had contacts with other ETA members in the Venezuelan jungle, who collaborated in the encryption of ETA documents. The decision of the court is final.

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



The Audiencia Nacional acquitted one individual of the charges of **terrorist public disorder, possession and use of incendiary devices, and terrorist damage**. The decision of the court is final.

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



At a trial at the Audiencia Nacional two individuals were found guilty of **attempted terrorist assassination and possession and transportation of explosive devices with a terrorist purpose**. They were handed down sentences of twenty-three years' imprisonment each. The two were charged in relation to the attack on a journalist in 2001 when an explosive device was placed together with the regular post and exploded as the journalist tried to open it. The victim suffered serious injuries as a result of the explosion. The attack was claimed by ETA in the newspaper Gara later in the year. The decision of the court is final.

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



The Audiencia Nacional found three defendants guilty of **terrorist damage of public property** and sentenced them to five years' imprisonment each. The three had placed an explosive device in front of the court in Sestao in December 2007 which exploded and caused significant material damage. The attack was claimed by ETA in the newspaper Gara in January 2008. The convicted individuals submitted an appeal in March 2012.

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



One defendant was found guilty of **humiliation of the victims of terrorism** and was sentenced to one year and six months' imprisonment by the Audiencia Nacional. In June 2010 he sent a letter to a member of the European Parliament (MEP) humiliating her and her deceased brother who had been assassinated by ETA. The letter was a reaction to the disapproval expressed by the MEP towards the financing, by the Andalucian Health Service, of the artificial insemination of a terrorist convict. The defence lawyers submitted an appeal against the conviction in March 2012.

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



### March 2012

At a trial at the Audiencia Nacional one defendant was acquitted of the charges of **possession of inflammable devices with a terrorist purpose** and of **terrorist damage** as it did not consider it proven that he was involved in an arson attack on a public bus in February 2001 in Bilbao.

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



The Audiencia Nacional found three individuals guilty of **conspiracy to terrorist assassination** and **attempted terrorist ravage** and sentenced each of them to twenty years' imprisonment. According to the prosecution, they made an explosive device to be placed in a car in a public place with the purpose of assassinating a councillor in the town of Arboleda in January 2001. They parked the car in the vicinity of a place which he visited. Following a phone call to the newspaper Gara reporting that an explosion would take place in fifteen minutes, the police deactivated the device. The defendants, all convicted of participation in a criminal organisation in France in 2002, 2005 and 2007 respectively, were surrendered by the French authorities in execution of European Arrest Warrants. The three were acquitted of belonging to a terrorist organisation for which they were also charged by the prosecution. The defence of two of them submitted an appeal.

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



The Audiencia Nacional convicted eighteen individuals and acquitted one other in relation to their actions and the resulting injuries during the inauguration ceremony of the new mayor and councillors of Llodio in June 2003. They were accused of terrorist coercion, aggression and causing injuries as they protested against the exclusion of a favoured candidate from the elections. Alternatively, their actions constituted an **offence against the institutions of the state**. The eighteen were given a two-month sentence for the latter. Two of the convicted individuals were handed down sentences of one year and financial penalties for **committing an attack** and one of them was ordered to pay another fine for **making threats**. Three other defendants were imposed financial penalties for **causing injuries**. The eighteen were acquitted of all other charges.

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



The Supreme Court reduced, with seven years each, the penalties of two GRAPO members, who were convicted by the Audiencia Nacional, together with other four, for the **possession of forged documents, detonators, weapons and ammunition**. The two were given sentences of five and three years respectively. In the opinion of the court, the possession of certain materials, such as sulphur, clocks, batteries, etc., did not constitute an offence of possession of explosives.

*Source: [El Mundo](#).*



### April 2012

The Audiencia Nacional acquitted the lawyer of the fugitive ETA members who was facing a prison term of nine years. The court considered it not proven that the defendant was an ETA militant. He



denied **membership in the terrorist organisation** and claimed that his work was limited to helping people in a difficult situation.

Source: [El Mundo](#).



The Supreme Court acquitted one individual previously sentenced to eight years in prison for his alleged involvement in the **attack** against the high speed train works in 2008 due to lack of evidence of his involvement in the act. In its sentence, the Supreme Court pointed out that the police officers to whom the defendant made his statement did not turn up at the trial at the Audiencia Nacional and therefore his statement could not be included in the act. The court renounced the appeal of the other individual convicted together with him by the Audiencia Nacional.

Source: [El Mundo](#).



The Audiencia Nacional sentenced three ETA members to twenty years' imprisonment each as it found them guilty of a **homicide attack** against a policeman in September 2008. The court considered it proven that the three placed a home-made explosive device in the policeman's car, which did not detonate possibly due to malfunctioning of the detonator. They were also ordered to pay a compensation for the moral damages caused to the victim, as requested by the prosecution.

Source: [El Mundo](#).



The Supreme Court acquitted one individual sentenced by the Audiencia Nacional to fifteen years' imprisonment for the alleged **placement of an explosive device** in September 2000. The attack was claimed by GRAPO. The court accepted the appeal of the defendant and considered that there was a lack of evidence for the conviction by the lower court in October 2011.

Source: [El Mundo](#).



## United Kingdom

### January 2012

The Belfast Crown Court found one individual guilty of six counts of **attempted murder** and one count of **possession of two firearms and ammunition with intent to endanger life** and sentenced him to life imprisonment with a minimum of twenty-five years to be served in relation to the Real IRA-claimed murder of two soldiers at Massereene Barracks in Antrim in 2009. A co-defendant was earlier acquitted of the same charges. The convicted individual had set fire on the attack car and though he had a lesser role than the gunmen and the driver of the car, according to the judge he "played a prominent and essential role" in the crime. Much of the evidence relied on DNA matching profiles. The police have again called for information about the murderers.

Source: [BBC](#).



The Manchester Crown Court convicted one individual and sentenced him to two years and three months after he pleaded guilty to four charges under the Terrorism Act. He was arrested in 2011 after police was handed in a memory stick on which he downloaded a ricin recipe, assassination and torture techniques as well as other documents on how to make bombs. According to the court, there was no evidence that the offending went beyond **collecting information** but the defendant's actions were more than idle curiosity. In a letter the defendant wrote that he wanted to fight jihad for Allah.

Source: [BBC](#).



### February 2012

In a trial the Woolwich Crown Court nine individuals were charged with terrorist offences in relation to a plot to bomb the London Stock Exchange and to build a terrorist training camp. They were arrested in December 2010 after they decided to form a group in October 2010 to "support and commit acts of terrorism in furtherance of their religious belief". According to the prosecution, the men were not members of Al Qaida but were motivated by extreme jihadist propaganda circulated on the Internet by organisations like Al Qaida. They planned to **raise funds** and **set up a terrorist camp** in Pakistan, and recruit British Muslims to attend it and possibly return to carry out attacks in the United Kingdom. Three of the men were handed down indeterminate sentences for public protection with minimum terms of eight years, and eight years and ten months. Four other defendants pleaded guilty to **engaging in conduct in preparation for acts of terrorism** by planning to plant a bomb in the toilets of the London Stock Exchange. They were handed down sentences of between twelve years, and sixteen years and ten months. Another defendant, who admitted attending meetings with the intention of **assisting others to prepare or commit acts of terrorism**, was sentenced to ten years and four months' imprisonment. The ninth individual pleaded guilty to **possessing two editions of an Al Qaida magazine for terrorist purposes** and was given a five-year sentence.

Source: [BBC](#).



In a trial at the Central Criminal Court two German men pleaded guilty to charges of **having material which could be of use to someone preparing an act of terrorism** and were sentenced to prison terms of sixteen months, minus the days spent in custody, and of twelve months respectively. The two were arrested in July 2011 when they arrived at Dover. Among the seized material were a hard drive and a laptop. The police found a number of articles from Al Qaida's magazine "Inspire" with information on how to destroy buildings, make bombs, participate or serve in jihad, etc. The defence argued that the two studied Islam or extremism but were not terrorists. The two convicted individuals would be deported from the United Kingdom.

Source: [The Local](#).



### March 2012

The Woolwich Crown Court sentenced one individual to five years and three months in prison after he pleaded guilty to seven counts of **fundraising for terrorists**. He was charged for donating approximately £9 000 to fund terrorism in Somalia in 2010 giving them to three of his friends who left the United Kingdom to allegedly become involved in terrorist activities there. The police investigation



used secretly recorded phone conversations and also seized some extremist material from his apartment in London. He denied four counts of providing funds for terrorism and engaging in the preparation of terrorism, which the prosecution said will remain on file.

Source: [BBC](#).



### 2. Other Court Decisions of Interest January – April 2012

#### Denmark

##### January 2012

The Kurdish television station Roj TV was found guilty of promoting terrorism and fined 5.2 million Danish crowns. The court heard that between February 2008 and September 2010 Roj TV had “one-sidedly and uncritically disseminated (PKK) messages, including incitement to revolt and to join the organisation”. According to the prosecutors, the TV station, based in Denmark, was financed and controlled by the Kurdistan Workers Party (PKK). The court did not however revoke its broadcasting licence. An appeal was expected.

Source: [Reuters](#).

#### Germany

##### February 2012

A court in Frankfurt convicted one individual for shooting two U.S. servicemen to death and seriously wounding two other at the city airport in March 2011 and sentenced him to life imprisonment. The court found him guilty of three counts of attempted murder and serious bodily harm and, in line with the request of the prosecution, it acknowledged the attacker’s “particularly severe guilt”, making him thus ineligible for parole after fifteen years as is standard in Germany. The shootings occurred soon after the American troops landed in Frankfurt and were about to be taken to the U.S. Air Force Base at Ramstein before flying out to Afghanistan. The convicted man, who had quickly radicalised in the months prior to the attack but was not a member of a terrorist organisation, worked at the airport at the time of the attack.

Source: [Spiegel](#).

#### The Netherlands

##### April 2012

The Dutch Supreme Court ruled that a Dutch-Pakistani man could be extradited to the United States where he is indicted on suspicion of terrorist crimes including plotting a suicide attack on an American military base in Afghanistan. He was arrested in Pakistan in 2011 and expelled to the Netherlands where he was sent to a high-security prison pending possible extradition. His argument that he should not be extradited, as he had been tortured in Pakistan and some Americans were involved in the abuse, was rejected by the court. The extradition can be carried out once the Dutch government approves it. The defence lawyer announced his intention to fight the decision of the court.

Source: [Fox News](#).

## Sweden

### January 2012

The Gothenburg District Court found three individuals not guilty of the charges brought to them in relation to an alleged plot to kill an artist who depicted Prophet Muhammad in caricatures in 2007. The court had already released the men prior to announcing its decision. The police originally treated the case as a terror investigation, but later re-labelled it as a murder plot.

Source: [Yahoo News](#).

## United Kingdom

### March 2012

In its recent decision the Court of Appeal ruled that there was nothing in international law which required the broad definition of terrorism under the Terrorism Act 2000, as amended, to be read so as to exclude acts of war committed during an armed conflict. The ruling was pronounced in relation to the case of one individual who was prosecuted for supporting terrorism as defined under Section 1 of the Terrorism Act, found guilty and sentenced to five years in prison. The Court of Appeal agreed that the trial judge's reply to the jury that "an explosives attack on Coalition forces in Iraq is a terrorist attack" within the meaning of the Terrorism Act 2000, was correct in law.

Source: [BAILII](#).

## Norway

### January 2012

The Oslo District Court found two individuals guilty of terror charges and sentenced them to prison terms of seven and three and a half years respectively. The two were accused of plotting to attack a Danish newspaper that caricatured the Prophet Muhammad. The convictions pronounced by the Court are the first ones under Norwegian anti-terrorism legislation. A third defendant was cleared of the terror charges but was found guilty of helping the other two acquire explosives and sentenced to four months. According to the Court, the attack was planned together with Al Qaida. The three defendants made some admissions but pleaded innocent to terror conspiracy charges and rejected any links to Al Qaida. As stated by the prosecution, the three initially wanted to attack the Danish newspaper Jyllands-Posten that published the caricatures of the Prophet Muhammad but then decided to murder one of the cartoonists. According to one of the defendants, they had planned just to have a talk. The alleged ring leader admitted he had been planning a solo raid against the Chinese Embassy in Oslo in protest against the oppression of a Muslim minority in China. As individual plotting of an attack is not covered by the Norwegian anti-terrorism legislation, the prosecution needed to prove that the defendants had worked together in a conspiracy. Testimonies given to the U.S. authorities by three American Al Qaida recruits were also used by the prosecution. According to the investigators, the plot was linked to the Al Qaida planners behind thwarted attacks against the New York subway system and a British shopping mall in 2009.

Source: [Fox News](#).

### March 2012

The Oslo District Court found the Kurdish founder of radical Islamic group Ansar al-Islam guilty of making death threats against officials and others and sentenced him to five years' imprisonment. The man, who claims he is no longer involved with the organisation, which both the UN and the United States regard as terrorist, was granted a refugee status in 1991. In 2006 the UN added him to its list of people believed to have links with Al Qaida. The Norwegian authorities issued a deportation order but he remained in the country due to the security situation in Iraq. He announced he would appeal the decision of the court. Following its decision on his sentence, the court ruled that he should be remanded in custody for eight weeks as he was suspected of a punishable act that could lead to a penalty of more than six months.

Source: [BBC](#), [The Foreigner](#).

## European Court of Human Rights

### January 2012

The European Court of Human Rights (ECHR) ruled the Spanish state to pay 10 000 Euro non-pecuniary damage to a journalist of the Al Jazeera television who had been sentenced in 2005 by the Audiencia Nacional to seven years' imprisonment for collaboration with a terrorist organisation (Al Qaida). In 1994 the central external intelligence unit of the police requested permission from the central investigating judge to tap the telephone lines of several individuals in order to investigate their links with the Palestinian organisation Hamas. In 2003 the central investigating judge issued an order charging the applicant and others with membership of, or collaboration with, a terrorist organisation. Referring to Article 6 §1 (right to a fair trial) the applicant alleged that the Division of the Audiencia Nacional, which had examined the merits of his case and had convicted him, had not been impartial; in his submission, all the evidence obtained from the telephone tapping should have been declared unlawful. In the opinion of the Court, there was a violation of Article 6 §1 in respect of the right to an impartial tribunal but not in respect of the use of evidence obtained from unlawful telephone tapping.

Source: [El Mundo](#).

The ECHR blocked the United Kingdom's extradition of a Jordanian extremist as, according to the Court, the extradition would violate his right to a free trial. In its ruling, the Court stated that extradition of the plaintiff would be in violation of Article 6 of the European Convention on Human Rights, "given the real risk that proof obtained from other people and torture could be used in his new trial in Jordan". According to the ECHR, the Jordan State Security Court "proved that it was incapable of appropriately conducting enquiries into allegations of torture and excluding the use of proof obtained under torture." The plaintiff, long-time considered as the right-hand man of Osama Bin Laden, has lived in the United Kingdom since 1993 and has refugee status. He had been sentenced in absentia, to fifteen years in prison for acts of terrorism and a retrial was due to take place. The UK authorities granted a decision to expel him in 2005 but he appealed it in December 2010 on the grounds that in Jordan he would be subject to a real risk of torture, in flagrant denial of justice. His expulsion was blocked by the ECHR in February 2009 and the UK government was called on to introduce a stay of proceedings until the case had been completely assessed.

Source: [ECHR](#).

## April 2012

In its judgment regarding the possible extradition of six applicants from the United Kingdom to the United States, the ECHR ruled that there would be no violation of human rights if the men were to be held in solitary confinement at ADX Florence, a Federal maximum security prison in Colorado, which is used for people convicted of terrorism offences, and if they would be sentenced to life imprisonment. The case of the sixth applicant would be considered further due to his mental health problems and the need for more submissions to the Court. The six applicants are charged with terrorism offences in relation to taking hostages, promoting violent jihad and conspiring to set up a jihad training camp in Oregon, organising the 1998 U.S. Embassy bombings in East Africa, providing support to terrorists and conspiracy to kill, maim or injure people and damage property in a foreign country. In the Court's opinion, if the applicants were convicted as charged, the U.S. authorities would be justified in considering them a significant security risk and in imposing strict limitations on their ability to communicate with the outside world. A referral to the Grand Chamber was submitted and, following the decision of its admissibility, the case could be re-examined.

Source: [ECHR](#), [BBC](#).

## II. Comparative Analysis

January – April 2012

### Court Decisions in the EU Member States

In the period January – April 2012 terrorism-related court decisions were pronounced in eight EU Member States: Belgium, France, Germany, Ireland, Italy, Portugal, Spain and the United Kingdom (please see Figure 1 below).

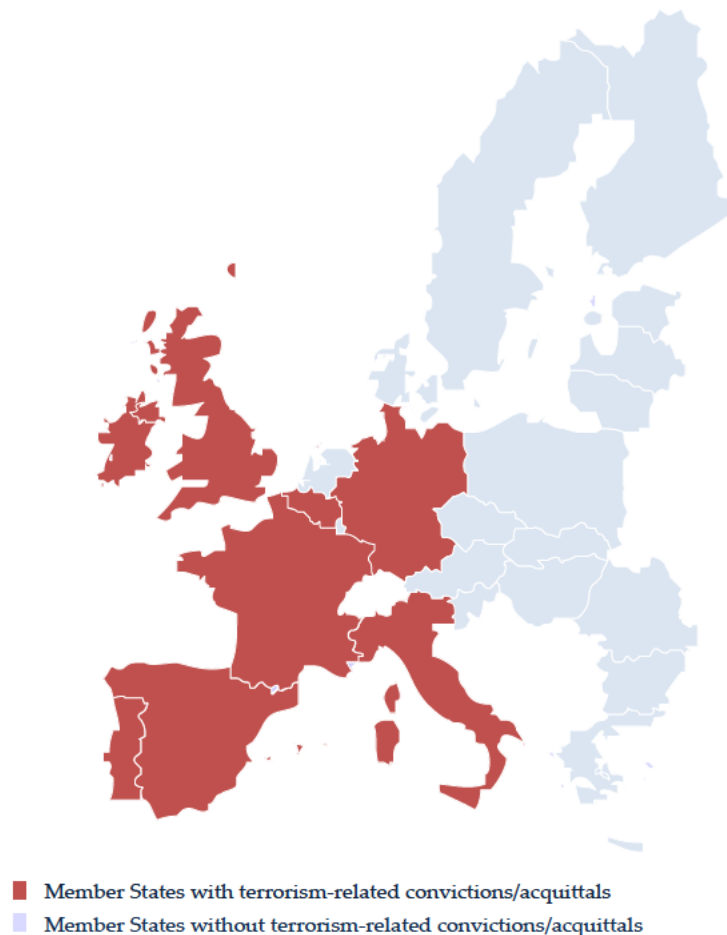


Figure 1

### Convictions and Acquittals

In the majority of the Member States (Belgium, France, Germany, Ireland, Portugal and the United Kingdom) all court decisions contained guilty verdicts. In comparison with 2011 two of these Member States, Belgium and Germany, had also a full conviction rate with no acquittals throughout the year. In Italy and in Spain a number of acquittals were pronounced in January – April 2012. The percentage of acquittals in Spain for the reporting period (31%) is lower to that percentage for the year 2011



(42%). As a whole, the total percentage of acquittals in the period in January – April 2012 is lower than the average for 2011, which was 31% (please see Figure 2 below).

Figure 2

COUNTRY	CONVICTIONS	ACQUITTALS	TOTAL	ACQUITTALS AS %
Belgium	2	-	2	0%
France	25	-	25	0%
Germany	4	-	4	0%
Ireland	5	-	5	0%
Italy	1	14	15	93%
Portugal	1	-	1	0%
Spain	49	22	71	31%
United Kingdom	14	-	14	0%
<b>TOTAL</b>	<b>101</b>	<b>36</b>	<b>137</b>	<b>26%</b>

## Types of Terrorism

As in 2009, 2010 and 2011, the majority of verdicts in the period January – April 2012 relate to separatist terrorism. Spain has the highest number of verdicts for separatist cases in the reporting period, and the United Kingdom for religiously-inspired<sup>1</sup> terrorism (please see Figure 3 below).

Figure 3

COUNTRY	SEPARATIST	RELIGIOUSLY-INSPIRED	LEFT-WING	RIGHT-WING	NOT SPECIFIED	TOTAL
Belgium	-	2	-	-	-	2
France	17	5	-	-	3	25
Germany	1	3	-	-	-	4
Ireland	5	-	-	-	-	5
Italy	-	2	13	-	-	15
Portugal	1	-	-	-	-	1
Spain	67	-	4	-	-	71
United Kingdom	1	13	-	-	-	14
<b>TOTAL</b>	<b>92</b>	<b>25</b>	<b>17</b>	<b>-</b>	<b>3</b>	<b>137</b>

<sup>1</sup> Terrorism verdicts are classified by type of terrorism according to the terminology used by Europol in the EU Terrorism Situation and Trend Report TE-SAT 2012.

So far in 2012 the reported verdicts in relation to left-wing terrorism have the highest acquittal rate (88%), which is dissimilar to 2009, 2010 and 2011, when the majority of the acquittals were to be found in separatist terrorism cases.

### Types of Convicted Offences

The evaluation of the kind of terrorist offences prosecuted more frequently in the respective reporting period is one of the themes of interest indicated by the respondents to the questionnaire on the future development of the present report (*please see the Annex*). Due to the fact that information from open sources often does not contain the necessary details, an analysis has been made on the type of convicted offences instead. Following the proper verification with the competent national authorities, at the end of the year an analysis shall be made on the types of offences prosecuted and convicted.

The overview below presents the types of offences of which the individuals brought to trial were found guilty.<sup>2</sup> The analysis considered the countries' specifics and definitions of offences in the national legislations. With a view to avoid fragmentation and terminology or translation inaccuracies, some offences have been grouped, e.g. offences such as "participation in a terrorist organisation", "belonging to a terrorist organisation", "membership in a terrorist organisation" have been combined under "membership in a terrorist organisation or similar".

The overview focuses on offences that appear more than once in the verdicts. In order to ensure certain relativity, the offences are shown as a percentage. In the cases when one individual was found guilty of more than one offence, all convicted offences are included separately.

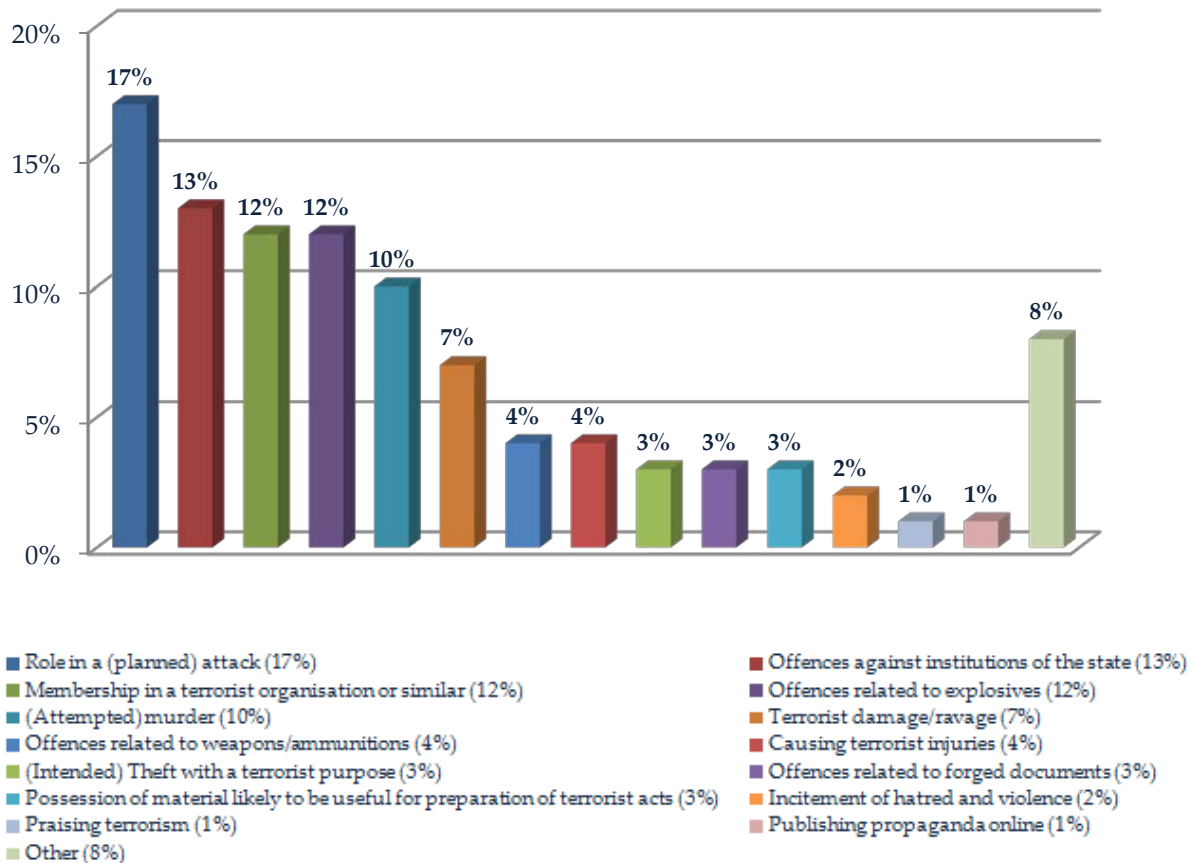
A closer look at the information available in open sources or shared with Eurojust reveals a rather wide spectrum of terrorist offences in the Member States concerned (*please see Figure 4 below*). A relatively high percentage of the convicted offences are related to roles in a (planned) terrorist attack (17%). The majority of these could be seen in France. The second largest type of offences, the offences against institutions of the state, presents 13% of the total; all of these offences are in relation to one trial and were all committed in Spain. Spain and France are also the two Member States with the highest number of convictions for membership in a terrorist organisation or similar (*please see explanation of the used term above*); this offence constitutes 12% of the total number of offences. Equally, the various offences related to explosives (possession, storage, transportation, etc.) constitute also 12%, with the majority of these have been committed in France. The offence of (attempted) murder, most often seen in Spain, presents 10% of the total.

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<sup>2</sup> The overview that follows is based on the information on offences as found in open sources or, in the case of Spain, as reported to Eurojust by the national authorities. Open sources information can be incomplete or inaccurate; therefore the overview should be treated with caution until confirmed by the competent authorities of the respective Member States.

Figure 4

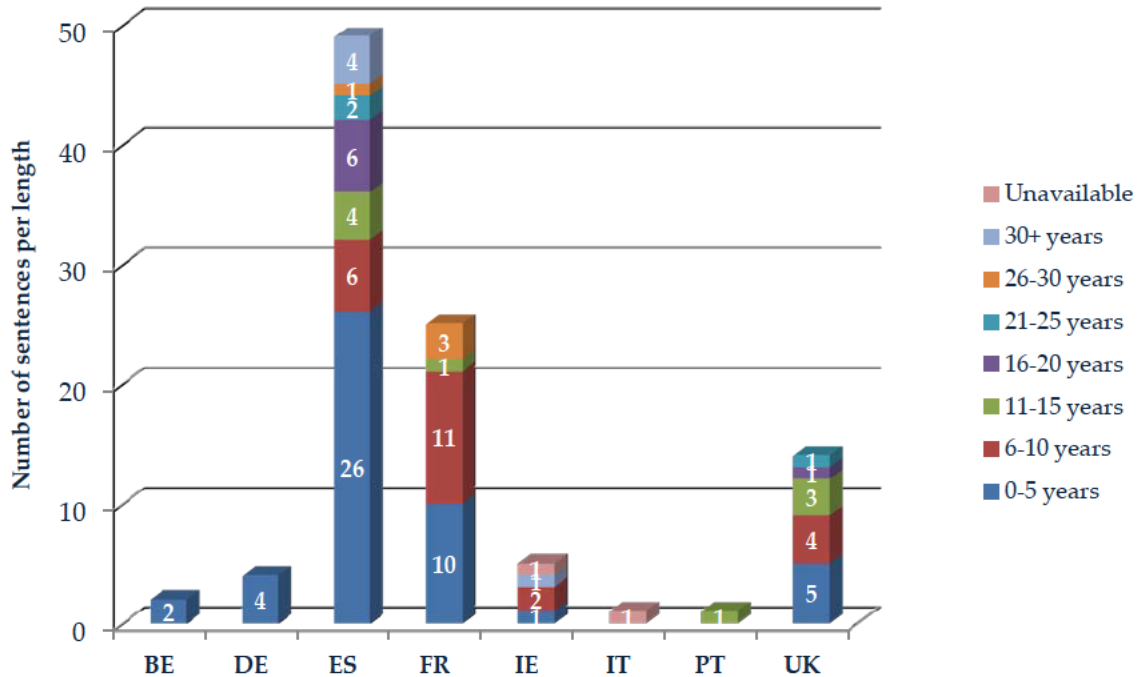
## Types of Convicted Offences



## Pronounced Sentences

The length of sentences pronounced for terrorism offences varies per country and per convicted offence. The severity of penalties throughout the EU in the period January – April 2012 ranges between two months and thirty-six years (*please see Figure 5 below*). As in previous reporting periods, life sentences or indeterminate sentences were also handed down. For the purposes of the overview below, they are included as the minimum indicated to be served. 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 or by a ban to enter the territory of the country upon completion of the prison sentence. As seen on Figure 5 below, in the period January – April 2012 sentences of up to five years' imprisonment are the most frequent penalties for terrorist offences (47.5%), followed by sentences of between six and ten years (22.7%). These two combined present just above 70% of all the penalties handed down for terrorist offences.

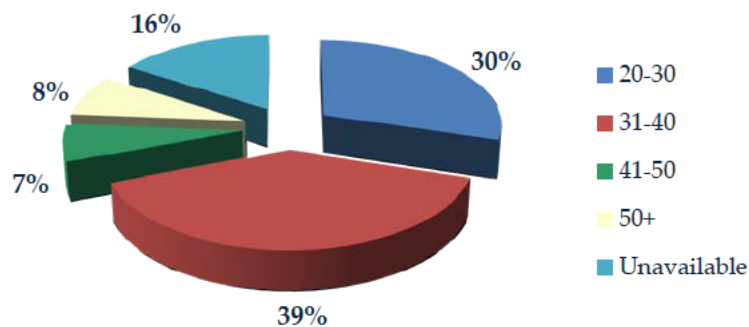
Figure 5



### Age of Convicted Individuals

The data on the age of those found guilty, where available, shows a majority (39%) of terrorism convicts in their thirties. The second largest group (30%) consists of individuals in their twenties. In other words, more than two thirds of the convicted individuals were aged between twenty and forty years (please see Figure 6 below).

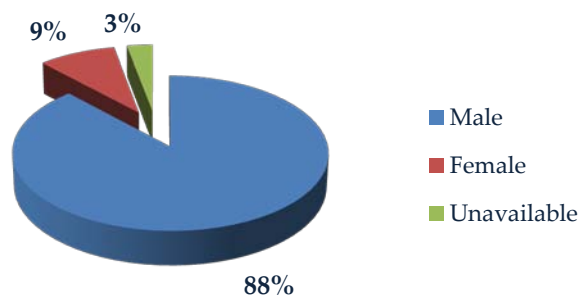
Figure 6



## Gender of Convicted Individuals

Of the 101 defendants found guilty in the period January – April 2012, nine were female. This constitutes 9% of the total number of guilty verdicts in the reporting period (*please see Figure 7 below*). In comparison, the convicted female defendants in 2011 presented 7% of all convicted individuals.

Figure 7





## III. Legal Update

### 1. EU

January – April 2012

#### European Commission

##### January 2012

Commission Implementing Regulation (EU) No 15/2012 of 10 January 2012 amending for the 162<sup>nd</sup> time Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with the Al Qaida network.

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

Commission Implementing Regulation (EU) No 34/2012 of 17 January 2012 amending for the 163<sup>rd</sup> time Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with the Al Qaida network.

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

##### February 2012

Commission Implementing Regulation (EU) No 97/2012 of 6 February 2012 amending for the 164<sup>th</sup> time Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with the Al Qaida network.

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

##### March 2012

Commission Implementing Regulation (EU) No 177/2012 of 1 March 2012 amending for the 165<sup>th</sup> time Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with the Al Qaida network.

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

Commission Implementing Regulation (EU) No 215/2012 of 13 March 2012 amending for the 166<sup>th</sup> time Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with the Al Qaida network.

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



Commission Implementing Regulation (EU) No 253/2012 of 22 March 2012 amending for the 167<sup>th</sup> time Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with the Al Qaida network.

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

## April 2012

Commission Implementing Regulation (EU) No 316/2012 of 12 April 2012 amending for the 168<sup>th</sup> time Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with the Al Qaida network.

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

Commission Implementing Regulation (EU) No 335/2012 of 19 April 2012 amending for the 169<sup>th</sup> time Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with the Al Qaida network.

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

## 2. EU Member States

### Belgium

#### February 2012

A bill was submitted in the Belgian Parliament that will make a conviction for terrorist offences incompatible with the granting of a refugee status. In 2011, a man sentenced to six years' imprisonment in 2006 for participating in a terrorist organisation was granted a refugee status in Belgium as it was considered there was a risk of torture if he would be returned to his home country. Also, in November 2010, the European Court of Justice ruled that the fact that a person has been a member of a terrorist organisation cannot mean that he is automatically excluded from refugee status, unless the person is personally responsible for terrorist acts. According to the Court, the exclusion from a refugee status of a person belonging to a terrorist organisation is subject to individual consideration of specific facts that allows the competent authority to assess whether the applicant has committed a serious crime.

Source: [Skynet](#).

### France

#### January 2012

The former French government ordered the dissolution of Forsane Alizza or "The Knights of Pride", a domestic Islamist group, as it considered it a terrorist organisation that trained its members "for armed combat". According to the website of the group, its goal is to fight Islamophobia. Forsane Alizza was active during the demonstrations in 2011 against the law prohibiting the wearing of full

facial veil in public places as the group declared some of its aims include the defence of Muslim women. It acknowledged also some violent aims and called for the recruitment of “soldiers”. Its website contains anti-Semitic material as well as postings that support terrorist organisations, including the Afghan Taliban. The group’s leader was arrested in March 2012, together with eighteen others, in raids on suspected militants, as a result of investigations into possible accomplices of the gunman, who shot seven people dead in Toulouse earlier in March.

Source: [New York Times](#).

### April 2012

Following the lone wolf killings in Southern France, the former conservative French cabinet agreed on a bill reinforcing the prevention and repression of terrorism. The bill, transposing the provisions of the Council Framework Decision 2008/919/JHA, included a set of new counterterrorism measures to punish those who recruit terrorist, even if recruitment fails, who visit websites that incite or praise deadly terrorism or travel to indoctrination and weapons-training camps for terrorist ends weapons-training camps abroad. According to the then-government, such measures were needed to fight the relatively new phenomenon of “lone wolf” terrorism by extremists who self-radicalise online via jihadist websites, and are hard for authorities to track. The bill was opposed by the Socialist Party, whose candidate won the presidential elections in May 2012. According to the Socialists, France’s legislation against terrorism is already strong enough; it just needs to be applied better.

Source: [The Guardian](#).

## Germany

### February 2012

The German Constitutional Court ruled that the existing law on the storage and access to user names, passwords and PIN codes by intelligence agencies was a breach of the basic right to privacy of personal information guaranteed in the German constitution. It ordered the Parliament to clarify the rules by June 2013. According to the law, three authorities have access to online communications data in order to identify terrorists, arms dealers or traffickers: the domestic intelligence, the foreign spy agency and the Military Counter-intelligence Service.

Source: [The Local](#).

## Ireland

### February 2012

In relation to a case in which a member of the Garda team issued a search warrant on the basis of section 29 (1) of the Offences Against the State Act (as inserted by section 5 of the Criminal Law Act 1976), often used in the past by gardaí to search the homes of suspects in terrorist cases, the Supreme Court declared that the above-mentioned section 29 (1) was repugnant to the Constitution. The court found that Article 40.5 of the Constitution expressly provides that a person’s home is inviolable and

shall not be forcibly entered except in accordance with the law, whilst section 29 (1) permitted a search on the basis of a warrant not issued by an independent person.

## United Kingdom

### February 2012

The UK is reported to be drafting new anti-terror plans that will provide for the storing of details of phone calls and text messages, email traffic and websites visited online in a series of vast databases. The databases would not record the contents but the numbers or email addresses of senders and recipients. The data will be stored by landline and mobile phone companies and broadband providers for a period of a year. The plans will also allow the security services to have access to communication on social networking sites such as Facebook, Twitter, and communications between players in online video games. Under the scheme the security services would be granted “real time” access to phone and Internet records of people they want to put under surveillance, as well as the ability to reconstruct their movements through the information stored in the databases. According to some experts, the new surveillance plans could breach European data protection laws. Similar plans were drafted by the Labour government in 2009 but were dropped due to little public support. The plans are expected to be announced in May 2012 (*more details will be provided in the next issue of the TCM*).

Source: [The Telegraph](#).

## IV. Judicial Analysis

*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/or 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 analysis, however, focuses on certain issues of interest, rather than covering all aspects and arguments of the selected case.*

**Procedure:** High Court of Justice Court of Appeal (Criminal Division) on Appeal from Manchester Crown Court, the United Kingdom

**Dates of the hearings:** 30 November 2010, 1-3 December 2010

**Date of decision:** 25 February 2011

### Background of the Case

#### The Defendants

The first defendant, hereafter called A., was a member of Al-Muhajiroun, an extreme Islamist organisation based in the United Kingdom. He travelled to Pakistan several times. In an interview to The Sunday Times in March 2002 he stated, while disguised and using a false name, that he was an Al Qaida (AQ) fighter who just got back from Afghanistan and gave details of what he had done. The second defendant, hereafter called B., was a former prisoner of the Indian authorities for seven years and had spent substantial parts of 2003–2004 in Pakistan. The two, having made reservations separately, flew on the same flight to Pakistan in May 2005. In December 2005 they shared a hotel room in Dubai for several days.

#### The Arrests

B. was arrested in Pakistan in August 2006, where he was kept in custody for eight months until moved to a normal prison and eventually deported to the United Kingdom in September 2007. He was arrested by the UK authorities upon his arrival in the country.

Following the arrest of B., A. was also arrested in August 2006. He was already under prosecution when B.'s case was joined to it.

The prosecution's case was supported by information including:

- Secretly recorded conversations that took place in the hotel in Dubai, the content of which was provided to the Manchester police by the Dubai authorities: it included discussions on training camps, a summons from AQ hierarchy, fundraising, martial arts techniques, anti-surveillance procedures, etc.

- Three diaries given to A. by B.: they contained information written in invisible ink. Two of those diaries were seized upon A.'s arrest later. The diaries contained contact numbers for persons with terrorist connections, including names labelled with AQ; email addresses and access passwords suitable for use for covert messaging via a "dead letter drop", a method which avoids intercepting.
- Surveillance, including information from covert listening devices: Conversations about the risks of surveillance and arrest, terrorist activity, military operations against AQ in Afghanistan and Pakistan, prison conditions in Pakistan, British rules for detention and control of suspected terrorists, American extraordinary rendition, martyrdom, etc.

## Grounds of Appeal

B. appealed against the judge's refusal to stay (stop) the prosecution as an abuse of due process of the court.

Both applicants appealed against:

- the judge admitting certain expert evidence;
- the judge
  - a. failing to give any or any adequate direction to the jury as to the meaning of "belong to" in section 11(1) of the Terrorism Act (counts 3 and 4) – "the Membership Issue", and
  - b. failing to direct the jury as to the territorial nature of the offence under section 11(1) – "the Territoriality Issue".

A. advanced a further appeals ground claiming that the judge misdirected the jury as to the use that they could make, when considering the case against him, of their conclusions concerning B. – "the Cross-Admissibility issue".

## Decision of the High Court of Justice

### Application to stay the prosecution

During the trial at the Manchester Crown Court (the 1<sup>st</sup> instance court) B. claimed that after arrest on 20 August 2006 in Pakistan he had been, *inter alia*, held incommunicado, without charge, without access to lawyers or contact with anyone outside the prison until December 2006. He further claimed to have been deprived of sleep, fed poorly, beaten, etc. On one occasion only, he had been seen and questioned by British officers. He requested the judge to stay the prosecution on the grounds that the British authorities were thus complicit in his torture as they had condoned it, indeed had effectively "outsourced" it to a foreign State. Additionally, the judge was asked to stay the prosecution on the grounds that the British authorities had connived in his unlawful return to the United Kingdom.

Opinion of the 1<sup>st</sup> instance judge: The judge did not consider the presented facts as torture. The judge expressly rejected the suggestion of outsourcing torture by British authorities and found that there was no connection between B.'s questioning in Pakistan and this trial. Accordingly he refused the application for a stay of the prosecution.



Submissions for the defence appeal: B.'s defence submitted that the judge should have stayed the prosecution on either or both of the following two grounds:

- The UK authorities were complicit in B.'s unlawful rendition and his deportation was in fact a disguised extradition; and/or
- The prosecution's evidence was tainted by torture in which the UK authorities were complicit. The defence claimed, *inter alia*, that the prohibition of torture by international law extends not only to the use of torture by a state, but also to complicity by a second state in such torture, and that such complicity is demonstrated when the states involved have any settled practice of information- or intelligence-sharing, which is known, or believed, that torture is used.

Opinion of the High Court of Justice: There was no unlawful rendition and Pakistan was fully entitled to deport the defendant. The 1<sup>st</sup> instance judge was correct in rejecting the first point. The Court emphasized that jurisdiction exists to preserve the integrity of the trial process and not to discipline the executive, the police or the intelligence services. The judge held that whatever may have happened in Pakistan, it formed no part of the evidence at the trial and had had no impact upon it, therefore the defendant could be tried according to English law. Since no evidence, produced by torture (or any other ill-treatment), that there might arguably have been, was presented at trial and since the judge held that neither had it impacted upon the trial by way of informing the investigation, the 1<sup>st</sup> instance judge was right to refuse the request to stay the prosecution.

The Court further noted that it was not possible to treat the defence's proposed concept of "complicity in torture" as established law. Complicity means that a secondary party to a crime is responsible for it in law, just as the principal actor is. However, if a country receives from another country information, needed for the safety of its citizens, which is known or suspected to be the product of torture, such knowledge, or suspicion, would not amount in English law to secondary participation. The High Court ruled that the 1<sup>st</sup> instance judge was right to refuse the request to stay the prosecution against B., thus failing the respective grounds of appeal.

### Application to the admissibility of evidence

The evidence at stake: The prosecution invited an academic to give expert evidence about AQ, its methods (including its areas of operation) and its organisation. The evidence was given in *voir dire*<sup>3</sup> in September 2008 and dealt with the fact that certain names in one of the diaries were of people known to hold particular positions within AQ. The expert evidence also dealt with known practices of the organisation as well as AQ's connections with various parts of the world. The 1<sup>st</sup> instance judge did not admit into evidence the academic's opinion on what inferences should be drawn from his evidence. At the trial the expert gave evidence about the use by AQ of email dead letter drops and use of invisible ink, the activities of the proscribed extreme Kashmiri organisation Harakat-ul-Mujahideen (HuM), and on the question if membership in HuM would preclude membership in AQ. This was considered relevant in view of B.'s confession of membership in HuM and his guilty plea to such membership.

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<sup>3</sup> 1. The preliminary examination by a judge of a witness to determine his competence or of a juror to determine his qualification for jury service. 2. An inquiry conducted by the judge in the absence of the jury into the admissibility of an item of evidence. Oxford Dictionary of Law, Oxford University Press, Fourth Edition, 1997.



The defence's case: According to the defence, the expert evidence could not be admitted because the information the academic relied upon had to be proven independently. The defence found also errors in the statements of the expert in this and in other trials.

Submissions for the defence appeal:

- The expert evidence was not sufficient to support a conviction, nor was it based on reliable or acknowledged sources of information.
- The academic based his conclusions on inadmissible hearsay.
- Some of the information used was secret and thus an expert was being used to put before the jury information which was not otherwise admissible.
- His method was inadequate, shown by the errors in this and in other trials.

The opinion of the High Court of Justice: The Court found that the materials used by the expert were appropriate and legitimate and that his methods of assessment were properly academic. The Court acknowledged that experts rely on hearsay material (opinions, research and surveys of material by others) as examples. The use of such sources comes within the common law exception to the hearsay rule applicable to the evidence of experts. The Court ruled that the evidence was thus admissible, whilst not central or fundamental to the case against either of the appellants, as claimed by the defence. The Court found that the 1<sup>st</sup> instance judge's consideration of the expert evidence was impeccable. He had correctly pointed out to the jury the role of the expert and guided them in their approach to expert evidence. He directed the jury not to base any decision solely on this evidence.

The Court also referred to some substantive defence arguments regarding membership in both or either HuM and AQ and ruled that there was no reason to think that membership in the first one precluded membership in the second.

As a whole, the High Court of Justice ruled that the evidence was rightly admitted, effectively tested, correctly summarised and properly left to the jury. Accordingly, the grounds of appeal based on the admission of this evidence failed.

## **The Membership Issue**

The prosecution's case: According to the prosecution, the defendants were alleged to be active members of AQ, heavily involved in general terrorist planning and the co-ordination of agents or sympathisers in the United Kingdom. At the close of the prosecution case, A. was charged, *inter alia*, of belonging or professing to belong to a proscribed organisation (AQ). The indictment was later amended separating the allegation of professing membership from that of belonging.

The defence's case: A.'s representative claimed that he was not a member of AQ even though he had reported this to the Sunday Times. He had been trying to induce media organisations, such as television or newspaper companies, to pay for colourful "revelations". This would mean that he was not guilty of at least one of the charges for which he was convicted.

B.'s defence was that he was indeed a terrorist, but he was a member of HuM and not of AQ, as claimed by the prosecution. This would mean that he was not guilty of two of the three charges for which he was convicted.

Direction of the 1<sup>st</sup> instance judge to the jury: The 1<sup>st</sup> instance judge noted that AQ was a proscribed organisation during the period referring to the offences. The prosecution needed to prove

membership in any time within that period and not throughout the whole period. He also noted that he would define membership as “sharing a belief in the aims of an organisation and knowing of the means the organisation uses to achieve those aims, joining with others in the organisation in order to achieve those aims.” During the trial the judge pointed out to the jury that “member” and “belonging to” were ordinary English words and the jury should give them their ordinary meaning as they were not technical. The jury would not expect that AQ would issue membership cards or membership lists, or have its members swear an oath of allegiance. Membership thus did not necessarily involve anything permanent or long-term.

The grounds of appeal: As both defendants were convicted of offences under section 11 (membership) of the Terrorism Act 2000, they argued that the trial judge’s direction to the jury regarding ordinary English words was insufficiently falling within the meaning of section 11 of the Terrorism Act 2000.

The opinion of the High Court of Justice: Section 11(1) of the Terrorism Act 2000 states that a person commits an offence if he belongs or professes to belong to a proscribed organisation. In his arguments, the Court referred to section 11(2) of the Terrorism Act 2000 that stipulates:

“(2) It is a defence for a person charged with an offence under sub-section (1) to prove –  
(a) that the organisation was not proscribed on the last (or only) occasion on which he became a member or began to profess to be a member, and  
(b) that he has not taken part in the activities of the organisation at any time while it was proscribed.”

In the Court’s opinion there was no reason to think that the phrase “belongs to” in sub-section 11(1) and the word “member” in 11(2) were meant to embrace different facts. A person can be a member without taking part in the activities of an organisation, although participation in such activities may be a clear indication of membership. It was emphasized that membership of a loose and unstructured organisation may not require any formal steps, while a more structured organisation may have an express process by which a person becomes a member. A criminal association is inherently more likely to lack formality than an innocent one.

However, the High Court of Justice questioned the necessity for the judge’s conceptual analysis of “belonging to” or “membership” and the respective direction to the jury. Directions – in principle – should be tailored to the issues which arise from the evidence. As B. had admitted membership in HuM, it was the identity of the organisation that was the issue, not whether he belonged to that organisation. With regard to A., his defence claimed he had lied in the interview with the Sunday Times. Whilst the prosecution had inferred from the evidence that A. was taking directions from B., this was challenged by A., who claimed he was engaged on a TV documentary production on the subject of the training of British suicide bombers in terrorist training camps in Pakistan and that he was for that aim in contacts with B. as a Kashmiri freedom fighter. Therefore, the central issue for the jury to resolve in relation to the membership charge was whether A. was telling the truth. If the jury would consider that he had not lied in his interview with the Sunday Times, then he was in effect asserting membership of AQ. Yet, if he lied on his involvement with B., then the only inference to be drawn was that he was actively and knowingly participating in the activities of a proscribed organisation under the direction of B., and that he “belonged to” that organisation within the meaning of section 11(1).

According to the Court, the direction of the 1<sup>st</sup> instance judge was entirely appropriate, though it had not been necessary for him to embark upon an analysis of what could or could not amount to membership of a proscribed organisation.

## The Territoriality Issue

The grounds of appeal: The defendants claimed that at the material time the offence under section 11 could only be committed by a person who belonged to a proscribed organisation when within the United Kingdom. The extraterritorial jurisdiction in relation to the section 11 offence was adopted in section 17 of the Terrorism Act 2006, which came into effect on 13 April 2006 and was not retrospective. According to the defence, the territorial limitation on the commission of the section 11 offence was incorrectly omitted from the judge's directions to the jury.

The opinion of the High Court of Justice: Except for the evidence as to the meeting between the defendants in Dubai, all the other evidence for the prosecution's case on membership against A. was related to his activities within the UK jurisdiction. The evidence from Dubai was relied upon both to demonstrate membership of AQ and to provide the context for previous and subsequent activities. In principle, the evidence could either demonstrate that he was a member of AQ in the United Kingdom, or fail to do so.

With regard to B., the prosecution case as to membership of AQ was based on the evidence about his relationship with the first one, and in particular on the product of the Dubai listening device, and their subsequent actions in the United Kingdom. The defence claimed he was a member of HuM, and not AQ, and that his activities were in furtherance of the aims of HuM. The Court ruled that if the jury were satisfied on the evidence viewed as a whole that he was a member of AQ, then they would be satisfied that he was a member when in the United Kingdom.

Indeed, it could not sensibly have been suggested that they were only members of AQ when out of the UK jurisdiction. The point was also not raised by their defence when the judge circulated his proposed directions in draft. The court concluded that there was no issue as to the territorial limit of the offence under section 11 and the absence of a direction upon it did not affect the validity of the convictions.

## The Cross Admissibility Issue

The defence's case: A.'s conviction was considered invalid on the ground that the judge misdirected the jury, or inadequately directed it, on the use that it could make, when considering the case against him, of its conclusions concerning B. The arguments of the defence included:

- Membership of a terrorist organisation by one accused is not by itself relevant to the issue of the membership of that or another organisation by the other or to his alleged possession of articles for a terrorist purpose.
- Proving that B. was a director of a terrorist organisation does not tend to prove A. is a member of that organisation, or that his possession of articles given to him by B. was for a terrorist purpose.

The opinion of the High Court of Justice: The Court considered the direction given by the 1<sup>st</sup> instance judge as entirely appropriate. The judge had made it clear that findings of fact in relation to one defendant might affect the verdict on another, but would not be decisive. He had given examples which clearly demonstrated the manner in which their findings of fact in relation to one defendant could be relevant to the case against the other. The Court pointed out that the defence's argument on membership was unsustainable in this case.



## Conclusion

### Convictions

The High Court of Justice concluded that all grounds of appeal against conviction failed and the convictions by the jury were valid.

### Sentences

A. was sentenced to a total of ten years' imprisonment: two years for professing membership in AQ, nine years for membership in AQ, nine years for possession of the diaries for a purpose connected with the commission, preparation or instigation of an act of terrorism, and one year for possession on his computer of information relating to a terrorist bombing in London with detail of chemical explosives, being information likely to be of use to a terrorist. The first three sentences were made concurrent with one another; the last was consecutive.

B. was sentenced to nine years for membership in AQ and life imprisonment for directing the activities of AQ, to run consecutively.

## V. Topic of Interest

### **Agreement between the United States of America and the European Union on the use and transfer of Passenger Name Records to the United States authorities for the purpose of combating terrorism and serious transnational crime**

#### **Introduction**

On 14 December 2011 the signing of the new EU-U.S. Agreement on the use and transfer of Passenger Name Records (PNR) took place.<sup>4</sup> The signed Agreement was endorsed by the European Parliament on 19 April 2012<sup>5</sup> and by the EU Member States in the Council of Ministers on 26 April 2012<sup>6</sup>. The adoption procedure is completed and the new Agreement is awaiting publication in the Official Journal.<sup>7</sup> The new Agreement is expected to enter into force on 1 June 2012<sup>8</sup>; it will supersede the existing EU-U.S. Agreement on the exchange of PNR data provisionally applied since 2007.

In the Press Release announcing initiation of the new EU-U.S. PNR Agreement, the European Commission stated that the new Agreement is “a big improvement over the existing Agreement from 2007”<sup>9</sup>. The new Agreement, among other benefits, “ensures better information sharing by U.S. authorities with law enforcement and judicial authorities from the EU” and represents “a legally binding text with stronger rules on police and law enforcement cooperation.”<sup>10</sup>

The transfer of PNR data by European air carriers to the U.S. has been a subject of several successive EU-U.S. Agreements, the newly concluded being the fourth in row. This chapter provides background information on the EU-U.S. PNR Agreements since 2004, brief analysis of the core provisions of the new Agreement as compared to the provisions of the latest previous EU-U.S. PNR Agreement, and a

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<sup>4</sup> Council of the European Union, [Press Release of 13 and 14 December 2011](#) “3135<sup>th</sup> Council meeting, Justice and Home Affairs, Brussels, 13-14 December 2011”.

<sup>5</sup> European Parliament, [Legislative Resolution of 19 April 2012](#) on the draft Council decision on the conclusion of the Agreement between the United States of America and the European Union on the use and transfer of Passenger Name Records to the United States Department of Homeland Security (17433/2011 – C7-0511/2011 – 2011/0382(NLE)).

<sup>6</sup> Council of the European Union, [Press Release of 26 April 2012](#) “Council adopts new EU-U.S. agreement on Passenger Name Records (PNR).”

<sup>7</sup> European Parliament, Legislative Observatory, [Procedure file 2011/0382\(NLE\)](#).

<sup>8</sup> Council of the European Union, [Press Release of 26 April 2012](#) “Council adopts new EU-U.S. agreement on Passenger Name Records (PNR).”

<sup>9</sup> EU Commissioner for Home Affairs Cecilia Malström, as quoted in the European Commission’s [Press Release of 17 November 2011](#) “New EU-U.S. agreement on PNR improves data protection and fights crime and terrorism”.

<sup>10</sup> European Commission, [Press Release of 17 November 2011](#) “New EU-U.S. agreement on PNR improves data protection and fights crime and terrorism”.





short overview of other EU international agreements in the area of use and exchange of PNR data for the purpose of combating terrorist offences and transnational crime.

### Background Information

After the terrorist attacks of 11 September 2001 the United States adopted a legislation requiring air carriers operating passenger flights to or from the U.S. territory to provide the U.S. authorities with access to the data contained in the reservation and departure control systems, called "Passenger Name Records" (PNR).<sup>11</sup> Since then the EU authorities have been working with the U.S. counterparts to develop a solution that "will provide the legal basis for the transfer of PNR data from the EU to the U.S. as recognition of the necessity and importance of the use of PNR data in the fight against terrorism and other serious transnational crime"<sup>12</sup>.

#### 2004 EU-U.S. PNR Agreement

On 14 May 2004, following negotiations between the Commission and the U.S. authorities, the Commission adopted a decision finding that the U.S. ensure an adequate level of protection for PNR data transferred from the Community<sup>13</sup>. Subsequently, on 17 May 2004, the Council approved the conclusion of a bilateral Agreement between the European Community and the United States on the processing and transfer of PNR data by air carriers.<sup>14</sup> The Agreement was signed on 28 May 2004 and entered into force immediately.

However, on 30 May 2006, the European Court of Justice, upon a submission by the European Parliament, ruled on the annulment of both the Commission's adequacy finding decision and the Council's decision concluding the Agreement, on the grounds that the decisions did not have an appropriate legal basis.<sup>15</sup> The Court ruled that the transfer of PNR data to the U.S. authorities constituted "processing operations concerning public security and the activities of the State in areas of

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<sup>11</sup> US Aviation and Transportation Security Act of 19 November 2001 ([Title 49, United States Code, Section 44909 \(c\) \(3\)](#)) and its implementing regulations (Title 19, Code of Federal Regulations, Section 122.49b).

<sup>12</sup> European Commission, [Explanatory Memorandum](#) to the Proposal for a Council Decision on the conclusion of the Agreement between the United States of America and the European Union on the use and transfer of Passenger Name Records to the United States Department of Homeland Security /\* COM/2011/0807 final - 2011/0382 (NLE) \*/

<sup>13</sup> European Commission, Decision [2004/535/EC](#) of 14 May 2004 on the adequate protection of personal data contained in the Passenger Name Record of air passengers transferred to the United States Bureau of Customs and Border Protection.

<sup>14</sup> Council of the European Union, [Decision 2004/496/EC of 17 May 2004](#) on the conclusion of an Agreement between the European Community and the United States of America on the processing and transfer of PNR data by Air Carriers to the United States Department of Homeland Security, Bureau of Customs and Border Protection.

<sup>15</sup> European Court of Justice, [Judgment of the Court of 30 May 2006](#) in Joined Cases C-317/04 (European Parliament v Council of the European Union) and C-318/04 (European Parliament v Commission of the European Communities)



criminal law”<sup>16</sup>, therefore, an activity, which did not fall within the scope of Community law. The Court’s ruling of 30 May 2006 terminated the validity of this Agreement effectively from 30 September 2006, thus allowing time for the EU and U.S. authorities to establish a replacement Agreement.

### 2006 EU-U.S. PNR Agreement

Following the Court’s ruling, on 16 October 2006, the Council adopted the decision on signing a second, short-term Agreement on the processing and transfer of PNR data to U.S. authorities.<sup>17</sup> The purpose of this Agreement was to preserve the established practice on the transfer of the PNR data to the U.S. authorities until a new, long-term Agreement is concluded. This interim Agreement was signed on 19 October 2006 and expired few months later, on 31 July 2007.<sup>18</sup>

### 2007 EU-U.S. PNR Agreement

On 22 February 2007 the Council decided to open negotiations with the U.S. authorities for a long-term PNR Agreement<sup>19</sup>, which gave rise to the third EU-U.S. PNR Agreement approved by the Council Decision on 23 June 2007<sup>20</sup> and signed by the parties on 26 July 2007.<sup>21</sup>

The 2007 EU-U.S. PNR Agreement was composed of 3 inter-related elements: the formal Agreement signed by the both parties, the letter from the Department of Homeland Security (DHS) addressed to the EU authorities and the letter from the EU authorities addressed to the DHS. The substantial clauses of the Agreement were contained in the attached letters, rather than in the formal Agreement itself. The Agreement was expected to expire by 23 July 2014 unless extended by mutual written agreement of the parties.

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<sup>16</sup> Ibid, paragraph 56.

<sup>17</sup> Council of the European Union, [Decision 2006/729/CFSP/JHA of 16 October 2006](#) on the signing, on behalf of the European Union, of an 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.

<sup>18</sup> 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 – [Summary of Treaty](#) (Treaties Office Database, European External Action Service).

<sup>19</sup> Council of the European Union, Preamble to the [Decision 2007/551/CFSP/JHA of 23 July 2007](#) on the signing, on behalf of the European Union, of an 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).

<sup>20</sup> Council of the European Union, [Decision 2007/551/CFSP/JHA of 23 July 2007](#) on the signing, on behalf of the European Union, of an 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).

<sup>21</sup> [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).

A number of EU Member States indicated that they would need to comply with the requirements of their domestic constitutional procedures, in order for the Council to conclude the Agreement.<sup>22</sup> Pending the ratification by the Member States, the Agreement was applied on a provisional basis from its signature date.<sup>23</sup>

Following the entry into force of the Lisbon Treaty and pending the conclusion of the Agreement, the Council submitted the Agreement to the European Parliament for its consent. However, on 5 May 2010, the European Parliament adopted a resolution where it decided to postpone the vote on this issue and requested a re-negotiation of the Agreement on the basis of certain requirements.<sup>24</sup> In the Resolution, the Parliament also called the Commission to adopt a coherent approach to the use of PNR data for law enforcement and security purposes and to establish a single set of principles to serve as a basis for all EU PNR agreements with third countries.<sup>25</sup>

On 21 September 2010, the Commission published a Communication<sup>26</sup> establishing a global approach for the transfer of PNR data to third countries, accompanied by three recommendations to the Council to authorise re-negotiation of the existing PNR Agreements, including the Agreement with the U.S. The Communication listed basic principles for the protection of personal data and other criteria, which should guide the EU in negotiating PNR agreements with third countries. 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<sup>27</sup>, which allowed the Commission to start the process of re-negotiation of the Agreement with the U.S. and the other two countries.

### Main elements of the New EU-U.S. PNR Agreement

#### Preamble

The Preamble of the new Agreement states that the prime purpose of the Agreement is “to prevent and combat terrorism and serious transnational crime”.

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<sup>22</sup> BE, CZ, DE, ES, LV, LT, HU, MT, NL, PL and FI – [Note of 23 July 2008](#) from the General Secretariat of the Council of the European Union to the Delegations “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) – Declarations made in accordance with Article 24(5) TEU – State of play”

<sup>23</sup> 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) – [Summary of Treaty](#) (Treaties Office Database, European External Action Service).

<sup>24</sup> European Parliament, [Resolution of 5 May 2010](#) on the launch of negotiations for Passenger Name Record (PNR) agreements with the United States, Australia and Canada.

<sup>25</sup> Ibid, paragraph 7.

<sup>26</sup> European Commission, [Communication](#) on the global approach to transfers of Passenger Name Record (PNR) data to third countries /COM(2010) 492 final/.

<sup>27</sup> Council of the European Union, [Press Release of 2-3 December 2010](#) “3051<sup>st</sup> Council meeting, Justice and Home Affairs, Brussels, 2-3 December 2010”.

Among the references to the reasons and considerations underlying the Agreement, the Preamble stresses "the importance of sharing PNR and relevant and appropriate analytical information obtained from PNR by the United States with competent police and judicial authorities of Member States of the European Union and Europol or Eurojust as a means to foster international police and judicial cooperation".

## Chapter I: Purpose, scope and use of data (Articles 1 – 4)

The aim of the Agreement is to "ensure security and to protect the life and safety of the public" (*Article 1(1)*) by providing for the transfer of PNR data by the European air carriers to the United States Department of Homeland Security (DHS) for the purpose of preventing, detecting, investigating and prosecuting:

- Terrorist offences and related crimes; and
- Other transnational crimes which are punishable by a sentence of imprisonment of three years or more (*Article 4(1)*).

PNR data may be used and processed to identify individuals who should be questioned or examined more closely on their arrival in, or departure from, the U.S. (*Article 4(3)*).

It may also be used and processed on a case-by-case basis in the following circumstances:

- Where necessary in view of a serious threat, for the protection of vital interests of any individual; or
- If ordered by a U.S. court (*Article 4(2)*).

Limitations on the use and processing of PNR data are "without prejudice to domestic law enforcement, judicial powers, or proceedings, where other violations of law or indications thereof are detected in the course of the use and processing of PNR" (*Article 4(4)*).

The provisions of *Articles 4(2), 4(3) and 4(4)* constitute a considerable expansion of the purposes of use of PNR data, comparing to the provisions of the EU-U.S. PNR Agreement from 2007.

## Chapter II: Data protection safeguards, treatment of sensitive data and retention of data (Articles 5 – 14)

The Agreement includes provisions on data security and integrity (*Articles 5(1) and 5(2)*), requires all processing of PNR data to be logged or documented (*Article 5(6)*), and prohibits the U.S. authorities from taking any decision based solely on the automated processing and use of PNR data if it would produce "significant adverse actions affecting the legal interests of individuals" (*Article 7*).

The Agreement allows access to, processing and use of sensitive data "in exceptional circumstances where the life of an individual could be imperilled or seriously impaired." Access in these circumstances requires the approval of a DHS senior manager, on a case-by-case basis. The data must be permanently deleted within 30 days of receipt by DHS, although a longer retention period may be permitted, in accordance with U.S. law, for the purpose of a specific investigation, prosecution or enforcement action (*Article 6*).

In respect of PNR data retention periods and access to the data, the new Agreement introduces rules that provide for progressive restriction of access. PNR data may be retained in an active database for the first five years, but should be "depersonalised and masked" after six months of retention (*Article 8(1)*). After five years, the data shall be transferred to a dormant database for up to ten years. During

this ten-year period the data may be re-personalised and retrieved in connection with law enforcement operations where there is "an identifiable case, threat or risk"; but for serious transnational crime which does not relate to terrorism this can be done only within the first five years, which is five years less than under the Agreement from 2007 (*Article 8(3)*).

After ten years, PNR data must be made fully anonymous by deleting all elements, which might identify the individuals to whom the data relate (*Article 8(4)*). This means that, after the expiration of the total fifteen year retention period, the data will no longer be deleted, as it was provided by the Agreement from 2007, but rather will be kept anonymised for indefinite period, without further possibility of re-personalisation.

The Agreement specifies that the need for a ten-year dormant period of data retention will be subject to review and evaluation one year after the Agreement's entry into force (*Article 8(6)*).

DHS must make available to the public the information on the use and processing of PNR data, and publicise the means whereby individuals may access their PNR data and, where appropriate, seek rectification or redress (*Article 10*). The Agreement also sets out the basis, in accordance with the U.S. law, for seeking administrative or judicial redress (*Article 13*).

The Agreement stipulates that compliance with data protection safeguards is subject to "independent review and oversight by Department Privacy Officers, such as the DHS Chief Privacy Officer" and that additional levels of independent review and oversight are provided by the DHS Office of Inspector General, the Government Accountability Office and the U.S. Congress (*Article 14*).

### **Chapter III: Data transmission, sharing and use in law enforcement and judicial cooperation (Articles 15 – 18)**

The Agreement provides that the so-called "push method" applies to the transfer of PNR data (*Article 15(1)*), but it also specifies that carriers may be required to give DHS access to their PNR databases between or after the regular transfers, in two situations:

- When carriers are unable, for technical reasons, to respond timely to a request for PNR data; and
- When DHS requires access to PNR data "in exceptional circumstances in order to respond to a specific, urgent and serious threat" (*Article 15(5)*).

The initial transfer of PNR data should be made 96 hours before the scheduled flight departure time, but the Agreement does not stipulate a maximum number of transfers per flight, leaving these to be determined by DHS (*Article 15(3)*).

DHS may share PNR data with other U.S. Government authorities, provided that they apply the same or comparable data protection safeguards and only use the data for the purposes specified in the Agreement (*Article 16*).

Transfers outside the U.S. to third country authorities are permitted if use of the data is consistent with the purposes set out in the Agreement and comparable data protection safeguards apply. If the transfer of PNR data concerns a citizen or resident of an EU Member State, that Member State must be informed of the transfer (*Article 17*).

The Agreement requires DHS to make available to Member States' police or judicial authorities, and to Europol and Eurojust, any relevant and appropriate analytical information obtained as a result of processing of PNR data (*Article 18(1)*), and these authorities, in a specific case, may also request access



to U.S.-held PNR data and related analytical information (*Article 18(2)*). These provisions constitute a considerable progress made by the new Agreement in the field of the EU-U.S. law enforcement and judicial cooperation; in the Agreement from 2007, such cooperation was not yet of a binding nature.

However, the information only has to be shared with the EU authorities when it concerns cases under examination or investigation relating to terrorism (as defined in *Article 4(1)(a)*) or to serious transnational crime (*Article 4(1)(b)*); other purposes mentioned in *Article 4* fall outside the obligation of law enforcement and judicial cooperation.

## Chapter IV: Implementing and final provisions (Articles 19 – 27)

The Agreement includes a provision which stipulates that, by virtue of concluding and implementing the Agreement, DHS will be deemed to provide an adequate level of protection for the processing and use of PNR data, as required by EU law, and that EU air carriers will also be deemed to have complied with EU law (*Article 19*).

A further provision notes that the establishment of an EU PNR system, which currently is under consideration<sup>28</sup>, may have an effect on the EU-U.S. Agreement and may require the parties to consult with a view to ensure full reciprocity, particularly as regards the applicable data protection standards (*Article 20*).

The implementation of the Agreement will be subject to a joint review by the parties within one year of its entry into force, followed by a joint evaluation of the Agreement itself after four years (*Article 23*).

### Annex: List of PNR data types

The Annex to the new Agreement contains 19 types of PNR data to be transferred from the European air carriers' databases to the U.S. DHS, which are equivalent to the types of data envisaged in the Agreement from 2007.

A further detailed comparison of the key provisions of the new Agreement with the provisions of the EU-U.S. Agreements from 2004 and 2007 has been included in the Rapporteur's Sophia in 't Veld Draft Recommendation on the draft Council decision on the Conclusion of the new EU-U.S. PNR Agreement<sup>29</sup> presented at the European Parliament LIBE Committee meeting of 27 February 2012. The

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<sup>28</sup> European Commission, [Proposal for a Directive](#) of the European Parliament and of the Council on the use of Passenger Name Record data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime (COM (2011) 32 final 2011/0023 (COD)).

See also: Eurojust's Terrorism Convictions Monitor, Issue 10 (May 2011), Chapter VI: "Topic of Interest – Proposal for a European Parliament and Council Directive on the use of Passenger Name Record data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime". The chapter contains a summary of background information, state of play with the legislative procedure and analysis of core provisions of the Draft Directive, as well as a brief overview of other EU legal instruments related to the area of the proposal and national PNR data systems.

<sup>29</sup> European Parliament – Committee on Civil Liberties, Justice and Home Affairs, [Draft Recommendation](#) on the draft Council decision on the Conclusion of the Agreement between the United States of America and the European Union on the use and transfer of Passenger name Records (PNR) to the United States Department of Homeland Security, Rapporteur: Sophia in 't Veld (17433/2011 – C7-0511/2011 – 2011/0382(NLE)) and the [comparative chart](#) of the key provisions in the 2004, 2007 and 2012 agreements.



Draft Recommendation focuses on the assessment of the Agreement's provisions against the criteria set up in the European Parliament's Resolution<sup>30</sup> of 5 May 2010. Also, a comprehensive comparative study of the provisions of the new EU-U.S. PNR Agreement has been performed by Prof. Dr. Gerrit Hornung (Universität Passau) and Dr. Franziska Boehm (Université du Luxembourg)<sup>31</sup>.

### Overview of other EU international agreements in the area of use and exchange of PNR data

Besides the Agreement with the United States, the EU has entered into Agreements on the transfer of PNR data with Australia and Canada. The Commission's Communication on a global approach to transfers of PNR data to third countries<sup>32</sup> was accompanied by the recommendations requesting the Council to authorise re-negotiation of these Agreements too. Following the European Parliament resolution of 11 November 2010,<sup>33</sup> the Council authorised the Commission on 2 December 2010 to open negotiations on behalf of the EU with these countries.

#### EU-Australia PNR Agreement

The new Agreement between the European Union and Australia on the processing and transfer of PNR data by air carriers to the Australian Customs and Border Protection Service<sup>34</sup> was adopted by the Council on 22 September 2011<sup>35</sup> and signed on 29 September 2011<sup>36</sup>. The European Parliament gave its consent to the Agreement on 27 October 2011<sup>37</sup>. Currently the procedure is completed and the

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<sup>30</sup> European Parliament, [Resolution of 5 May 2010](#) on the launch of negotiations for Passenger Name Record (PNR) agreements with the United States, Australia and Canada.

<sup>31</sup> Prof. Dr. Gerrit Hornung, LL.M., Chair of Public Law, Information Technology Law and Legal Informatics, Universität Passau and Dr. Franziska Boehm, Centre for Security, Reliability and Trust (SnT), Université du Luxembourg – [Comparative Study](#) on the 2011 draft Agreement between the United States of America and the European Union on the use and transfer of Passenger Name Records (PNR) to the United States Department of Homeland Security (Passau/Luxembourg, 14 March 2012).

<sup>32</sup> European Commission, [Communication](#) on the global approach to transfers of Passenger Name Record (PNR) data to third countries /COM(2010) 492 final/.

<sup>33</sup> European Parliament, [Resolution of 11 November 2010](#) on the global approach to transfers of passenger name record (PNR) data to third countries, and on the recommendations from the Commission to the Council to authorize the opening of negotiations between the European Union and Australia, Canada and the United States.

<sup>34</sup> [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.

<sup>35</sup> Council of the European Union, [Press Release of 22 September 2011](#) "Council gives green light for the new EU-Australia agreement on Passenger Name Records (PNR), Brussels, 22 September 2011".

<sup>36</sup> Council of the European Union, [Press Release of 29 September 2011](#) "Signature of the EU-Australia agreement on Passenger Name Records (PNR), Brussels, 29 September 2011".

<sup>37</sup> European Parliament, [Legislative Resolution of 27 October 2011](#) on the draft Council decision on the conclusion of the Agreement between the European Union and Australia on the processing and transfer of Passenger Name Record (PNR) data by air carriers to the Australian Customs and Border Protection Service (09825/2011 – C7-0304/2011 – 2011/0126(NLE)).

Council's decision on the conclusion of the Agreement<sup>38</sup> is awaiting publication in the Official Journal.<sup>39</sup>

The newly concluded Agreement will replace the EU-Australia PNR Agreement signed on 30 June 2008<sup>40</sup>, which never reached its formal conclusion and, from its signature date, was applied on a provisional basis<sup>41</sup>.

The main aspects of the new PNR agreement with Australia are listed in the Council's Press Release announcing signing of the Agreement<sup>42</sup>:

- a strict purpose limitation, the use of PNR data being limited to the prevention, detection, investigation and prosecution of terrorist offences or serious transnational crime;
- a legally binding commitment from the Australian Customs and Border Protection Service to inform the Member States' police or judicial authorities, Europol and Eurojust of any EU relevant intelligence flowing from the analysis of these PNR data;
- a robust data protection regime with an absolute prohibition of the use of sensitive data, strong data security and integrity requirements;
- rights of access, rectification and erasure, and the possibility to obtain administrative and judicial redress;
- a limited storage of PNR data for a period of five years and a half; deletion of all elements of PNR data which could lead to the identification of passengers after the first three and a half years.

## EU-Canada PNR Agreement

Agreement between the European Community and Canada on the processing of Advanced Passenger Information and Passenger Name Record data was adopted by the Council on 18 July 2005<sup>43</sup> and signed on 3 October 2005<sup>44</sup>. The Agreement entered into force on 22 March 2006<sup>45</sup> and enabled the

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<sup>38</sup> Council of the European Union, [Decision on the conclusion of the Agreement between the European Union and Australia](#) on the processing and transfer of Passenger Name Record (PNR) data by air carriers to the Australian Customs and Border Protection Service.

<sup>39</sup> European Parliament, Legislative Observatory, [Procedure file 2011/0126\(NLE\)](#).

<sup>40</sup> [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

<sup>41</sup> 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 – [Summary of Treaty](#) (Treaties Office Database, European External Action Service).

<sup>42</sup> Council of the European Union, [Press Release of 29 September 2011](#) "Signature of the EU-Australia agreement on Passenger Name Records (PNR), Brussels, 29 September 2011".

<sup>43</sup> Council of the European Union, [Decision 2006/230/EC of 18 July 2005](#) on the conclusion of an Agreement between the European Community and the Government of Canada on the processing of API/PNR data.

<sup>44</sup> [Agreement between the European Community and the Government of Canada](#) on the processing of Advance Passenger Information and Passenger Name Record data.

<sup>45</sup> Agreement between the European Community and the Government of Canada on the processing of Advance Passenger Information and Passenger Name Record data – [Summary of Treaty](#) (Treaties Office Database, European External Action Service).



Canadian Border Services Agency to collect PNR data on airline passengers flying into Canada from the EU. It expired in September 2009, because of the expiry of the Commission's adequacy decision concerning Canadian data protection standards<sup>46</sup>.

Pending the conclusion of the new EU-Canada PNR Agreement, the transfer of PNR data has been taking place on the basis of unilateral undertakings by Canada to the EU Member States.<sup>47</sup>

A new EU-Canada long-term PNR Agreement is currently being negotiated. Accordingly to the Provisional Agenda for Council meetings during the first semester of 2012, the adoption of the Council decision on concluding of the new EU-Canada PNR Agreement is envisaged in the agenda of the Justice and Home Affairs Council on 7-8 June 2012<sup>48</sup>.

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<sup>46</sup> European Commission, [Decision 2006/253/EC of 6 September 2005](#) on the adequate protection of personal data contained in the Passenger Name Record of air passengers transferred to the Canada Border Services Agency (notified under document number C(2005) 3248) (Text with EEA relevance).

<sup>47</sup> European Parliament, [Resolution of 5 May 2010](#) on the launch of negotiations for Passenger Name Record (PNR) agreements with the United States, Australia and Canada – Preamble to the Resolution.

<sup>48</sup> Justice and Home Affairs Council, [Provisional Agenda](#), Luxembourg – 7-8 June 2012 (Note of 19 December 2011 from the General Secretariat of the Council to the Delegations “Provisional agendas for Council meetings during the first semester of 2012 (Danish Presidency), p. 38

## VI. VSIE/ARE

### Concluded/Ongoing trials

#### January – April 2012

##### Sweden

#### January 2012

At a trial at the Gothenburg court one defendant was found guilty and sentenced to three years and six months' imprisonment for setting an arson on a fast food restaurant in Gothenburg, sending threatening letters, some written in his own blood, to fifty people and organisations, linked to animal cruelty or the fur trade, and assaulting the owners and staff of a fashion shop during a demonstration. He also pleaded guilty to smashing the windows of a restaurant. The court ordered the man to pay 428 000 kronor compensation to those affected by his actions.

Source: [The Local](#).

##### United Kingdom

#### March 2012

The founder of the National Anti-Vivisection Alliance (NAVA) was remanded in custody in February 2012 as he breached the conditions of his bail and took part in a protest outside Harlan Laboratories in Leicestershire. He was charged with interfering with the work of Harlan Laboratories and three other firms. The man, considered an animal rights "lone wolf", has a long list of animal rights activities. Following a successful letter and social media campaign against CEOs, which he carried out together with a few supporters, Stena Line, P&O Ferries and DFDS Seaways stopped transporting live animals destined for science laboratories in the United Kingdom. According to scientists, that was a major blow to research into conditions such as muscular dystrophy and motor neurone disease. The man is seen as a key militant who has turned the Internet and online social networks into a weapon for activists. His campaign is now to target airlines.

Source: [The Telegraph](#).

## VII. The Way Ahead

### Ongoing/Upcoming Trials

January – April 2012

*The overview below includes a selection of ongoing and upcoming trials where decisions are expected within the next few months. Any further developments, resulting in convictions or acquittals, will be presented in the next edition(s) of the TCM.*

#### Belgium

Fourteen defendants, arrested in 2010 in a large international operation, were brought to court in Mechelen. The charges filed against them include participating in terrorist activities, leading a terrorist organisation and breaching Belgian arms laws. According to the prosecution, they were plotting to carry out terrorist attacks against Jewish and military targets, recruited others to train in terrorist camps in Afghanistan and Pakistan and discussed their plans in online chat sessions and websites. The group consists of eight Belgians and three Dutchmen all of Moroccan descent, and three Russians of Chechen origin that came in contact with one another via a forum and chatrooms on the website Ansar Al Mujahedien. The prosecution asked for sentences of between two and ten years' imprisonment.

Source: [HLN](#), [RNW](#).

At a trial in Brussels seven fundamentalists are charged with recruiting and having been recruited to participate in armed jihad in Iraq and Afghanistan, and planning attacks on Belgian soil. The defendants were arrested in November 2010 following some house searches during which the police found weapons, terrorist manuals and hold-ups plans. The group is believed to be have been active in Belgium since 2006. The main suspect, for whom the prosecution requested seven years' imprisonment, allegedly joined Al Qaida in 2005 and took part in jihad. He had contacts with one of the defendants in a trial in 2010 in Belgium. He also recruited a security guard that used to work at the European Parliament in Brussels to send him to conflict zones in Afghanistan and Iraq.

Another defendant allegedly spread anti-Semitic and xenophobe messages on his website, which was also used to seek young Muslims and recruit them for jihad. He is the son of a terrorist convicted in June 2011 in Italy to eight years' imprisonment for leading and promoting a transnational criminal group linked to Al Qaida, recruitment, training and financing of kamikaze. The prosecution asked for an eight year sentence for him.

Source: [HLN](#), [De Morgen](#).



In Brussels the chamber of the 1<sup>st</sup> instance court decided to drop the terrorism charges against four alleged members of the left-wing international movement Secours Rouge who are suspected of having participated in the activities of the PCPM. The four would be prosecuted for attempted document forgery and, for one of the defendants, possession of a device that can interfere with GSM-communication. The Federal Prosecution has appealed this decision (*please see also chapter Court Decisions, information from Italy*).

Source: [NLN](#), [De Morgen](#).

## Denmark

At a trial in Copenhagen five defendants are charged with attempted acts of terrorism. They were arrested in 2011 and, according to the prosecution, wanted to destabilise the country and frighten the population with arson attacks. The arsons and arson attempts included the police academy, the intelligence agency, the national police's data centre, two Danish banks, three companies selling mink furs and the Nordic headquarters of Nestlé. The suspects are believed to belong to extremist left-wing groups. If found guilty the defendants face life sentences, which in Denmark generally means serving sixteen years in prison.

Source: [The Copenhagen Post](#).

Four defendants – three Swedish nationals and one Swedish resident – who are charged with terrorism and illegal weapons are tried at the Glostrup Municipal Court. According to the prosecution, they were plotting an attack on the Jyllands-Posten newspaper that published the cartoons of Prophet Muhammad in 2005, and were planning other acts to terrorise the population at large. Three of the men were arrested in Denmark when they were allegedly on their way to the newspaper's offices. The fourth one was arrested in Sweden and later surrendered to Denmark. If found guilty, the defendants face life sentences. The decision of the court is due in mid-June.

Source: [VOA](#).

## Germany

At a trial in Koblenz one defendant has been brought to court for alleged membership in a terrorist organisation (Al Qaida). According to the prosecution, the man was to play a key role in a planned terror plot in Germany. His acquaintance with a person who assisted the organisers of the September 11 attacks is believed to have facilitated his radicalisation. He had allegedly undergone training in terrorist training camps in Pakistan run by Al Qaida and the Islamic movement of Uzbekistan. The man was arrested in Afghanistan in 2010 and turned into a key witness who provides the German government with inside information on Al Qaida.

Source: [Spiegel](#).

### Ireland

In a trial at the Special Criminal Court an alleged leader of the Real IRA has been the first person to be charged with directing terrorism under the legislation adopted in the aftermath of the Omagh bombing in 1988. The trial assumed after the Supreme Court rejected the application of the defence to challenge a refusal of further disclosure of documents relating to an FBI agent who is one of the key witnesses against the defendant.

Source: [Mail Online](#).

### Italy

A group of defendants, arrested in 2007 as alleged members of the new Red Brigades – Partito Comunista Politico-Militare (PCPM), is brought to the court in Milano after the Cassation Court overturned their convictions confirmed by the Assize Court of Appeal in 2010. The trial will consider whether the group was willing and able to use terrorist methods to achieve its programme (*please see also chapter Court Decisions, information from Italy*).

Source: [il Giornale](#), [De Morgen](#).

### Lithuania

An Irishman sentenced in October 2011 to twelve years' imprisonment for attempted smuggling, aiding a terrorist organisation (Real IRA) and illegal possession of arms appealed his conviction claiming he had been set up by the British intelligence. He was arrested in 2008 when he met a Lithuanian agent who pretended to be an arms dealer. The prosecution also appealed the 1st instance decision as it had sought a sixteen-year penalty.

Source: [RTE News](#).

### United Kingdom

At the High Court in Glasgow one defendant is tried in relation to the explosion that took place in Stockholm in December 2010 and killed the bomber himself. The man is accused of having been involved in a conspiracy with the bomber between 2003 and 2011 as well as of transferring money to or for the use of the bomber, in the knowledge or with reasonable cause to suspect it would be used for the purposes of terrorism. On the location of the explosion the police found nine suspected pipe bombs, of which only one was "empty", as well as an international driver's licence from Belgium, a Swedish identity card and a Swedish bank card registered to the name of the bomber.

Source: [Daily Record](#).

In a trial due to start in October two men, believed to have been part of a group that tried to finance terrorism in Somalia, will face charges for offences that allegedly took place between August 2008 and

June 2011 and carry a sentence of up to life imprisonment. One of the defendants is suspected of plotting to raise funds through a “Darwar” religious stall in the United Kingdom. The other is accused of intending to assist acts of terrorism and possessing *44 Ways to Support Jihad*, written by the deceased Al Qaida leader Anwar al Awlaki. Two more individuals were still in police custody.

Source: [Wales Online](#).

## Norway

On 16 April the trial against the lone wolf, who set up a car bomb in the centre of Oslo and then went on a shooting rampage at a youth political summer camp on the island of Utoeya in July 2011, began in Oslo. His actions claimed eight lives in Oslo and sixty-nine lives on Utoeya and injured a total of two hundred and forty-two people. The man was charged with acts of terrorism and mass murder. The case is heard by a panel of five judges, one of who was dismissed shortly after the trial began, as he made some comments on a social networking site. The prosecution announced it would call more than ninety witnesses, while the defence lawyers would summon up to forty, including some far right extremists. At the opening of the trial, the defendant admitted the committed acts but denied criminal responsibility. He said he acted in self-defence. After reading a thirteen-page statement, he was cross-examined by the prosecution. He confirmed his intention to kill hundreds in his attack on the Labour Party summer camp, with his primary target being a former prime minister. He also hoped his car bomb in Oslo would kill the entire government. In his words, his actions were “a small barbarian act to prevent a larger barbarian act”. He reiterated his belief that these were “legitimate targets”, and added that there were many others in Norway “who deserve to be executed, e.g. journalists and members of Parliament”. The defendant told the court that there could be only two “just” outcomes to his trial – acquittal or the death penalty. He is determined to persuade the judges he is sane and motivated by a political ideology. He denied the results of the November 2011 psychiatric report that assessed him as a paranoid schizophrenic. In April 2012 a new report concluded he was sane. His defence claims sanity as well and in its attempts to demonstrate how someone with extreme political views can be tried as sane, has called as a witness the founder of the radical Islamic group Ansar al-Islam, who was recently sentenced to five years’ imprisonment (*please see chapter Other Court Decisions of Interest, information from Norway*). If the court decides he is criminally insane, the defendant will be committed to psychiatric care; if considered to be mentally stable and found guilty, he will be sent to prison. The trial is expected to last till 22 June 2012 and the verdict is due to be pronounced some weeks later.

Source: [BBC](#).

## United States

Trials against the man believed to be the mastermind of the September 11 attacks and four other co-defendants are due to open in the military court at the Guantánamo Bay. He was captured in 2003 and spent the following three years in secret overseas CIA prisons. The last six years he was kept in Guantánamo Bay where a special courtroom will host the trial. Together with three co-accused, he faces the death penalty for conspiracy and terrorism charges and thousands of counts of murder equal to the number of casualties of the September 11 attacks. The man who had studied mechanical



engineering in the U.S. is the uncle of the terrorist responsible for the 1993 World Trade Centre truck bomb that killed six people. In 1994 they both plotted, but failed in their plans, to blow up planes flying between the U.S. and Asia. The man returned then to Afghanistan in 1996 and renewed his links with Osama bin Laden, who approved his plan that led to the hijacking of four passenger planes in September 2001. Following the attack, he became Al Qaida's chief terror strategist with a global reach. He dispatched the British "shoe bomber", to try and blow up a plane from Paris to Miami, and coordinated terror plots in Pakistan and Bali. He was also responsible for the beheading of an American journalist captured while investigating the Al Qaida network in Karachi. He allegedly confessed full responsibility for September 11 and more than a dozen other plots, including plans to assassinate the late Pope John Paul II and former U.S. presidents Bill Clinton and Jimmy Carter. His initial confessions were however collected by waterboarding, considered as coerced by the Obama administration. According to the transcripts of a close-door hearing in 2007, he claimed responsibility for the September 11 operation, "from A to Z". One of his former accomplices has already made a plea deal and will testify against him.

Source: [The Telegraph](#).

## Annex: Future Steps in the Development of the TCM

### Results of the TCM Questionnaire

#### Introduction

During the Strategic Meeting on terrorism that took place on 8 June 2011 at Eurojust the participants were requested to share their opinion regarding the future steps in the development of the TCM by replying to a set of questions on specific requirements to the report. During the meeting and the following months a total of ten answers were received from representatives of Belgium, Bulgaria, Estonia, Greece, Lithuania, Norway, Slovenia and the United Kingdom (the questions were answered by two representatives of Greece and one set of replies is anonymous, therefore the country of origin of the respondent could not be identified).

In February 2012 a renewed request was sent, via the National Desks at Eurojust, to the representatives of the countries that did not reply to the questionnaire. Responses were received by the national authorities of the Czech Republic, France, Germany, Spain and Sweden.

Additionally, all National Desks and the respective national authorities were encouraged to share with the Case Analysis Unit relevant court decisions that could be analysed as well as topics or issues that they would like the drafting team to focus on in the next TCMs.

#### Overview of Replies

The summary below highlights the replies to questions where a clear preference is established based on the majority of the replies received.

#### Themes of interest

The following themes were indicated by the respondents as interesting:

- Analysis of judgments with mutual legal assistance or mutual recognition issues in and outside the EU, in order to establish best practices (indicated by fourteen out of fifteen respondents);
- Indictment analysis - legal investigative problems encountered (indicated by thirteen out of fifteen respondents);
- Examination of the use of special investigative techniques (indicated by fourteen out of fifteen respondents);
- Analysis of which evidence was or was not accepted during the terrorism trials and, most importantly, for which reasons (indicated by thirteen out of fifteen respondents);
- Analysis of the legal grounds on which a decision for acquittal was taken (indicated by thirteen out of fifteen respondents);
- Evaluation of the kind of terrorist offences, which are prosecuted more frequently in the reporting period (indicated by nine out of fifteen respondents).



### Other topics and comments

#### *Inviting prosecutors to submit case presentations for inclusion in the TCM*

Whilst eight out of the fifteen respondents replied that they would be in favour of prosecutors being invited to submit case presentations for inclusion in the TCM, only three of them indicated that they would be interested in preparing some articles for this purpose. These three respondents will be contacted individually in order to discuss their possible future input.

#### *Gearing the reporting towards certain organisations and types of terrorism*

Eight respondents indicated that they would be interested in gearing the reporting towards certain organisations and types of terrorism, with Islamist organisations being specifically mentioned by one reply. It was, however, also pointed out that the reporting should cover all areas of terrorism so as to ensure that trends across the spectrum of terrorist activity can be monitored. Additionally, it was mentioned that focusing on some special type of terrorism or organisation could be counterproductive as it should not in principle alter the proceedings of a legal trial.

#### *Monitoring of national case-law in order to evaluate the impact of the 2002 and 2008 Framework Decisions on terrorism*

The majority (eleven) of the respondents indicated no particular or little interest in the TCM carrying out systematic and in-depth monitoring of national case-law in order to evaluate the impact of the 2002 and 2008 Framework Decisions on terrorism and in the view of assessing the potential need for amendments in the legislation. The difficulties in evaluation are mentioned as a reason for a negative reply.

## The Way Forward

All replies to the questionnaire will be duly considered in the future planning and drafting of the TCM.

Additionally, the TCM drafting team will take into consideration the request of the EU Counter-Terrorism Coordinator, extended during a CODEXTER meeting at the Council of Europe in Strasbourg in April 2012, for Eurojust to monitor how courts are dealing with the new anti-terrorism legislation. Such an overview will be attempted and possibly included in the next issues of the TCM.

In order to be able to produce analyses that focus on the above-mentioned themes of interest in a professional and comprehensive manner, the Case Analysis Unit kindly requests the competent national authorities to share with Eurojust relevant court decisions that could be analysed, so that lessons learnt and best practices can be identified.

# Contact and Analysis Team

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**Eurojust May 2012**