



EUROJUST

European Union Agency for
Criminal Justice Cooperation

Eurojust Meeting on Counter-Terrorism, 16-17 November 2022

Summary of Discussions

Criminal justice across borders



Eurojust Meeting on Counter-Terrorism

The Hague, 16-17 November 2022

(Eurojust's premises and videoconference)

Summary of Discussions

The 2022 European Union Agency for Criminal Justice Cooperation (Eurojust) Meeting on Counter-Terrorism focused on operational experience with cases opened on the basis of information transmitted within the framework of the European Judicial Counter-Terrorism Register (CTR), cross-border investigations into the financing of terrorism, the impact of migrant smuggling on terrorism and various legal challenges in counter-terrorism proceedings. The meeting gathered the national correspondents for Eurojust for terrorism matters, specialised prosecutors from both EU Member States and partner non-EU countries, as well as representatives from EU institutions and agencies, and international organisations.

Welcoming Remarks

The Vice-President of Eurojust and the Chair of the Counter-Terrorism Working Group welcomed participants to the 2022 Eurojust Meeting on Counter-Terrorism (CT), which is designed to provide a trusted platform for sharing experiences with investigations and prosecutions and exchanging best practices.

The Vice-President emphasised the overall large interest in CT meetings in response to the need to address challenges stemming from the continued and evolving terrorist threat. In some cases with offences committed in relation to an armed conflict, cumulative prosecution of perpetrators has been allowed for both terrorist offences and core international crimes (e.g. genocide, war crimes or crimes against humanity).

The Vice-President mentioned the newly revised Eurojust Regulation (Regulation (EU) 2018/1727), by which the Agency's mandate has been extended to include preserving, analysing and storing evidence relating to core international crimes, not only in the context of the war in Ukraine, but also related to other possible armed conflicts. A project has been launched with the objective of establishing a core international crimes evidence database (CICED), aimed at facilitating the work of all Member States and partners involved in core international crime investigations.

Eurojust will generally continue to support the fight against cross-border criminal activities of violent extremists and terrorists, and to facilitate judicial cooperation in terrorism cases among judicial authorities at the EU and international level.

The Chair of the Counter-Terrorism Working Group presented the four topics of this year's meeting that are of direct relevance to the priorities and CT efforts at the EU level: (1) the CTR; (2) cross-border investigations into the financing of terrorism; (3) the impact of migrant smuggling on terrorism; and (4) legal challenges in CT proceedings. The chair added that the contributions by the representatives of the EU Counter-Terrorism Coordinator (EU CTC), the European Commission's Directorate-General (DG) for Justice and Consumers and DG Migration and Home Affairs will provide further updates on ongoing developments at the EU level, including as concerns the upcoming amendments to the Eurojust Regulation.

On behalf of Eurojust, the Chair of the Counter-Terrorism Working Group expressed her gratitude to the national correspondents for terrorism matters and judicial practitioners from Member States and partner non-EU countries for their willingness to attend this meeting, and to the prominent speakers who would share their expertise on the topics. She also thanked the representatives of EU institutions and agencies for their contribution to the discussions.

Ongoing developments at the EU level: Keynote speakers

The representative of the EU CTC recapped some of the priorities presented during the 2021 Eurojust Meeting on Counter-Terrorism that are currently still a priority. Reference was made to the evaluation of the implementation of the Counter-Terrorism Action Plan for Afghanistan and the implementation of the measures in relation to the camps in North-East Syria and Iraq, in particular the rehabilitation and reintegration of non-EU-country nationals. The importance of the digitalisation of justice and the support provided by the EU CTC to the CTR were emphasised, including the importance of systematically sharing information on all CT proceedings with Eurojust and providing regular updates to enable link detection. The ongoing dialogue with Saudi Arabia on countering terrorist financing was also mentioned.

In addition, concerns related to the potential CT dimension of the war in Ukraine were outlined, including the possibility for terrorists to enter the EU by taking advantage of the influx of refugees from Ukraine and to make use of the weapons currently used in Ukraine to commit terrorist acts in the future. The need to be prepared to manage potential threats stemming from extremist volunteers fighting in Ukraine and the need to address the danger of Russian disinformation and sabotage were also mentioned. Major efforts have been made to reinforce border security and prevent the trafficking of firearms. Violent extremists who travel to Ukraine to take part in the fighting are considered a minority. Nevertheless, risks exist as they gain combat experience and may become more radicalised. The challenges to monitoring travel to Ukraine, and the different approaches towards those joining different combat groups there, raise the importance of the analysis of national legislations and criminal justice responses. This is an area where Eurojust could potentially play a role. Furthermore, Eurojust's support for the judicial proceedings with regard to the war in Ukraine was praised and Member States were encouraged to turn to Eurojust in their relevant proceedings.

The representative of the EU CTC also recalled the four strands agreed at the EU level to address right-wing violent extremism and terrorism. The challenges relating to the use of the internet, the conspiracy beliefs that drive antisystem moves and the vague ultimate objectives of violent antisystem extremism were noted, including the little or no moderation of extremist content on social media platforms. In this respect, a specific focus has been placed on prevention and on developing a common understanding of the phenomenon across the EU.

Promoting the use of battlefield information as evidence in criminal proceedings and cumulative prosecutions for terrorism and core international crimes, if allowed by national law, remain a priority too. The impact of developments at the EU level, e.g. relating to data retention, encryption, and artificial intelligence, was mentioned, along with recent rulings of the Court of Justice concerning the processing of data for national security purposes. CT practitioners were invited to voice their views on the importance of retaining capabilities to investigate alleged criminal acts and ensuring the necessary data is available.

The representative of DG Justice and Consumers informed the participants of the latest legislative developments in the area of digital criminal justice. In particular, the progress achieved with the legislative initiative concerning digital information exchange in terrorism cases was presented. The initiative aims to amend the Eurojust Regulation in order to improve the functioning of the CTR, the digital information exchange with Eurojust and cooperation with non-EU countries. Proposed key amendments bring clarity as to the obligation of Member States to transmit information to Eurojust, the categories of data to be transmitted, the rules on data retention, and access to the Eurojust case management system (CMS) at the national level. Following the adoption of the Council of the European Union's general approach in June 2022 and the position of the European Parliament in November 2022, the inter-institutional negotiations are currently ongoing, with the aim to reach an agreement on the amendments as soon as possible.

The proposed amendments follow the amendments to the Eurojust Regulation adopted in June 2022 through Regulation (EU) 2022/838 concerning the preservation, analysis and storage at Eurojust of evidence relating to genocide, crimes against humanity, war crimes and related criminal offences. Based on these amendments, Eurojust was authorised to establish a dedicated database, the CISED, which should be fully functional towards the end of 2022 and will be integrated in the future Eurojust CMS.

Another legislative initiative that has advanced in 2022 concerns the establishment of a joint investigation teams (JITs) collaboration platform. The Council decided on its general approach in June 2022, with limited amendments to the Commission proposal, including on the role of JIT agreements for opening and managing a JIT space, the role of the JITs Network Secretariat and the JIT space administrator(s), the inclusion of the European Public Prosecutor's Office and some minor data-protection-related changes. In October 2022, the Parliament adopted its position and proposed some amendments concerning, among other things, the participation of international judicial authorities, the extension of the scope to specialised customs JITs (based on the Naples II Convention), the connection with the Secure Information Exchange Network Application (SIENA) and new tasks for the JITs Network Secretariat, including training on the use of the platform, outreach activities and data protection expertise. The first political trilogue on the legislative proposal took place on 14 November 2022, with the aim of reaching an agreement soon.

The representative of DG Migration and Home Affairs presented the DG's CT priorities and projects in 2022, in particular the ongoing implementation of the 2020 Counter-Terrorism Agenda for the EU. Under the Agenda's 'prevent' pillar, specific focus has been placed on countering radicalisation and preventing extremism taking root. To this end, DG Migration and Home Affairs is currently helping Member States implement Regulation (EU) 2021/784 on addressing the dissemination of terrorist content online, which entered into force in June 2021. Work is also ongoing within the framework of the EU Internet Forum, which has produced guidelines for tech companies concerning online content moderation, borderline content, etc., and within the framework of the Radicalisation Awareness Network (RAN), which will be transformed into a knowledge hub in the coming years.

Under the Agenda's 'protect' pillar, the use of battlefield information remains crucial to detect suspected terrorists at the EU's borders. DG Migration and Home Affairs continues to engage with key non-EU countries to facilitate information sharing and ensure first-line officers have sufficient information and tools to detect such suspected terrorists. The legal basis for the Schengen Information System has also been adapted to allow for the insertion of information from non-EU countries by Member State nationals in the interest of the EU following a request by the European Union Agency for Law Enforcement Cooperation (Europol) (Regulation (EU) 2022/1190).

Furthermore, steps have also been taken to cut off supplies to terrorists, including of firearms and chemical, biological, radiological and nuclear agents.

Under the Agenda's 'respond' pillar, the added value of Directive (EU) 2017/541 on combating terrorism as the main criminal law instrument at the EU level has been recognised. The evaluation of the directive confirmed that it is a functioning instrument that has achieved its objectives.

Furthermore, the importance of partnerships with non-EU countries to improve security within the EU was emphasised. The Joint Action Plan on CT with the Western Balkans, in which Eurojust also participates, was given as an example of excellent results that have been achieved.

First session: The European Judicial Counter-Terrorism Register (CTR)

Implementation and functioning of the CTR: Follow-up to potential links

The Vice-Chair of the Counter-Terrorism Working Group moderated this session. She emphasised Eurojust's strong belief in the CTR and its benefits for the Member States. Under the existing legal framework, non-EU countries are not obliged to report relevant CT proceedings to Eurojust; however, partner non-EU countries may also benefit indirectly from the enhanced sharing of information, as the Eurojust CMS allows for cross-checks of all inserted data. The Vice-Chair of the Counter-Terrorism Working Group referred to the added value the CTR has already brought to ongoing CT investigations and prosecutions, in particular those supported by the National Desk of Italy at Eurojust.

The National Member for Italy at Eurojust together with a seconded national expert to the National Desk of Italy shared the Italian Desk's operational experience with cases opened on the basis of CTR. Following this, they presented two relevant cases.

The CTR is a unique EU-wide operation tool. It was set up in 2019, based on Council Decision 2005/671/JHA. Through the CTR, Member States share information on terrorism investigations and prosecutions. Its purpose is to detect links between judicial CT proceedings and to identify cooperation and coordination needs. Through the CTR, analysis is done and lessons learned to improve the judicial response to terrorism.

The Italian District Anti-Mafia and Counter-Terrorism Directorates contribute to the transmission of information, which is then centralised and transmitted by the national correspondent for terrorism matters, the National Anti-Mafia and Counter-Terrorism Directorate. The National Member for Italy at Eurojust receives the information personally.

The competent Italian authorities transmit information on: (a) terrorism proceedings that have, prima facie, a transnational dimension, (b) terrorism proceedings with a purely national scope and where links with another Member State's jurisdiction may only emerge after information sharing.

The CTR fully respects confidentiality, secrecy and data ownership.

Out of a total of 1 413 CTR entities in the years 2019–2021, Italy contributed 370.

Operational follow-up to CTR data reveals: (a) prompt feedback to national authorities on potential links, (b) assistance for the specific needs of each case to ensure efficient coordination and contribute to the successful outcome of investigations and prosecutions; (c) the possibility to take the appropriate action towards other National Desks and Liaison Prosecutors by considering Eurojust's own initiatives (sharing information, coordination of investigations, triggering new cases).

Several cases were opened at Eurojust based on CTR data as a result of the identification of links between national proceedings or at national authorities' request. The main alleged offences are participation in a terrorist organisation, terrorism financing and other crimes such as counterfeiting of documents.

In one case, investigating a suspected foreign fighter, the Italian authorities sought to identify, through the CTR's functionalities and judicial cooperation tools, possible links with the main target of their investigation and with other terrorism cases. In February 2020, the Italian Desk at Eurojust opened a case towards five Member States, one non-EU country and Europol. Over the course of 2020, Eurojust facilitated multiple European Investigation Orders (EIOs) and mutual legal assistance (MLA) requests, gathering further evidence and witness testimonies in support of the Italian investigation. Eurojust also facilitated spontaneous exchanges of information between the national judicial authorities involved and the sharing of information with Europol. In July 2020 and October 2020, Eurojust organised two coordination meetings, enabling national authorities to inform one another about developments in the ongoing investigations and execution of EIOs and MLA requests, discuss future judicial cooperation and coordination needs and agree on the most efficient way forward. In May 2021, the main target of the investigation was sentenced to four years' imprisonment for participation in a terrorist organisation. The Court of Assize of Appeal of Milan upheld the conviction in December 2021.

In another case, CTR information served as a basis to identify the need for multilateral coordination and pursue it through Eurojust. Following an investigation, a person was arrested and later convicted of possession of false documents. The person was also suspected of belonging to an international organisation and of involvement in document forgery. The CTR identified links to five other countries, including to terrorist suspects and cells and also to the provider of the fake documents to the perpetrators of terrorist attacks in Europe. Eurojust organised two coordination meetings and the facilitation of EIOs. The current outcome is an indictment by the preliminary investigation judge at the Court of Bari.

The potentiality of the CTR can even be enhanced depending on the level and completeness of contributions from all the national correspondents for terrorism matters in the Member States.

In the discussion that followed, representatives of Member States shared their experience with the transmission of CTR data to Eurojust and the potential links identified by the Eurojust CMS. It was pointed out that the CTR may prove very useful in cases of persons investigated and prosecuted for terrorist offences in different Member States.

It is important to make a distinction between the *raison d'être* of the CTR and the technical difficulties that may be encountered when collecting and transmitting the information to Eurojust. Despite the limited resources and those technical difficulties, the CTR has proven to be a useful tool. The preventive aspect of the sharing of information within the framework of the CTR was also underlined.

The CTR was concluded to be crucial and the need to continue enhancing the sharing of information and the Eurojust CMS was emphasised. The possibility for national authorities to enter information directly into the Eurojust CMS under the current provisions of the Eurojust Regulation and under the upcoming CTR-related amendments was also discussed.

Second session: Cross-border investigations into financing of terrorism

The representatives of the Public Prosecutor's Office Milan and the Italian National Anti-Mafia and Counter-Terrorism Directorate made a presentation on a cross-border terrorism financing investigation started against a foreign fighter for crimes stipulated by Article 270bis of the Italian Criminal Code (i.e. association for the purpose of terrorism, including international terrorism, and subversion of the democratic order). The Italian authorities then shared their national experience and best practices in relation to this specific case.

The special investigation targeted an international network of criminals linked by financial transactions. The main suspect, a Syrian fighter for the militia of the so-called Islamic State of Iraq and the Levant (Daesh), was involved in intensely proselytising via social networks while repeatedly attempting to enlist in the Daesh army. He was convicted for the offence referred to in Article 270bis of the Italian Criminal Code.

In addition, acting as a unique recipient in Italy and a central financial facilitator, he received money from multiple senders, which he subsequently directed to Daesh terrorist fighters and their families. The suspect benefited from the cooperation of a global network of intermediaries located in various foreign territories, including Türkiye, and involved his own family members in the illicit activities. Connections were also established to a Kyrgyz national located in Türkiye and used to facilitate the delivery of funds and obstruct any reconstruction of the money flows. Criminal proceedings were also initiated by the Public Prosecutor's Office Milan against this person with the aim of duly identifying him and acquiring evidence of possible terrorist financing activities carried out.

The analysis of financial investigations revealed patterns of behaviour typical of networks supporting terrorist groups, in particular the use of legal money transfers allowing the illicit nature of transactions to be camouflaged. Modest amounts were transferred via regular money transfer companies and providers. In a more general context, mixed transfer channels or methods are becoming more and more used in terrorism financing cases (e.g. *hawala*, cryptocurrencies or PayPal – which remains problematic as the centre is in Singapore, with which Italy has no convention). The choice seems to depend on the organisation of terrorist networks and the skills of involved criminals.

The analysis of transnational remittances to the main target showed the involvement of persons outside terrorist activities like close relatives or other third parties related to terrorist fighters. Both Member States and non-EU countries (e.g. Austria, Azerbaijan, Belgium, France, Germany, Ireland, Norway, Russia, Sweden, Switzerland and Tajikistan) were implicated.

The connection to terrorism was established through the involved senders suspected of terrorism by being directly or indirectly linked to foreign terrorist fighters (FTFs) helping the main suspect as final money receiver/facilitator.

In 2017, the main suspect was sentenced by the Court of Assizes of Milan to 8 years' imprisonment for participation in the Daesh terrorist association under Article 270bis of the Italian Criminal Code.

International cooperation was activated with a focus on the countries (Germany, Ireland and Switzerland) from where the main target received the funds. Multiple links to several EU and non-EU jurisdictions (Kyrgyzstan, Türkiye and Uzbekistan) and ongoing operations in Belgium and Spain could be concretely detected on the basis of Europol analysis.

One coordination meeting was organised in December 2021 at Eurojust, with the main objective being the exchange of information on investigations into conduct with terrorist purposes pending in

other countries (Belgium, Germany, Spain and Switzerland). A letter of request was sent to Türkiye in order to obtain additional information on one target and establish possible links to other known individuals in the context of international jihadist terrorism. Italy has been informed that the letter of request has been executed, but still awaits its receipt.

Data collection and retention have proved to be of utmost importance in this particular case and generally in transnational organised crime / countering terrorism investigations conducted by Italian public prosecutor's offices. A specific protocol has been implemented with Eurojust in order to ensure that information is promptly shared and uploaded in the CTR. Yet more efforts should be made to improve awareness on its added value to (inter)national investigations and prosecutions, and to change/adjust judicial cooperation consequently.

In the round-table discussions that followed, the participants addressed various challenges in the cooperation with non-EU countries dealing with FTFs. The involvement of Eurojust was generally acknowledged to be very important, especially in relation to MLA requests and JITs.

The importance of consulting the Europol Terrorist Finance Tracking Programme (TFTP) was also stressed.

Third session: The impact of migrant smuggling on terrorism

The Head Prosecutor of the CT Division of the Hellenic Police made a presentation on the impact of migrant smuggling on terrorism. She shared the Greek national experience and best practices, analysing three case studies.

The risk of possible exploitation of migration flows by members of terrorist groups and FTFs to attempt to enter the EU undetected still exists. Although statistics from 2021 (referring to 2020) concluded that there was no evidence showing that terrorists used mixed migration flows systematically in order to move across the borders, in 2022 Europol found that people suspected of being linked to terrorism had been identified as travelling to and through the EU using the services of criminal migrant trafficking networks. The routes taken included the Eastern Mediterranean route, entering Greece from Türkiye and continuing the journey via the Western Balkan routes to the EU.

The assessment of the risk of terrorist smuggling into the EU showed that terrorists are likely to engage in terrorist activities in the EU, such as attacks, recruitment, training and indoctrination, along with criminal activities. Terrorists and FTFs are also likely to join criminal organisations or networks, as they have experience in the use of firearms and are used to violent behaviour. These threats are significantly reduced when CT preventive measures are in place.

There have been no terrorist attacks in Greece related to international terrorist networks since 1991 and there is no direct targeting of the country. There are no indications of active jihadist cells in Greece. The potential threat is mainly related to ongoing regional instability. However, the situation of migrants in camps makes them vulnerable to radicalisation and indoctrination. In addition, there is always the fear of the presence of lone wolves. Finally, persons involved in migrant smuggling, who can facilitate access to the market of counterfeited documents and who allegedly help FTFs to travel with fake identity documents, remain a concern.

The practical challenges to addressing these risks relate to the identification of people returning from conflict zones, whether Member State or non-EU-country nationals, and the verification of the true

identity and personal data of irregular migrants. Regarding the CT measures in place, it was mentioned that Greece cooperates closely with the police authorities of other countries. The importance of the newly developed passenger name record system (interconnection of national passenger information units) and the progress of screening procedures (biometrical/biographical data, communication data, etc.) was highlighted. Other key CT measures used by the Greek authorities are: (a) information gathering through the development of informant networks, (b) exchange of information domestically and internationally, (c) interviewing and monitoring of terrorist suspects, (d) monitoring facilitators to identify possible links with terrorist suspects, (e) training of frontline border officers on common risk indicators and (f) use of available databases.

The Special Violent Crimes Division of the Hellenic Police (DAEEV) cooperates at the European and international level with many other competent authorities from all over the world in the fight against international terrorism. The cooperation of law enforcement authorities includes information exchange, supporting investigations, contributing to the updating of the current terrorism threat, etc. At the national level, cooperation takes place between the Hellenic Police, the National Intelligence Service, the Hellenic Coast Guard, customs, the Financial Intelligence Unit and services of the wider public sector. At the regional/international level, the DAEEV cooperates with Europol, the International Criminal Police Organization and the Police Working Group on Terrorism and has liaison officers to all international law enforcement agencies.

In addition, she presented three cases of migrants who were residing in Greece under international protection and were identified as members of Daesh.

In one case, the CT Division of the Hellenic Police received intelligence in March 2019 about a Syrian suspected of being a member of Daesh who would be trying to infiltrate the EU through the external borders. After a thorough and persistent investigation to identify the person of interest, the suspect was arrested on a Greek island in the Eastern Aegean Sea together with his 2-year-old son on 23 April 2019 for illegal entry. A request was sent to Europol for the use of a seized video for judicial purposes, followed by a forensic examination. On 4 October 2019, the suspect was arrested by virtue of an arrest warrant for participation in Daesh. He confessed to being a member of Daesh and to participating in the aforementioned video. He had military and religious training and had announced Daesh court rulings/sentences. On 6 May 2022, the Appeal Court of Athens sentenced him to 10 years' imprisonment for membership of Daesh. Regarding his 2-year-old son, the juvenile prosecutor ordered he be sent to (a) hospital for medical examination, (b) accommodation facilities and (c) a foster family.

In another case, the CT Division of the Hellenic Police received information and identity details of a person from Syria who had joined Daesh. In order to verify the validity of this information, the DAEEV conducted a diligent investigation and found a video on YouTube. The video footage took place in the Al-Omar field in Deir Ez-Zor, Syria, against members of the Shaitat tribe, and shows the person of interest, among other members of Daesh holding battle rifles and Daesh flags and beating/torturing prisoners. On 19 November 2020, the suspect was arrested within the framework of judicial proceedings for his membership of Daesh. He was tried at first instance and sentenced to life imprisonment.

In a third case, a suspect investigated by the UN Investigative Team to Promote Accountability for Crimes Committed by Da'esh/ISIL (UNITAD) of involvement in terrorist activities, after an assessment, was identified as a person registered in Greece on 11 April 2019 as an asylum seeker

under a different name and was granted subsidiary protection from 29 September 2020. Meanwhile, this person was arrested on 7 December 2021 in Athens because a large number of passports and travel documents of third persons were found in his possession. He was prosecuted on the following charges: participation in a criminal organisation; facilitating the illegal entry/exit of others from Greece; possession of passports and travel documents of third persons; receiving the proceeds of crime and violation of the legislation on weapons. On 17 December 2021, he was released with restrictive measures until his trial. However, the DAEEV continued to monitor him and found that he was preparing to leave Greece, probably for another Member State or the United Kingdom, where close relatives and/or his wife reside. These persons were also alleged to be linked to or involved in Daesh terrorist activities, and before that Al-Qaeda. Therefore, his reconnection with them could pose a risk of further terrorist activity. In light of these facts, the DAEEV, in close cooperation with UNITAD, initially requested UNITAD confirm the identity of the person. Subsequently, the Special Prosecutor for Terrorism submitted a request for judicial assistance to UNITAD to provide the DAEEV with all the evidence and information it had on the person concerned for judicial use. The evidence sent included, inter alia, witness statements, payrolls and video footage. On the 23 December 2021, the above-mentioned person was re-arrested in the context of a preliminary investigation carried out by the DAEEV. He was accused, inter alia, of membership of and participation in Daesh. According to the initial findings, he had allegedly participated in Daesh, with the role of the executor and head of the security office of the organisation, based in the eastern side of Mosul in Iraq. He is currently in custody pending his trial.

In the discussions following the presentation, participants exchanged opinions on whether terrorists are using the opportunity to travel as migrants or whether terrorist organisations use migrant flows in order to send their members to Europe. Some were of the opinion that terrorists just take advantage of the opportunity and that it is not an organised act, while others believed it could be both.

During the discussions, the case of two Iraqi brothers who entered Greece and were alleged members of Daesh was presented. In order to verify the validity of the information, an MLA request was sent to UNITAD and Iraq. A video conference was organised. Diligent searches were conducted. One of the brothers was found to have participated in a propaganda video; original documents concerning Daesh payments were also found.

Fourth session: Examples of legal challenges in CT proceedings

The Argo case

Two representatives of the Federal Prosecutor's Office of Belgium presented a case concerning a planned terrorist attack against an Iranian opposition meeting, attended by thousands of people, at an exhibition centre in Villepinte, outside Paris. A challenging aspect of the case concerned the diplomatic status of one of the suspects and the questions related to immunity that arise from such a status. The investigation started in 2018 with information from the Belgian State Security Service about a possible act of violence in France by an Iranian-Belgian couple. Close cooperation between the Belgian, German, French and Luxembourgish authorities was established, which allowed for the arrest of the Iranian-Belgian couple on their way to France and the arrest of an accomplice in Villepinte (part of the French file). A professional explosive was found in the car in which the Iranian-Belgian couple was travelling. A fourth suspect, the commanding officer, was arrested in Germany

while on holiday with his family, on their way to Austria. This suspect, in reality an intelligence officer of the government of Iran, worked at the Iranian embassy in Vienna, Austria, and claimed diplomatic status. Following the arrest, Germany opened a parallel investigation and cooperation among the Member States involved was facilitated by Eurojust through several coordination meetings.

The importance of this case is demonstrated by the fact that a judicial intervention in similar cases is exceptional. On 4 February 2021, the Court of First Instance of Antwerp convicted the four accused of attempted terrorist assassination and participation in the activities of a terrorist group. They were sentenced to 15, 18, 17 and 20 years' imprisonment respectively. The court considered that the terrorist group was composed of these four accused, and of unidentified persons attached to a specific department of the Ministry of Intelligence of the Islamic Republic of Iran, thereby indicating the involvement of Iran in the case. The specific department referred to was not held to be a terrorist group as such.

The fourth accused, who had been surrendered by Germany to Belgium, invoked diplomatic immunity, which was rejected by the court. The court held that diplomatic immunity only applies to diplomats in the host state, in this case Austria, or for a diplomat in transit. As the accused was shown to have travelled for personal reasons, this provision was not applicable to him. The court also noted that immunity as a diplomat is not comparable to immunity as applied to foreign heads of state and ministers and that this claim by the accused is not supported by international law, case-law or customary law. In addition, with regard to the fact that the accused was suspected of being the (co-)author of a foiled deadly attack in France, the court found that such acts could not be considered as (normal) diplomatic activities. The accused also argued that the court could not exercise jurisdiction due to the state immunity of Iran. The court dismissed this argument, stating that as neither the state nor its organs were on trial, state immunity could not be invoked. According to the court, a determination by a court in the course of criminal proceedings that a certain involvement of a state, its organs or officials in criminal offences has been established does not lead to a violation of state immunity.

On 10 May 2022, the Court of Appeal of Antwerp convicted the first three accused to 18, 18 and 17 years' imprisonment respectively, and deprived them of their Belgian citizenship. The fourth defendant withdrew his appeal. The first two defendants started a procedure before the Belgian Supreme Court, the outcome of which was still pending at the time of the Eurojust meeting.

Following the Belgian presentation, participants discussed the importance and challenges of the case in light of the immunity issues involved. It was mentioned that this case illustrates how a diplomatic status can be misused for terrorism offences or other crimes. Participants referred to the use of information from national and foreign intelligence services in terrorism cases, which may involve certain challenges, including the classified nature of some information. In some countries, intelligence may be useful in acquiring more evidence but cannot constitute evidence. In others, intelligence can only be used in evidence together with additional corroborating evidence and, thus, a conviction cannot be based solely on intelligence.

Cases of cumulative prosecution for terrorism and core international crimes

A representative of the Public Prosecutor's Office of the Netherlands introduced the participants to a number of Dutch cases in which charges were brought for both terrorism and core international crimes. The aim of the Dutch authorities is to bring all returning Dutch FTFs to justice. Cases against FTFs are usually charged as participation in a terrorist organisation (Section 140a of the Dutch Criminal Code), including all kinds of support or recruitment for the organisation, and as conspiracy to a terrorist offence (Section 96 of the Dutch Criminal Code). These provisions have been used for both male and female suspects. While male FTFs have been charged in their role as fighters, female suspects have often been seen as participants in a terrorist organisation for being involved in propaganda activities for Daesh and thus fulfilling an important role.

In recent years, evidence has been collected on the important role of women in taking care of the fighters, their children and, thus, of future fighters. Evidence also showed that some Dutch women participated in fighting brigades for women. Prison sentences in FTF cases vary from 3 to 6 years. As an example, a woman was sentenced to 3 years and 6 months of imprisonment for participation in a terrorist organisation and preparation of or conspiracy to a terrorist offence. The accused was the administrator of a WhatsApp group, through which not only children's clothes and beauty products were sold, but also firearms and hand grenades. Battlefield evidence, more specifically information retrieved from the phone of an FTF, played an important role in this case. The participation of many women in the WhatsApp group led to the opening of several other cases.

A woman, brought back to the Netherlands by the Dutch government, was charged with participation in a terrorist organisation and preparation of or conspiracy to a terrorist offence for being a member of a so-called *khatiba*, a military battalion comprised solely of female members of Daesh. The accused was convicted of participation in a terrorist organisation, but acquitted of her alleged membership of the *khatiba*. According to statements by the husband of the accused, she had an important role in training women on how to handle weapons. These statements were not accepted as evidence by the District Court of Rotterdam, as there was no possibility for the defence to challenge statements of the husband, who was imprisoned in Iraq. The case is pending on appeal. Eurojust's role in facilitating cooperation in this case was acknowledged.

In addition to such cases, the first case in which an FTF was charged with both terrorism-related offences and war crimes was decided by the District Court of The Hague on 23 July 2019. The appeal judgment of 26 January 2021 was rendered by the Court of Appeal of The Hague, which sentenced the accused to 7 years' imprisonment. In addition to participation in a terrorist organisation, the accused was found guilty of posing next to a deceased person and distributing that photo, and two other photos of deceased persons, through YouTube. In determining the length of the prison sentence, the Court of Appeal, in conformity with the District Court, took as a point of departure a term of 2 years and 6 months for the war crime and 6 years for participation in a terrorist organisation.

Another case involved two female administrators of Daesh Telegram channels, a Dutch and a UK national, who had pretended to be men and had provided, among other things, instructions on Telegram on how to make bombs. The Dutch authorities prosecuted the Dutch national for terrorist offences and war crimes. The accused had posted two videos depicting war crimes on Telegram and had added comments below the videos. The District Court of The Hague found the accused guilty of the war crime of outrage upon personal dignity and incitement to commit a war crime. In addition, the court found her guilty of participation in a terrorist organisation and a war crimes organisation,

i.e. an organisation, the object of which is to commit war crimes. The accused was sentenced to 6 years' imprisonment and treatment in a psychiatric hospital.

In the discussion following the presentation, participants exchanged views on the use of battlefield evidence, which is considered important for cases similar to those presented. The Chair of the meeting noted that battlefield evidence remains a priority for Eurojust and foresaw further cooperation with the US authorities on this topic.

Concluding remarks

The Chair of the Counter-Terrorism Working Group summarised the meeting, referring to the interesting presentations during each of the four sessions. The Chair thanked all speakers and participants for their positive contributions to the meeting and closed the 2022 Eurojust Meeting on Counter-Terrorism.

Main findings

- The EU continues to engage with Member States, non-EU countries and global and regional key players to address identified challenges in the area of CT in the most efficient manner.
- The Eurojust CTR is considered to be a crucial tool to identify links between judicial CT proceedings in Member States. It has already proven its operational benefits and has triggered international cooperation and coordination through Eurojust that led to successful prosecutions and convictions. The sharing of information on judicial CT proceedings and the Eurojust CMS need to be further enhanced.
- Recent legislative developments, such as the legislative initiative concerning digital information exchange in terrorism cases, aim to strengthen Eurojust's capacity to identify links between cross-border judicial proceedings. The proposed amendments to the Eurojust Regulation will improve the CTR by bringing clarity as to the obligation of Member States to transmit information to Eurojust, the categories of data to be transmitted, the rules on data retention and the access to the Eurojust CMS at the national level.

Furthermore, the amendments to the Eurojust Regulation adopted in June 2022 extend Eurojust's mandate to include preserving, analysing and storing evidence relating to core international crimes. The dedicated CISED that is to be established at Eurojust will facilitate the work of all Member States and partners involved in core international crime investigations.

- Terrorism financing investigations have an international dimension and involve cross-border networks of criminals linked by financial transactions. Mixed money transfer channels or methods are used, shifting from regular money transfer providers to *hawala*, cryptocurrencies or PayPal. The choice seems to depend on the organisation of terrorist networks and the skills of involved criminals.

Activation of international cooperation is extremely important in ensuring successful results in terrorism financing cases. Links to other jurisdictions and ongoing operations can be concretely detected. As regards the cooperation with non-EU countries dealing with FTFs,

Eurojust's involvement should generally be considered, especially if formal cooperation via MLA requests or JITs is envisaged.

Data collection and retention are of utmost importance. Awareness should be improved on the added value of the CTR for transnational investigations and prosecutions, and judicial cooperation should be changed/adjusted consequently.

- The risk of possible exploitation of flows by members of terrorist groups and FTFs to attempt to enter the EU undetected still exists. Recent statistics show no evidence of terrorists using mixed migration flows systematically in order to move across the borders; however, people suspected of being linked to terrorism had been identified as travelling to and through the EU using the services of criminal migrant trafficking networks. The assessment of the risk of terrorist smuggling into the EU showed that terrorists are likely to engage in terrorist activities in the EU, such as attacks, recruitment, training and indoctrination, along with criminal activities in the EU, including by joining criminal organisations or networks.
- The invocation of diplomatic immunity may also constitute a challenge in terrorism proceedings. As seen in a Belgian case, for which Eurojust provided support, the challenge is multi-layered. A court may have to decide whether the accused can claim diplomatic status at the time of the offences, whether diplomatic immunity can be invoked in the situation at hand and whether prosecution of a person claiming diplomatic status violates state immunity.
- Recent Dutch case-law reconfirms the important role played by women in supporting the activities and objectives of Daesh through a variety of activities, including the administration of social media channels and distribution of materials linked to this terrorist organisation. In recent years, both female and male suspects have faced cumulative prosecutions for terrorist offences and war crimes for their acts committed in the name of Daesh. On multiple occasions, these cases have resulted in convictions and prison sentences of several years. Eurojust continues to provide support to such terrorism and core international crime cases.
- Battlefield evidence is used effectively in terrorism cases and in cases in which terrorism and core international crimes are charged cumulatively. Cooperation with the US authorities is well established in several countries and further engagement is encouraged, along with further engagement with EU agencies and international organisations. Increased use of battlefield evidence is considered essential and the work of Eurojust and the European Network for investigation and prosecution of genocide, crimes against humanity and war crimes on this subject matter remains important, also in light of the war in Ukraine.



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