



**EUROJUST**

# **Eurojust Meeting on Counter-Terrorism**

**17-18 November 2021**

**Outcome Report**

*Criminal justice across borders*

## EUROJUST MEETING ON COUNTER-TERRORISM

*The Hague, 17–18 November 2021*

*(Eurojust's premises and videoconference)*

### SUMMARY OF DISCUSSIONS

The 2021 European Union Agency for Criminal Justice Cooperation (Eurojust) Meeting on Counter-Terrorism focused on the new EU legal framework for addressing the dissemination of terrorist content online, recent terrorist trends and cases of left-wing and right-wing extremism and terrorism, judicial and non-judicial responses to the threat posed by prison leavers, battlefield evidence and the Council of the European Union's Counter-Terrorism Action Plan for Afghanistan. The meeting brought together national correspondents for Eurojust for terrorism matters and judicial practitioners from EU Member States and partner third countries, as well as representatives of EU and international organisations.

### Welcoming remarks

The **President of Eurojust and the Chair of the Counter-Terrorism Working Group** welcomed participants to the 2021 Eurojust Meeting on Counter-Terrorism. The President emphasised the challenges stemming from the continued and evolving terrorist threats, in particular referencing recent terrorist attacks that illustrate the complexity of the situation that national authorities and the EU as a whole face.

It was pointed out that close cooperation between law enforcement, intelligence agencies and judicial authorities is an important part of the strategy to address the terrorist threat efficiently. The need for close cooperation with third countries to strengthen the effectiveness of Member States' and EU efforts to combat terrorism was also mentioned.

The President informed participants that the 2021 meeting would cover four topics that are of direct relevance to the priorities and counter-terrorism (CT) efforts at EU level: (1) the role of judicial authorities in relation to the new EU legal framework for addressing the dissemination of terrorist content online; (2) recent terrorist trends and cases of left-wing and right-wing extremism and terrorism; (3) judicial and non-judicial responses to the threat posed by prison leavers; and (4) the situation in Afghanistan from a CT perspective.

On behalf of Eurojust, the President expressed his gratitude to the National Correspondents for Eurojust for Terrorism Matters and the judicial practitioners in the EU Member States and partner third countries for their participation in the meeting, and to the distinguished speakers who shared their expertise on the topics. He also thanked the newly appointed EU Counter-Terrorism Coordinator (EU CTC) and the representatives of EU institutions and agencies for sharing insights into relevant developments at EU level and for their contributions to the discussions during the meeting.

## Ongoing developments at European Union level: keynote speakers

The **EU CTC's** address to participants focused on developments and priorities at EU level that are relevant to the topics of the meeting. He mentioned the large number of issues on which the EU and Member States need to align their policies and approaches, and described his own role, which is to coordinate and build bridges among the involved stakeholders. He pointed out that criminal justice plays a key and essential role in CT and, therefore, it is of the utmost importance that prosecutors are well equipped to ensure an efficient judicial response to terrorism.

The EU CTC expressed his strong support for Eurojust. He referred to the key role that Eurojust plays in CT prosecutions and the fact that Member States rely more and more on Eurojust to increase the efficiency of their investigations and prosecutions, including through Eurojust coordination meetings. These meetings are an exceptional tool for bringing together all relevant authorities. The EU CTC also welcomed the progress achieved with the Counter-Terrorism Register (CTR), as information sharing is crucial to addressing terrorism efficiently. He expressed his support for the European Commission's intention to strengthen the Eurojust Regulation, and underlined the importance of strong links between Eurojust and the European Union Agency for Law Enforcement Cooperation (Europol), including in the framework of the Observatory Function on encryption and the EU Innovation Hub for Internal Security. The important contribution of Eurojust to judicial responses to foreign terrorist fighters and to supporting victims of terrorism was pointed out, as was the contribution of Eurojust to the full implementation of Directive (EU) 2017/541 on combating terrorism.

According to the EU CTC, the use of battlefield information in investigations and prosecutions is also a priority, and the work of Eurojust and the Genocide Network in this respect is valued as excellent and unique. Furthermore, the importance for Eurojust of investing in cooperation with third countries, including those that are part of the Euro-Mediterranean Partnership (EUROMED), was emphasised.

The EU CTC elaborated on his priorities for the upcoming months, which include:

- the implementation of the Counter-Terrorism Action Plan for Afghanistan and the 23 recommendations included in it;
- the implementation of five actions in relation to the camps in north-east Syria and Iraq, focusing on providing aid and the prevention of further radicalisation, with a particular focus on children;
- the prevention of radicalisation, in particular in view of the spread of terrorist content online, which increasingly is related not only to jihadist terrorism but also to right-wing and left-wing extremism and terrorism;
- the need to restrict the malicious use of new and disruptive technologies, and to equip our security services with the means to apply such technologies to fight terrorism while fully respecting fundamental freedoms.

The **representative of the Directorate-General for Justice and Consumers** shared with participants insights into relevant policy and legislative developments at EU level, focusing on the legislative package 'Security and Justice in the Digital World' that was to be adopted on 1 December 2021. The package consists of three legislative initiatives:



- digitalisation of cross-border judicial cooperation,
- a collaboration platform for joint investigation teams (JITs),
- exchange of digital information on cross-border terrorism cases.

The first legislative initiative, the digitalisation of cross-border judicial cooperation, aims to improve access to justice and the efficiency and resilience of cross-border judicial cooperation by introducing a mandatory digital communication channel for court-to-court communication and an optional digital communication channel for party-to-court communication. Moreover, the initiative establishes a legal basis for conducting oral hearings through videoconferencing, ensures that electronic documents are not refused or denied legal effect only because of their electronic form, and ensures the recognition of electronic signatures and seals. From a technical perspective, the digital communication channel will build on the e-Evidence Digital Exchange System (e-EDES) and IT systems for servicing documents and collecting evidence and in turn will make use of the e-Justice Communication via Online Data Exchange (e-CODEX) system as the underlying technical solution.

The second legislative initiative, the JIT collaboration platform, aims to increase the efficiency and effectiveness of investigations and prosecutions where a JIT is set up by enabling secure electronic communication and the exchange of information and evidence within the JIT and facilitating collaboration with third countries.

The third legislative initiative, the exchange of digital information on cross-border terrorism cases, proposes amendments to the Eurojust Regulation, focusing in particular on the Eurojust CTR and cooperation with third country Liaison Prosecutors at Eurojust. More specifically, it aims to enable Eurojust to identify links between cross-border terrorism cases and to provide proactive feedback and support to Member States' competent authorities. The proposed amendments to the Eurojust Regulation would enable the modernisation of the Eurojust Case Management System (CMS) to integrate the CTR and its functionalities, especially the detection of links between judicial proceedings. They also envisage the establishment of (obligatory) secure digital communication channels between competent authorities and Eurojust and the introduction of a digital communication tool to facilitate the digital exchange of structured data and to automate processes. Furthermore, the proposed amendments provide a clear legal basis for third country Liaison Prosecutors' access to the Eurojust CMS.

The representative of the Directorate-General for Justice and Consumers also thanked Eurojust for its participation in the recently established EU Victims' Rights Platform. Supporting victims, including victims of terrorism, and protecting and guaranteeing their rights is a key priority at EU level, and is reinforced by the implementation of the EU Strategy on Victims' Rights. The strategy was adopted in June 2020 for 2020–2025. A specific project focusing on the challenges and best practices in supporting victims of terrorism is the setting up of a dedicated EU Centre of Expertise for Victims of Terrorism.

During the discussions that followed, reference was also made to various channels, including the International Criminal Police Organization (Interpol), that could be used to obtain and share battlefield information and other relevant information. NATO's Automated Biometric Identification System, set up to store biometrics data and facilitate biometrics searches, was also mentioned.

## First session: freedom of expression versus terrorism

### The role of the judicial authorities in relation to the new legal framework on terrorism content online

A **Professor of Public International Law at the University of Malaga, Spain**, addressed the role of judicial authorities in relation to the new legal framework on terrorism content online. The terrorist attack in Christchurch, New Zealand, in 2019, which was streamed on the internet and subsequently triggered comments and discussion, showed that the internet can serve to promote radicalisation. The lack of legislation regarding online content and the possibility of removing content of a terrorist nature paved the way for the new Regulation (EU) 2021/784 of 29 April 2021 on addressing the dissemination of terrorist content online.

Although this regulation is an achievement, there are some areas of concern, for instance with regard to the lack of a definition of what constitutes terrorist content. This raises the question of whether online service providers are equipped to decide what content can be considered terrorist content, taking into account the context in which the statements were made. Concerns have been expressed that the term ‘terrorist content’ is interpreted too broadly and, therefore, that too much content is taken down. Harmonisation is needed when it comes to protecting the right to freedom of expression. A reference was made to the European Court of Human Rights, which in its case-law has shown a preference for decisions to be made by judicial authorities, as the removal of online content constitutes a restriction on the use of the internet for users. It seems that, at present, technology, based on algorithms, cannot make such decisions, and human oversight is needed, in particular as far as small online service providers are concerned. Freedom of expression constitutes the core foundation of a democratic society and, according to the European Court of Human Rights, this right also applies to ideas that are shocking to a democratic society. A balance has to be struck between the legitimate right of a state to protect itself against terrorism and the right of individuals to freedom of expression, as well as their right to be informed.

Another concern relates to the fact that wrongfully removed content should be reinstated as soon as possible. As Regulation (EU) 2021/784 does not set a deadline for reinstating removed content, users may not be able to challenge removal orders, which could be in breach of users’ right to a legal remedy. Nevertheless, Regulation (EU) 2021/784 is a positive development in that it provides for the possibility of more involvement of the judicial authorities, even if such involvement takes place *ex post*.

The **representative of the Directorate-General for Migration and Home Affairs** responded to the intervention of the previous speaker by pointing out that content, even if removed, is not deleted. This means that the speedy removal of content is possible, and that judicial authorities can be involved in the process, at a later stage, if need be. The representative cited the example of the Christchurch attack, during which some 1.5 million posts were removed by a single online service provider in less than 24 hours. Regulation (EU) 2021/784 went through lengthy negotiations that focused on the impact of the instrument on freedom of expression. The aim of the regulation is to target only the most harmful online content, and several safeguards are built in to the regulation. An exception was included for content published for journalistic, educational and artistic purposes. In addition, the Member State where the company is established or has its legal representative can scrutinise a removal order issued by another Member State and decide whether or not to ask for a review. As regards online service providers, Regulation (EU) 2021/784 does not impose specific

technology, but leaves it to the companies themselves to choose which tools they use to fight the spread of terrorist content on their platforms. They are also obliged to report annually on removals and complaints against such removals. Finally, it was noted that, until now, the decision to remove content has rested entirely with online service providers. Regulation (EU) 2021/784 is an important step in that it introduces a legal framework for the removal of such content.

In the discussion following the interventions, it was pointed out that the right to freedom of expression is taken very seriously and is of primary concern in international cooperation. On the other hand, the type of criminality that Regulation (EU) 2021/784 aims to address concerns the use of the internet for criminal purposes. A balanced approach to addressing terrorism while respecting the right to freedom of expression is needed. The regulation is a tool that can contribute to what needs to be a joint effort in countering terrorism. When incorporating Regulation (EU) 2021/784 into national law, there should be a clear role for the judicial authorities. As the removal of online content is already happening, the regulation offers an opportunity to achieve a homogeneous approach.

In one country, a working group encompassing both prosecutors and law enforcement has been set up for the purpose of implementing Regulation (EU) 2021/784, and the designation of the competent authority will take place shortly. In this country, removal orders are expected to be issued by a prosecutor, to ensure the right balance with freedom of expression. When issuing removal orders, the issuing authority will take into account previous experience of what constitutes incitement, the nature of a statement and the content of a statement.

Another point raised during the discussion is that the time constraints facing authorities that need to deal with online content, with sometimes only minutes to act, mean that the fastest way to deal with such content may be for decisions to be taken by administrative or law enforcement entities.

## **Second session: practitioners' insights into left-wing and right-wing extremism and terrorism**

### **Findings from a recent Italian case related to violent anarchism and left-wing terrorism**

The **representative of the Italian National Anti-Mafia Counter-Terrorism Directorate** presented experience from and insights into a recent Italian case related to violent anarchism and left-wing terrorism. He pointed out that, at present, insurrectional anarchy constitutes one of the principal subversions and domestic terrorism-related threats. The presented case concerned acts carried out by members of the *Federazione Anarchica Informale* (FAI, Informal Anarchist Federation), which is a very fluid terrorist association set up in 2003. The association's first attacks targeted European institutions and its founding document was circulated when explosive and incendiary devices were sent to the targets.

The FAI's founding document was initially signed by four groups, which had previously been involved in various attacks: FAI/*Cooperativa Artigiana Fuoco e Affini* (Cooperative for Fire and Related Affairs); FAI/*Cellule contro il capitale, il carcere, i suoi carcerieri e le sue celle* (Cells against Capital, Prisons, its Jailers and its Cells); FAI/*Brigata 20 Luglio* (July 20 Brigade); and FAI/*Solidarietà internazionale* (International Solidarity). The principles of the founding document included revolutionary solidarity, revolutionary information campaigns, and communication between groups and individuals taking place through the actions themselves.



An analysis of the numerous attacks carried out by the FAI since 2004 was also presented, along with the evolution of the FAI, including the further integration of six other associations, and its 'revolutionary campaigns'. A particular turning point in the evolution of the FAI was the beginning of its collaboration with Greek anarchist groups and the establishment of the FAI/FRI (*Fronte Rivoluzionario Internazionale*, International Revolutionary Front) in 2011. The FAI/FRI was soon joined by anarchist groups from five continents, attracted by its informal organisational model. Since the establishment of the FAI/FRI until 2020, the FAI and FAI/FRI have claimed responsibility for a total of 139 attacks throughout the world, including 24 in Greece, 20 in the United Kingdom, 17 in Chile, 16 in Mexico and 12 in Italy.

The FAI and later FAI/FRI do not appear to have many members in Italy; they seem to be composed of a strong nucleus of about 15 people and several other, less committed, supporters, amounting to a total of 30 to 40 people. However, both organisations have demonstrated that they are highly prepared, applying techniques to protect their communication channels and avoid interception, and making frequent use of the internet, including through servers situated abroad, to launch and promote campaigns for violent struggle, identify potential targets, instigate crimes and develop organisationally.

Given the transnational nature of the FAI/FRI, it is essential to strengthen international cooperation on anarchist terrorism, which affects countries all over the world. Italy has very good experience with fruitful cooperation facilitated through Eurojust, through letters rogatory and, most recently, through European investigation orders that ensured the acquisition of Greek judgments on the Greek *Synomosía Pyrínon tis Fotiás* (Conspiracy of Fire Cells) and the FAI/FRI. Moreover, in 2004, the FAI and the July 20 Brigade were placed on the EU list of terrorist groups pursuant to Council Common Position 2004/500/CFSP of 17 May 2004 updating Common Position 2001/931/CFSP on the application of specific measures to combat terrorism and repealing Common Position 2004/309/CFSP; however, they did not appear in the related subsequent documents of 2019 and 2020.

To conclude, the representative of the National Anti-Mafia Counter-Terrorism Directorate presented an analysis of the anarchist ideology and the methods traditionally used by anarchist groups to achieve their objectives and to overthrow the system: revolution (anarchy at an organisational level) and insurrection (anarchy at an individual level). At a later stage, it has been attempted to combine the individual anarchist and the organisational ideologies into an 'informal' one. The FAI and later the FAI/FRI represent a specific example of such an informal structure. However, by bringing criminal proceedings, it has been possible to reconstruct the membership of various informal insurrectional anarchist groups, and to identify subjects who are part of each distinct group. This has made it easier to charge with the crime of association individuals suspected of belonging to the same anarchist division. In response to the actions of the competent authorities, anarchists have tried to render this strategy ineffective by tempering their differences, misleading investigators and avoiding repression. Despite this, several trials have been initiated in different parts of Italy based on the analysis of the informal ideology.

In response to a question from a participant, the representative of the National Anti-Mafia Counter-Terrorism Directorate clarified that a court hearing is pending in the case of a recent attack on a vaccination centre. The attack, which was carried out by a group fighting against 'health dictatorship', is being treated as a terrorist attack, as it aimed to intimidate the population or force the government to change its policies. No links between extreme left-wing and right-wing associations and activities have been observed in Italy so far.

### **Examples of linkages between groups protesting against anti-COVID-19 measures and right-wing extremist and terrorist groups**

The **representative of the Prosecutor-General's Office of the German Federal Court of Justice** addressed the linkages between groups protesting against anti-COVID-19 measures and right-wing extremist and terrorist groups. Since spring 2020, several protests against pandemic-related regulations and restrictions have taken place in Germany, bringing together a heterogeneous group of protesters. Mainly organised by the so-called *Querdenken* movement, protests increasingly seem to draw the presence of right-wing extremists and neo-Nazi groups that are prone to using violence. Examples include the 'storming' of the Reichstag building on 29 August 2020 and a recent demonstration in Leipzig, in November 2021, during which dozens of right-wing extremists were arrested.

The German authorities have recently noted a tendency towards radicalisation, directed against anti-COVID-19 measures, among the members of right-wing extremist groups or among individuals inspired by such groups. These groups are very well connected, operate at supra-regional levels and join forces to implement media and financial activities. Their online activities are extensive and far-reaching, and they use Telegram as their main communication channel. Recently, the narrative observed in the discourse of right-wing extremist groups has changed from a mainly anti-refugee one to one that foresees the end of Germany, caused by the anti-COVID-19 measures imposed on the population by a government that they perceive as a dictatorship. In this context, the war rhetoric displayed by extreme right-wing groups seems to attract an increasing number of people, including former military staff.

Examples of violent actions carried out by radicalised groups protesting against anti-COVID-19 measures were presented, along with criminal judicial responses to those actions. Some of the criminal acts carried out by these groups have been evaluated and prosecuted with reference to state security, specifically linked to the COVID-19 pandemic. This type of incrimination has been used on several occasions in relation to acts of violence targeting law enforcement during demonstrations. In particular, one specific offence that is relevant to this context concerns the 'delegitimisation of the state relevant to the protection of the constitution'. In addition, online activities may constitute the offence of incitement to hatred. One specific example given was the case of a perpetrator, allegedly active in the right-wing extremist scene, who was charged with murder after he shot an employee of a petrol station following a dispute about the requirement to wear a mask inside the establishment. Several other examples were provided of acts related to the COVID-19 pandemic, one of which concerned an attack against critical infrastructure, specifically a high-speed InterCity Express train. Reference was also made to individual attacks against COVID-19 test centres and a number of arson attacks on telecommunication facilities.

In the subsequent discussions, a question was raised about the possibility of the German judicial authorities prosecuting crimes related to anti-COVID-19 measures as terrorist offences. So far, this type of case has been considered to fall into the category of endangerment of state security and has been prosecuted by local prosecution offices, without terrorism charges being brought against the perpetrators. Some challenges in the prosecution of these crimes as terrorist offences were highlighted, especially the difficulty of assigning this new phenomenon to a precise political ideology. Furthermore, it was noted that radicalisation linked to COVID-19 among German right-wing extremist and terrorist groups represents an expanding area of monitoring for the intelligence services.



## **Third session: jihadist terrorism – how to address the threat posed by prison leavers**

### **Part 1: judicial treatment of long-term convicts found guilty of terrorism offences after their release from prison**

A vice-prosecutor from the French National Counterterrorism Prosecution Office gave a presentation on the measures progressively put in place in France for the judicial treatment of long-term convicts. Although the vast majority of convicted terrorists serving long sentences in French prisons have a radical Islamic or jihadist background, addressing the risk of prison leavers repeating terrorist acts requires the cooperation and close attention of various judicial, administrative and intelligence actors. It is relatively rare for prisoners convicted of terrorism offences to be released early on parole, and in 2020–2021 most prison leavers who had been incarcerated for committing terrorist offences were long-term convicts who had served the totality of their custodial sentence for their crimes, which could include attempted or actual departure to the Islamic State-controlled territories in Syria and Iraq and planning attacks. In 2016, a change in the criminalisation of these terrorist offences resulted in the ability to impose longer custodial sentences. Therefore, currently and in the near future, the threat posed by prison leavers mainly concerns individuals given custodial sentences of between 6 and 9 years for terrorist offences generally committed prior to 2016.

Before providing detailed insights into the judicial treatment of prison leavers, the speaker described the overall structure and functioning of the French judicial system in the field of terrorism and its historical, gradual specialisation and centralisation in one single jurisdiction competent to investigate, prosecute and judge terrorism cases within the Court of Paris. Specialised supervising judges with an exclusive national competence in CT play a central role in this system. At present, there are three CT supervision judges in France, whose responsibilities include following up convicts throughout their sentences, with the option of granting measures reducing or modifying sentences, and defining monitoring procedures for freed convicts and prison leavers. They also have far-reaching investigative and coercive powers, in particular in case of an immediate terrorist threat or emergency. The National Counter-Terrorism Prosecution Office (PNAT) established in March 2019, comprises three specialised departments: one that deals with investigations into terrorism cases, another which handles investigations into core international crimes and a third responsible for the follow-up of terrorist convicts. Since the formation of the National Counterterrorism Prosecution Office, close cooperation has been established between the Office's prosecution authorities and specialised CT supervision judges. Thus, all information available on an individual suspected, investigated and possibly convicted for terrorist crimes is shared among all actors involved in the judicial follow-up, in a precise and contextualised manner.

As regards supervision measures applicable to prison leavers, a change to legislation implemented in June 2016 introduced differentiated provisions for terrorist convicts. In particular, in the case of individuals convicted of participation in a criminal conspiracy for the purpose of committing an act of terrorism, specific social and judicial follow-up measures can be handed down by the court judges as part of the sentence and work as probation measures until its full execution. In addition, in the case of prisoners released after serving sentences longer than 7 years, and based on a medical assessment of the dangerousness of the convict or the risk of repetition of the act of terrorism, judicial supervision measures can be imposed, including a range of interdictions and obligations, such as work or training obligations, psychological follow-up and social reintegration programmes. For the most serious crimes and terrorist offences punishable by prison sentences longer than 15 years, and



when the degree of danger or psychological disorder remains high, additional security supervision measures can be ordered, which involve some degree of deprivation of liberty.

Traditionally, judicial follow-up and supervision measures applied for the duration of the unserved portion of a prison sentence and were defined as alternatives to imprisonment. However, this strategy was recently reformed in a law that came into force on 30 July 2021, which created a judicial measure for the prevention of terrorist recidivism and for social reintegration. This new measure, which relies on a multidisciplinary approach, can be imposed autonomously, irrespective of the sentence handed down or how much of the sentence has already been served. It is applicable to terrorist convicts given a custodial sentence longer of 5 years or more and requires that it be demonstrated that, at the end of the detention period, the convicted person presents a particularly high risk, defined as a very high probability of recidivism and persistent adherence to an ideology or to theses inciting the commission of acts of terrorism. It also requires proof that the convicted person was, during the execution of his or her sentence, in a position to benefit from measures likely to promote his or her social reintegration. The measure, which incorporates a variety of social, psychological and educational obligations, can be imposed for 1 year, renewable for 5 years. The speaker also emphasised the importance of such a multidisciplinary approach, and reported that a variety of judicial and social actors are working with convicted terrorists serving long sentences on identity discourses and anti-hatred narratives, sharing of knowledge on religion, and reflection on their citizenship and their role in society. This new legislation results in a change of focus in the judicial treatment of prison leavers, with the greater prioritisation of the social reintegration of long-term terrorist convicts on their release, with the objective of preventing recidivism.

**The Legal Officer and Programme Coordinator within the General Secretariat of Penitentiary Institutions in Spain**, who is also a member of the European Organisation of Prison and Correctional Services, on behalf of the Spanish General Directorate of Prison Administration, introduced the concept of supervised freedom in the Spanish system, with a focus on its regulation, the different actors involved at judicial level, preparation and execution stages and problems/difficulties.

The speaker began the presentation by stating that, in Spain, supervised freedom is applicable to people who understand the meaning of the law (Article 106.2 CP), and to mentally ill people or people who have committed a crime under the influence of drugs or other substances. In addition, it can be implemented after the execution of a close security measure in the case of people who cannot understand the meaning of the sentence. Supervised freedom is possible for those convicted of committing crimes against life, sexual offences and terrorism.

The process itself generally requires the involvement of two judges: (1) the main judge, who gives the prison sentence and imposes supervised freedom; and (2) the penitentiary judge, who submits a proposal to the main judge. The proposal can include specific measures such as treatment programmes or prohibitions/limitations in terms of activities and movements.

The preparation for supervised freedom starts approximately 3 months before the end of the prison sentence, when the observatory board of the prison submits a proposal to the penitentiary judge. This proposal depends on the inmate's progress during the serving of the prison sentence, and includes information from a security point of view. The information is collected through (1) the internal monitoring ensured by control groups (prison officers/guards acting as observers of inmates, and not investigators); and (2) the control exercised by external boards (the Intelligence Centre for Counter-Terrorism and Organised Crime (*Centro de Inteligencia contra el Terrorismo y el*

*Crimen Organizado*), prisons' central headquarters and police forces.

The speaker further underlined that, in practice, supervised freedom entails measures such as electronic monitoring (the responsibility of the penitentiary), treatment programmes and interventions (the responsibility of the penitentiary for terrorist offenders), with the prioritisation of community interventions, and police control imposing certain limitations (no use of internet, no contact with inmates sentenced for similar crimes, the prohibition of specific activities and compulsory check-ins with police departments). Every 3 months information must be provided/submitted to the relevant judicial authority.

Finally, the speaker pointed out the main difficulties in this process, namely the involvement/distribution of different competent authorities executing different measures in a supervised freedom case, which can make it quite challenging for the judge to access all the necessary information; the existence of multiple perspectives (observatory board versus external board); and stricter requirements to be fulfilled for early release, which is followed by the application for supervised freedom. One solution could be to adopt an individual perspective such that the judge is provided with all the necessary information relating to an individual case, thus speeding the procedure as a whole.

In the discussions following, the speaker explained that in the Spanish judicial system, a terrorism case is usually distinguished from a common case by the characterisation of the general facts of the case and the inmate's personal environment, personality and activities, among other things.

The speaker also clarified that the use of the internet inside prisons is monitored and controlled through the control groups, but that this is not possible once the inmate is released. The same applies to the inmate's outside contacts and activities.

## **Part 2: other forms of follow-up and monitoring processes**

The **Director, *ad interim*, of the Belgian Coordination Unit for Threat Analysis (CUTA)**, presented the multidisciplinary approach adopted in Belgium to tackle extremism and terrorism and concrete tools and structures available to practitioners at all levels for assessing the risk posed by radicalised individuals to internal and external security. The recently renewed Strategic Note Extremism and Terrorism (Strategy TER) sets out the main principles of the Belgian approach, which implies the close cooperation of a wide range of partners from different sectors, including justice, police, security, intelligence, finance and prison, and social, prevention and deradicalisation services and agencies, acting at all levels. The Strategy TER combines a set of decentralised local structures, namely local task forces at the level of judicial districts and local integrated security cells at the levels of cities and communities, focusing on security and on social and preventive aspects, respectively. At federal level, in addition to the national task force, the central platform responsible for coordinating Strategy TER, various thematic national working groups were set up to analyse and gather specific expertise on evolving and new threat trends, for example the national working group dedicated to prisons.

In the Belgian multidisciplinary and multi-agency cooperation framework, a key role is played by CUTA both as coordinator and as operational manager of the Common Database (CDB). The CDB collects in a single central tool non-classified information on people who meet strict legally defined criteria to be registered as foreign terrorist fighters, home-grown terrorist fighters, hate propagandists, potentially violent extremists or people convicted of terrorism. The CDB is accessible

to and mandatorily contributed to by all partners engaged in the national strategy. As a mapping tool, the CDB helps provide an accurate picture of the general threat level. In Belgium, although presently the overall threat level has been assessed as moderate, the most serious threats continue to be posed not only by jihadists, but also, increasingly, by right-wing extremists.

Presented as the backbone of the Belgian deconcentrated approach, the CDB centralises all information needed by CUTA to issue individual threat assessments based on which each detected entity is closely monitored. The continuous sharing of information ensures that threat assessment files are updated in real time and that the progress of monitored individuals receives appropriate follow-up. In this context, local actors and municipalities play an essential role not only in identifying the threat, but also in defining and implementing adapted, tailor-made measures, from both a repressive perspective and a preventive perspective. As regards terrorist offenders and convicts, the involvement of prison administration services in the multidisciplinary strategy has contributed to a better knowledge of the situation in Belgian prisons and to a more thorough assessment of the level of threat posed by radicalised individuals. For example, observations and multidisciplinary reports by the prison service are taken into account in the individual threat assessments made by CUTA.

As a result of these individual threat assessments, a number of specific administrative measures can also be proposed by CUTA, in consultation with the federal prosecutor's office and security services, to reduce the risk posed by each monitored person, such as passport and ID bans, and the freezing of assets.

In the following discussions, the Belgian multidisciplinary and multi-agency approach was depicted as a possible model for other Member States, in particular those with decentralised judicial systems. The use of a centralised operational database on terrorists and violent extremists and its benefit for the work of Eurojust, facilitating the coordination of cross-border investigations and prosecutions, was also emphasised.

## **Fourth session: Afghanistan**

### **Presentation of the Afghanistan Counter-Terrorism Action Plan**

The **representative of the Office of the EU CTC** presented the Counter-Terrorism Action Plan on Afghanistan, issued by the EU CTC in September 2021. The action plan was drawn up following statements of the Council of the European Union in late August and September 2021, according to which 'The EU and its Member States will do their utmost to ensure that the situation in Afghanistan does not lead to new security threats for EU citizens'. The Council also stated: 'Prevent Afghanistan from serving as a base for hosting, financing or exporting terrorism to other countries'. The action plan contains 23 recommendations, divided into four main areas.

The first area concerns security checks to prevent the infiltration of terrorists into the EU. To identify people who may pose a risk to the EU's internal security, there is a need for uniform, systematic and enhanced checks at the EU's external borders, and checks of people who have already been evacuated. It is also important to cooperate with the United States on the use of battlefield information from Afghanistan and to fill any information gaps. There is a need to optimise the checking of biometric data, to ensure the identification of high-risk targets released by the Taliban.

The second area of action concerns strategic intelligence and foresight with a view to preventing Afghanistan from becoming a safe haven for terrorist organisations. Effective monitoring requires



strategic intelligence, which in turn requires the mobilisation of several actors, such as the EU Intelligence and Situation (EU INTCEN), Europol, third countries and other international organisations. Humanitarian assistance is important, in Afghanistan and in neighbouring countries. In addition, EU capacity building regarding CT and border security in the region needs to be increased.

The third area of action focuses on monitoring and countering propaganda and radicalisation. There is a need to monitor the online space and reduce the pull factor of these organisations, as well as developing processes for the removal of terrorist content online.

The fourth and final area of recommendations concerns tackling organised crime as a source of terrorist financing. Increased cooperation is needed in this regard, and Eurojust has a key role to play in this. In addition, there is a need to work with the western Balkans on all aspects of the CT action plan.

The representative of the EU CTC's office emphasised certain elements already implemented or to be implemented in the short term, including the improvement of security checks, the organisation of a workshop on battlefield evidence together with the EU Commission (Directorate-General for Migration and Home Affairs) and the United States, as well as an upcoming visit of the EU CTC to Albania and Kosovo for discussions. In addition, relevant agencies such as Europol, the European Border and Coast Guard Agency (FRONTEX) and the European Union Agency for Asylum (EUAA) have increased their preparedness for potential deployment at external borders. Furthermore, the focus on the possible use of organised crime activities to finance terrorist activities in Afghanistan has been integrated into the Operational Action Plans for 2022 in the European Multidisciplinary Platform Against Criminal Threats (EMPACT) priorities.

In the discussion following the intervention, the question of whether the Taliban is still considered a terrorist organisation was raised. It was noted that, although the Taliban is not listed as a terrorist organisation, certain members of the Taliban have been listed as involved in terrorist acts and are subject to restrictive measures. An area of uncertainty is whether or not the situation in Afghanistan presently can be considered an armed conflict, which would be decisive for whether national legislation on war crimes applies.

Challenges were expressed related to access to and the use of battlefield evidence. Although information may be available, for instance on registration with a terrorist organisation, this information is often limited, which means that additional data should be obtained through, for instance, the military services. Obtaining information through such channels takes time. If the information concerns a person whose permission to travel is pending, while a terrorism suspicion exists, the situation is challenging. Solutions to such situations are needed. An additional challenge is the lack of contextual information and exact data, such as where and when a picture to be used as evidence was taken. Such information can be decisive for whether or not a case can be pursued. The need to cooperate with several third countries holding battlefield information was mentioned, as was the need for cooperation with Interpol and EU agencies, such as EUAA and FRONTEX. The assistance of the UN mechanisms United Nations Investigative Team to Promote Accountability for Crimes Committed by Da'esh/ISIL (UNITAD) and International, Impartial and Independent Mechanism (IIIM) in providing battlefield information was emphasised. The example was given of an investigation into two Iraqi nationals who arrived in the EU as refugees in 2017. In 2020, a criminal investigation was opened, and at the end of the year cooperation between the national authorities and UNITAD was initiated, with increasing contacts between the investigating team and UNITAD. Dozens of meetings were held, with almost daily contact at a certain point in time. A mutual legal assistance request was



issued to UNITAD and the evidence provided was added to the investigation. Through UNITAD, witnesses and victims were also identified. Without the assistance of UNITAD, there would not have been evidence to substantiate this case, in which the proceedings are ongoing.

## Concluding remarks

The **Chair of the Counter-Terrorism Working Group** summarised the meeting, referring to the interesting presentations and contributions during the four sessions, and the complementary discussions. The speakers presented recent developments at EU level, including legislative developments on the dissemination of terrorist content online, experiences of left-wing and right-wing terrorism cases, and examples of approaches taken by various countries when it comes to convicts of terrorism leaving prison, as well as updates from the office of the EU CTC, including on the Afghanistan Counter-Terrorism Action Plan. The Chair thanked all speakers and participants and closed the 2021 Eurojust Meeting on Counter-Terrorism.

## Main findings

- Information exchange in terrorism cases as part of the Eurojust CTR and the digitalisation of judicial cooperation remains a priority and will be further reinforced by the new legislative package ‘Security and Justice in the Digital World’ of the European Commission of 1 December 2021.
- The recent Regulation (EU) 2021/784 constitutes an important legal framework for addressing online content and the possibility of removing content of a terrorist nature, and is a tool that can contribute to the efforts in countering terrorism. As the removal of online content constitutes a restriction on the use of the internet for users, a balance needs to be struck between addressing terrorism and respecting the right to freedom of expression.
- The threat posed by right-wing and left-wing extremism and terrorism continues to evolve. Owing to the versatile and volatile nature of these two phenomena, the sharing of experiences and best practices is essential to address them efficiently at judicial level.
- The risk of recidivism by long-term terrorist convicts represents a real threat to security. Multidisciplinary approaches in the follow-up of terrorist offenders and close cooperation between all actors involved at judicial, security, administrative and social levels in the monitoring and supervision of prison leavers are key elements to address this threat.
- Supervised freedom, including after early release, is one of the judicial measures taken in relation to terrorist offenders leaving prison. The process is quite straightforward, involving several actors with well-defined responsibilities at different stages, but it nevertheless entails certain difficulties, for which solutions are being sought.
- The use of battlefield information, including from Afghanistan, in the investigation and prosecution of terrorism and core international crimes is a priority, and the work of Eurojust and the Genocide Network in this respect is important. To fill any information gaps, continuing cooperation with the United States and increasing engagement with other relevant third countries, as well as with EU agencies and international organisations, are essential.





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