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# Draft Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism

**Request for an opinion**
Committee of Ministers

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**Letter from the Chair of the Ministers' Deputies to the President of the Assembly (15 April 2015)**

At their 1225th meeting (15 April 2015), the Ministers' Deputies decided to transmit the Draft Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism and its explanatory report to the Parliamentary Assembly and invited the Assembly to give priority to this issue and adopt its opinion on the draft Protocol as a matter of urgency.

Accordingly, I have the honour of sending you the enclosed draft protocol, together with the related draft explanatory report for information purposes.

On behalf of the Ministers' Deputies, I thank you in advance for your attention to this urgent matter.

I look forward to receiving the Assembly's opinion.

Yours sincerely,

*[signed]*

Dirk Van Eeckhout

Chair of the Ministers' Deputies

**Appendix 1 Abridged report of the 28th meeting (Strasbourg, 8-10 April 2015) of the Committee of Experts on Terrorism (CODEXTER)**

**Draft Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism – Request for opinion by the Parliamentary Assembly**

The Committee of Experts on Terrorism (CODEXTER) decided to:

…

– take note of the intervention by the Commissioner for Human Rights, Mr Nils MUIŽNIEKS, who expressed his concerns about ensuring that the duty of States to prevent and combat terrorism is carefully balanced with their duty to protect and uphold human rights and the rule of law. The Commissioner for Human Rights further underlined the need for legal clarity and precision in criminal law instruments;

– take note of the information provided by the Counterterrorism Coordinator, Mr Ivan KOEDJIKOV, concerning his recent participation in meetings of the Parliamentary Assembly of the Council of Europe and the LIBE Committee of the European Parliament on the topic of the draft Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism (CETS No. 196);

– take note of the submission of Amnesty International and the International Commission of Jurists concerning the draft Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism (CETS No. 196), dated 7 April 2015;

…

– examine and adopt the draft Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism (CETS No. 196);

– submit the aforesaid draft Additional Protocol to the Committee of Ministers for adoption;

– draw the attention of the Committee of Ministers to the possible benefits of allowing non-member States to sign and ratify future binding legal instruments of the Council of Europe in the manner prescribed by the MEDICRIME Convention (CETS No. 211) and other recent conventions, while fully acknowledging that in the case of this Additional Protocol, it is advisable for the sake of legal consistency to use the exact same mechanism for accession by non-member States as that applicable to the Council of Europe Convention on the Prevention of Terrorism (CETS No. 196);

– examine and adopt the draft Explanatory Report to the draft Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism (CETS No. 196);

– submit the aforesaid draft Explanatory Report to the Committee of Ministers for consideration (document CM(2015)61 add);

**Appendix 2 Draft Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism**

The member States of the Council of Europe and the other Parties to the Council of Europe Convention on the Prevention of Terrorism (CETS No. 196), signatory to this Protocol,

Considering that the aim of the Council of Europe is to achieve greater unity between its members;

Desiring to further strengthen the efforts to prevent and suppress terrorism in all its forms, both in Europe and globally, while respecting human rights and the rule of law;

Recalling human rights and fundamental freedoms enshrined, in particular, in the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5) and its protocols, as well as in the International Covenant on Civil and Political Rights;

Expressing their grave concern about the threat posed by persons travelling abroad for the purpose of committing, contributing to or participating in terrorist offences, or the providing or receiving of training for terrorism in the territory of another State;

Having regard in this respect to Resolution 2178 (2014) adopted by the Security Council of the United Nations at its 7272nd meeting on 24 September 2014, in particular paragraphs 4 to 6 thereof;

Considering it desirable to supplement the Council of Europe Convention on the Prevention of Terrorism in certain respects,

Have agreed as follows:

**Article 1 – Purpose**

The purpose of this Protocol is to supplement the provisions of the Council of Europe Convention on the Prevention of Terrorism, opened for signature in Warsaw on 16 May 2005 (hereinafter referred to as "the Convention") as regards the criminalisation of the acts described in Articles 2 to 6 of this Protocol, thereby enhancing the efforts of Parties in preventing terrorism and its negative effects on the full enjoyment of human rights, in particular the right to life, both by measures to be taken at national level and through international co-operation, with due regard to the existing applicable multilateral or bilateral treaties or agreements between the Parties.

**Article 2 – Participating in an association or group for the purpose of terrorism**

1. For the purpose of this Protocol, "participating in an association or group for the purpose of terrorism" means to participate in the activities of an association or group for the purpose of committing or contributing to the commission of one or more terrorist offences by the association or the group.

2. Each Party shall adopt such measures as may be necessary to establish "participating in an association or group for the purpose of terrorism", as defined in paragraph 1, when committed unlawfully and intentionally, as a criminal offence under its domestic law.

**Article 3 – Receiving training for terrorism**

1. For the purpose of this Protocol, "receiving training for terrorism" means to receive instruction, including obtaining knowledge or practical skills, from another person in the making or use of explosives, firearms or other weapons or noxious or hazardous substances, or in other specific methods or techniques, for the purpose of carrying out or contributing to the commission of a terrorist offence.

2. Each Party shall adopt such measures as may be necessary to establish "receiving training for terrorism", as defined in paragraph 1, when committed unlawfully and intentionally, as a criminal offence under its domestic law.

**Article 4 – Travelling abroad for the purpose of terrorism**

1. For the purpose of this Protocol, "travelling abroad for the purpose of terrorism" means travelling to a State, which is not that of the traveller's nationality or residence, for the purpose of the commission of, contribution to or participation in a terrorist offence, or the providing or receiving of training for terrorism.

2. Each Party shall adopt such measures as may be necessary to establish "travelling abroad for the purpose of terrorism", as defined in paragraph 1, from its territory or by its nationals, when committed unlawfully and intentionally, as a criminal offence under its domestic law. In doing so, each Party may establish conditions required by and in line with its constitutional principles.

3. Each Party shall also adopt such measures as may be necessary to establish as a criminal offence under, and in accordance with, its domestic law the attempt to commit an offence as set forth in this article.

**Article 5 – Funding travelling abroad for the purpose of terrorism**

1. For the purpose of this Protocol, "funding travelling abroad for the purpose of terrorism" means providing or collecting, by any means, directly or indirectly, funds fully or partially enabling any person to travel abroad for the purpose of terrorism, as defined in Article 4, paragraph 1, of this Protocol, knowing that the funds are fully or partially intended to be used for this purpose.

2. Each Party shall adopt such measures as may be necessary to establish the "funding of travelling abroad for the purpose of terrorism", as defined in paragraph 1, when committed unlawfully and intentionally, as a criminal offence under its domestic law.

**Article 6 – Organising or otherwise facilitating travelling abroad for the purpose of terrorism**

1. For the purpose of this Protocol, "organising or otherwise facilitating travelling abroad for the purpose of terrorism" means any act of organisation or facilitation that assists any person in travelling abroad for the purpose of terrorism, as defined in Article 4, paragraph 1, of this Protocol, knowing that the assistance thus rendered is for the purpose of terrorism.

2. Each Party shall adopt such measures as may be necessary to establish "organising or otherwise facilitating travelling abroad for the purpose of terrorism", as defined in paragraph 1, when committed unlawfully and intentionally, as a criminal offence under its domestic law.

**Article 7 – Exchange of information**

1. Without prejudice to Article 3, paragraph 2, sub-paragraph a, of the Convention and in accordance with its domestic law and existing international obligations, each Party shall take such measures as may be necessary in order to strengthen the timely exchange between Parties of any available relevant information concerning persons travelling abroad for the purpose of terrorism, as defined in Article 4. For that purpose, each Party shall designate a point of contact available on a 24-hour, seven-days-a-week basis.

2. A Party may choose to designate an already existing point of contact under paragraph 1.

3. A Party's point of contact shall have the capacity to carry out communications with the point of contact of another Party on an expedited basis.

**Article 8 – Conditions and safeguards**

1. Each Party shall ensure that the implementation of this Protocol, including the establishment, implementation and application of the criminalisation under Articles 2 to 6, is carried out while respecting human rights obligations, in particular the right to freedom of movement, freedom of expression, freedom of association and freedom of religion, as set forth in, where applicable to that Party, the Convention for the Protection of Human Rights and Fundamental Freedoms, the International Covenant on Civil and Political Rights and other obligations under international law.

2. The establishment, implementation and application of the criminalisation under Articles 2 to 6 of this Protocol should furthermore be subject to the principle of proportionality, with respect to the legitimate aims pursued and to their necessity in a democratic society, and should exclude any form of arbitrariness or discriminatory or racist treatment.

**Article 9 – Relation between this Protocol and the Convention**

The words and expressions used in this Protocol shall be interpreted within the meaning of the Convention. As between the Parties, all the provisions of the Convention shall apply accordingly, with the exception of Article 9.

**Article 10 – Signature and entry into force**

1. This Protocol shall be open for signature by Signatories to the Convention. It shall be subject to ratification, acceptance or approval. A Signatory may not ratify, accept or approve this Protocol unless it has previously ratified, accepted or approved the Convention, or does so simultaneously. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

2. This Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the deposit of the sixth instrument of ratification, acceptance or approval, including at least four member States of the Council of Europe.

3. In respect of any Signatory which subsequently deposits its instrument of ratification, acceptance or approval, this Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of ratification, acceptance or approval.

**Article 11 – Accession to the Protocol**

1. After the entry into force of this Protocol, any State, which has acceded to the Convention, may also accede to this Protocol or do so simultaneously.

2. In respect of any State acceding to the Protocol under paragraph 1 above, the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of accession with the Secretary General of the Council of Europe.

**Article 12 – Territorial application**

1. Any State or the European Union may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Protocol shall apply.

2. Any Party may, at any later time, by declaration addressed to the Secretary General of the Council of Europe, extend the application of this Protocol to any other territory specified in the declaration. In respect of such territory the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of the declaration by the Secretary General.

3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General of the Council of Europe. The withdrawal shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

**Article 13 – Denunciation**

1. Any Party may, at any time, denounce this Protocol by means of a notification addressed to the Secretary General of the Council of Europe.

2. Such denunciation shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of the notification by the Secretary General of the Council of Europe.

3. Denunciation of the Convention automatically entails denunciation of this Protocol.

**Article 14 – Notifications**

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe, the European Union, the non-member States which have participated in the elaboration of this Protocol as well as any State which has acceded to, or has been invited to accede to, this Protocol of:

*a.* any signature;

*b.* the deposit of any instrument of ratification, acceptance, approval or accession;

*c.* any date of entry into force of this Protocol in accordance with Articles 10 and 11;

*d.* any other act, declaration, notification or communication relating to this Protocol.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

Done at …, this … day of … 2015, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe, to the European Union, to the non-member States which have participated in the elaboration of this Protocol, and to any State invited to accede to it.

**Appendix 3 Draft Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism – Draft Explanatory Report**

**Introduction**

1. Many States in Europe and around the world are faced with a growing terrorist threat posed by individuals, who travel abroad for the purposes of terrorism. These individuals are often referred to as "foreign terrorist fighters".

2. On 24 September 2014, the Security Council of the United Nations, acting under Chapter VII of the Charter of the United Nations, unanimously adopted Resolution 2178 (2014) on "Threats to international peace and security caused by terrorist acts" (hereinafter UNSCR 2178).

3. In the Resolution, the Security Council called on member States of the United Nations to take a series of measures aimed at preventing and curbing the flow of foreign terrorist fighters to conflict zones. In particular, all States shall ensure that their domestic laws and regulations establish serious criminal offences sufficient to provide the ability to prosecute and to penalise in a manner duly reflecting the seriousness of the offence, those travelling abroad for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts, or the providing or receiving of terrorist training, as well as the wilful provision or collecting of funds for, and the wilful organisation or other facilitation of, such travels.

4. At the occasion of its 27th plenary meeting (November 2014), the Committee of Experts on Terrorism (CODEXTER), the steering committee of the Council of Europe responsible for the formulation of counter-terrorism policies, examined the issue of radicalisation and foreign terrorist fighters.

5. The Secretary General of the Council of Europe, who opened the debate of the Steering Committee, supported the CODEXTER's activities on these important issues and its proposal to submit to the Committee of Ministers draft terms of reference for a committee to be set up for the purpose of drafting an Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism (CETS No. 196) from 2005. The main objective of the Additional Protocol should be to supplement the aforesaid Convention with a series of provisions aimed at implementing the criminal law aspects of UNSCR 2178.

6. On 22 January 2015, the Committee of Ministers, at the proposal of the CODEXTER, adopted the terms of reference for the Committee on Foreign Terrorist Fighters and Related Issues (COD-CTE).

7. The COD-CTE, under the authority of the CODEXTER, was tasked with preparing an Additional Protocol supplementing the Council of Europe Convention on the Prevention of Terrorism (CETS No. 196). In particular, the COD-CTE, when preparing the Additional Protocol, should examine:

The criminalisation of the following acts when committed intentionally:

– being recruited, or attempting to be recruited, for terrorism;

– receiving training, or attempting to receive training, for terrorism;

– travelling, or attempting to travel, to a State other than the State of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts, or the providing or receiving of terrorist training;

– providing or collecting funds for such travels;

– organising and facilitating (other than "recruitment for terrorism") such travels;

– whether any other act relevant for the purpose of effectively combating the phenomenon of foreign terrorist fighters, in the light of UNSCR 2178, should be included in the draft Additional Protocol.

8. The COD-CTE held, in total, three meetings on 23-26 February, on 9-12 March and on 23-26 March 2015, respectively. After the last meeting, the outcome of the work of the COD-CTE was presented to the CODEXTER, which examined and adopted the draft Additional Protocol on 8-10 April 2015.

9. [The CODEXTER submitted the draft Additional Protocol to the Committee of Ministers on 10 April 2015. The Parliamentary Assembly, at the invitation of the Committee of Ministers, adopted Opinion No. … on the draft Additional Protocol on … April 2015. At their … meeting on … 2015, the Ministers' Deputies examined and decided to adopt the draft Additional Protocol to the Convention. At the same time, they took note of the present Explanatory Report to the Additional Protocol.]

**Relationship between the Protocol and the Council of Europe Convention on the Prevention of Terrorism**

10. The Protocol is intended to supplement the Council of Europe Convention on the Prevention of Terrorism (hereinafter "the Convention") by adding some provisions on the criminalisation of a number of acts which are related to terrorist offences and a provision on the exchange of information. The offences set forth in the Protocol, like those in the Convention, are mainly of a preparatory nature in relation to terrorist acts.

11. The provisions of the Convention apply to the Protocol, with the exception of Article 9 of the Convention, and the provisions of the Protocol shall be interpreted within the meaning of the Convention. In the case of Article 8 of the Protocol (Conditions and safeguards), the drafters considered it necessary, for reasons of clarity and its importance in the context of the subject matter of the Protocol, to repeat the provision already contained in Article 12 of the Convention almost verbatim and with the addition of a reference to the right of freedom of movement.

12. Thus, for example, the provisions of the Convention on national prevention policies, international co-operation on prevention and international co-operation on criminal matters fully apply to the Protocol.

**Specific commentaries on the Preamble and the Articles of the Protocol**

**The Preamble**

13. At the outset it should be recalled that the preambular paragraphs are not part of the operative provisions of the Protocol and therefore, by their nature, do not bestow rights or impose obligations on Parties. However, the preambular paragraphs are intended to set a general framework and facilitate the understanding of the operative provisions of the Protocol.

14. The Preamble recalls the determination of the member States of the Council of Europe and the other Parties to the Council of Europe Convention on the Prevention of Terrorism to prevent and suppress terrorism, in Europe and globally.

15. It further refers to the grave concern raised by persons travelling abroad for the purpose of terrorism – the so-called foreign terrorist fighters – and the actions of the United Nations Security Council to counter the threat posed by foreign terrorist fighters.

16. The Preamble finally describes the specific purpose of the Protocol, namely to supplement the Council of Europe Convention on the Prevention of Terrorism with a series of provisions assisting Parties to the Protocol in the implementation of the criminal law obligations flowing from the United Nations Security Council Resolution 2178 (2014), while fully respecting the rule of law and human rights and fundamental freedoms, as these have been set forth in the European and global human rights instruments, such as the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child and the 1951 Convention and the 1967 Protocol relating to the Status of Refugees. The Council of Europe Convention on the Prevention of Terrorism recalls that all measures taken to prevent or suppress terrorist offences have to respect the rule of law and democratic values, human rights and fundamental freedoms as well as other provisions of international law, including, where applicable, international humanitarian law. It was noted that while there are possible restrictions to some of these rights provided by the aforesaid international human rights instruments, a number of rights, such as prohibition against the retrospective operation of criminal laws and freedom from torture and other cruel, inhuman or degrading treatment or punishment, are absolute and non-derogable.

17. Among these human rights and fundamental freedoms, particular mention should be made of the right to freedom of movement, freedom of expression, freedom of association and freedom of religion. Moreover, the reference to respect for the principle of "rule of law" underlines the fact that any measures taken by Parties must be in conformity with this principle.

18. Hence the Protocol contains a legally binding provision in Article 8 (Conditions and safeguards) concerning the protection of human rights and fundamental freedoms, both in respect of information exchange and as an integral part of the new criminalisation provisions.

**Article 1 – Purpose**

19. The article describes the purpose of the Protocol, which is to supplement the Convention with provisions obliging Parties to criminalise certain acts which are related to terrorist offences and to facilitate international co-operation through information exchange. It has to be borne in mind that no universal legal definition of

"terrorism" and "terrorist offences" exist. The UNSCR 2178 also does not contain a definition of "terrorism". The terms of reference of the COD-CTE did not allow for the elaboration of definitions of a "terrorist offence" and "terrorism". The notions of "terrorist offence" and "terrorism" used in the Protocol are therefore the same as those used in the Convention, which refers to "any of the offences within the scope of and defined in the treaties listed in the Appendix" of the Convention.

20. In line with the Convention, the article also makes reference to the aim of enhancing the efforts of Parties in preventing terrorism and its negative impact on the enjoyment of basic human rights, in particular the right to life.

**Articles 2 to 6 – Criminalisation provisions – common aspects**

21. Articles 2 to 6 provide the core provisions of the Protocol, which require Parties to ensure that criminal offences are in place sufficient to provide the ability to prosecute acts covered by the provisions of the Protocol, namely "Participating in an association or group for the purpose of terrorism" (Article 2), "Receiving training for terrorism" (Article 3), "Travelling abroad for the purpose of terrorism" (Article 4), "Funding travelling abroad for the purpose of terrorism" (Article 5) and "Organising or otherwise facilitating travelling abroad for the purpose of terrorism" (Article 6). The obligation to adopt, where necessary, criminal offences for certain conduct does not require the Parties to establish self-standing offences to the extent that under the relevant legal system these acts may be considered as preparatory acts to the commission of terrorist offences or are criminalised under other provisions, including those related to attempt.

22. The criminal offences set forth in the Protocol are of a serious nature related to terrorist offences as they have the potential to lead to the commission of the offences established by the above-mentioned international conventions. However, they do not require that a terrorist offence be committed. The absence of such a requirement is affirmed by Article 8 of the Convention.

23. By the same token, the place where the terrorist offence might be committed is irrelevant for the purposes of the application of this Protocol.

24. The offences set forth in Articles 2 to 6 have several elements in common: they must be committed unlawfully and intentionally.

25. The requirement of unlawfulness reflects the insight that the conduct described may be legal or justified not only in cases where classical legal defences are applicable but also where other principles or interests lead to the exclusion of criminal liability, for example for law enforcement purposes.

26. The expression "unlawfully" derives its meaning from the context in which it is used. Thus, without restricting how Parties may implement the concept in their domestic law, it may refer to conduct undertaken without authority (whether legislative, executive, administrative, judicial, contractual or consensual) or conduct that is otherwise not covered by established legal defences or relevant principles under domestic law.

27. The Protocol, therefore, leaves unaffected conduct which is otherwise lawful under the domestic law of the Parties, such as conduct undertaken pursuant to lawful government authority.

28. Furthermore, the offences must be committed "intentionally" for criminal liability to apply. The drafters of the Protocol agreed that the exact meaning of "intentionally" in accordance with established practice of the Council of Europe in the drafting of legally binding criminal law instruments should be left to interpretation under domestic law. In addition to the general requirement that offences must be committed "intentionally", the offences in Articles 2 to 6 require a further subjective element, being either a terrorist purpose (as defined in Articles 2 to 4) or the knowledge about the terrorist purpose (as defined in Articles 5 and 6).

29. When transposing the Protocol into domestic law, Parties shall take into account that Articles 2 to 6 criminalise behaviour at a stage preceding the actual commission of a terrorist offence but already having the potential to lead to the commission of such acts. The conditions under which the conduct in question is criminalised need to be foreseeable with legal certainty.

30. When applying their domestic law in such cases, equal care should be taken by Parties to ensure that the right to a fair trial in all its aspects is respected. As always, the principle of the presumption of innocence should be respected, and the burden of proof lies with the State. This also implies special attention to the purpose/intent of a perpetrator to commit (contribute to, or participate in) a terrorist offence, which is an essential element of a criminal offence as defined by Articles 2-6 and should be proven in accordance with domestic law.

**Article 2 – Participating in an association or group for the purpose of terrorism**

31. The COD-CTE was tasked with examining the criminalisation of "being recruited, or attempting to be recruited, for terrorism". This has its origin in Article 6 of the Convention, criminalising the "active recruitment" of others, which as a starting point was intended to be mirrored in a provision on "passive recruitment" in the Protocol. During their deliberations, it became clear to the drafters of the Protocol that the criminalisation of a "passive" behaviour ("being recruited for terrorism") would create problems in some legal systems. Finding an appropriate definition of "being recruited for terrorism" which comprised a sufficiently "active" behaviour also posed certain problems. In the end, the drafters decided to criminalise behaviour closely related to that of "being recruited for terrorism", namely "participating in an association or group for the purpose of terrorism".

32. The criminal offence is defined in Article 2, paragraph 1, as "to participate in the activities of an association or group for the purpose of committing or contributing to the commission of one or more terrorist offences by the association or group".

33. These activities must have as their purpose the contribution to the commission of one or more terrorist offences by the association or group, or the commission of one or more such offences on behalf of the association or group. The criminalisation of the mere passive membership of a terrorist association or a group, or the membership of an inactive terrorist association or group, is thus not required under Article 2.

34. Furthermore, the offence must be committed intentionally and unlawfully.

35. Participation in the activities of an association or group for the purpose of terrorism may be the result of contacts established via the Internet, including social media, or through other IT-based platforms.

36. The drafters did not consider it necessary to criminalise the attempt or the aiding or abetting of this offence, cf. also Article 9 of the Protocol. Parties are however free to do so, if they consider it appropriate in their domestic legal systems.

37. Article 2 does not define the precise nature of the association or group, as the criminalisation depends on the commission of terrorist offences by the group regardless of its officially proclaimed activities. It should be noted that there is no internationally binding definition of a "terrorist association or group". For the purposes of paragraph 1, a Party may qualify or define the associations or groups within the meaning of this provision, including by interpreting the terms "association or group" to mean "proscribed" (i.e. prohibited by law) organisations or groups in accordance with its domestic law.

**Article 3 – Receiving training for terrorism**

38. This provision of the Protocol is to a certain extent intended to mirror Article 7 of the Convention (Training for terrorism), by obliging Parties to criminalise the receiving of training enabling the recipient to carry out or contribute to the commission of terrorist offences. The wording and terminology used in Article 3 of the Protocol is therefore largely the same as that used in Article 7 of the Convention.

39. The Group of Parties to the Council of Europe Convention on the Prevention of Terrorism has in its assessment from 2014 of the implementation of Article 7 of the Convention pointed to the possibility of criminalising at international level the receiving of training for terrorism, taking into account the developing trends in terrorism and counter-terrorism since the drafting of the Convention in 2004-2005. The CODEXTER considered this suggestion by the Group of Parties at its 27th plenary meeting on 13-14 November 2014 and decided to include the criminalisation of the receiving of training for terrorism among the issues to be examined by COD-CTE. The criminalisation of this offence will provide the Parties with additional tools to tackle the threats resulting from potential perpetrators, including those ultimately acting alone, by offering the possibility to investigate and prosecute training activities having the potential to lead to the commission of terrorist offences.

40. The COD-CTE decided to include receiving of training for terrorism among the acts criminalised through the Protocol. The drafters noted that the receiving of training for terrorism may take place in person, e.g. by attending a training camp run by a terrorist association or group, or through various electronic media, including through the Internet. However, the mere fact of visiting websites containing information or receiving communications, which could be used for training for terrorism, is not enough to commit the crime of receiving training for terrorism under the Protocol. The perpetrator must normally take an active part in the training. An example would be the participation of the perpetrator in interactive training sessions via the Internet. Parties may choose to criminalise forms of "self-study" in their domestic law.

41. Furthermore, the purpose of the receiving of training for terrorism must be to carry out or contribute to the commission of a terrorist offence, cf. paragraph 1 of Article 3, and the perpetrator must have the intention to do so, as well as acting "unlawfully", cf. paragraph 2 of Article 3. The participation in otherwise lawful activities, such as taking a chemistry course at university, taking flying lessons or receiving military training provided by a State, may also be considered as unlawfully committing the criminal offence of receiving training for terrorism, if it can be demonstrated that the person receiving the training has the required criminal intent to use the training thus acquired to commit a terrorist offence.

42. The drafters did not consider it necessary to criminalise the attempt or the aiding or abetting of this offence, cf. also Article 9 of the Protocol. Parties are however free to do so, if they consider it appropriate in their domestic legal systems.

**Article 4 – Travelling abroad for the purpose of terrorism**

43. Article 4 of the Protocol is intended to provide the legal framework for facilitating the implementation at the regional European level of the obligations for member States contained in Operative Paragraph 6 (a) of UNSCR 2178 of 24 September 2014.

44. The aim of the provision is to oblige a Party to criminalise the act of travelling to a State other than that of the nationality or residence of the traveller from the territory of the Party in question, or by its nationals, if the purpose of that travel is to commit, contribute to or participate in terrorist offences, or to provide or receive training for terrorism as defined in Article 7 of the Convention and Article 3 of this Protocol. The travel to the State of destination may be direct or by transiting other States en route.

45. The drafters took due note of the fact that the right to freedom of movement is enshrined in Article 2 of Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe, as well as in Article 12 of the International Covenant on Civil and Political Rights of the United Nations. However, both of the aforesaid international human rights instruments allow for the right to freedom of movement to be restricted under certain conditions, including the protection of national security, and (as regards Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms) for the prevention of crime.

46. It was the view of the drafters of this Protocol, that the seriousness of the threat posed by foreign terrorist fighters warrants a robust response which, on the other hand, should be fully compatible with human rights and the rule of law.

47. In this context, it should be emphasised that Article 4 does not contain an obligation for Parties to introduce a blanket ban on, or criminalisation of, all travels to certain destinations. Neither does Article 4 oblige Parties to introduce administrative measures, such as the withdrawal of passports. Article 4 is only concerned with the criminalisation of the act of travelling under very particular conditions. That these conditions are met in a concrete case must be proven in accordance with the domestic law of a Party through evidence submitted to an independent court for scrutiny in accordance with the specific, applicable criminal procedures of the Party and the general principle of the rule of law.

48. In order for a Party to criminalise behaviour under Article 4 of the Protocol, two basic requirements must thus be fulfilled: firstly, the real purpose of the travel must be for the perpetrator to commit or participate in terrorist offences, or to receive or provide training for terrorism, in a State other than that of nationality or residence, cf. Article 4, paragraph 1; secondly, the perpetrator must commit the crime intentionally and unlawfully, cf. Article 4, paragraph 2. Such purpose and intention are essential elements of the criminal offence as defined by Article 4. They must be proven in accordance with the domestic law of a Party.

49. When elaborating this provision, the drafters opted to closely follow the scope of Operative Paragraph 6 (a) of UNSCR 2178, criminalising the act of travelling to a State other than that of nationality or residence of the traveller for the purpose of terrorism. The obligation to criminalise this act will in accordance with UNSCR 2178 only apply to travels undertaken from the territory of the Party, or by its nationals, cf. Article 4, paragraph 2. It follows that all individuals travelling to a State other than that of their nationality or residence from the territory of the Party in question will be covered by the obligation to criminalise the act of travelling abroad for the purpose of terrorism under the Protocol. In so far as nationals of the Party in question are concerned, the obligation to criminalise however covers all travels to a State other than the State of nationality or residence of the traveller, irrespective of the geographical location of the starting point of the travel.

50. The drafters considered it appropriate to allow Parties to establish conditions when adopting the measures mentioned in Article 4, paragraph 2, where such conditions are required by their constitutional principles. In establishing such conditions, the overall purpose of the offence in Article 4 needs to be taken into account, i.e.

to implement Operative Paragraph 6 (a) of UNSCR 2178 in order to effectively prevent and deter those travelling with the intention to carry out terrorist offences or the intention to participate in activities having the potential for future terrorist acts to be committed (i.e. participation in terrorist training activities as defined in the Protocol and the Convention), and to have the necessary measures in place to be able to investigate and prosecute those traveling or attempting to travel. Conditions that Parties could contemplate for constitutional reasons when implementing Article 4, paragraph 2 of the Protocol include the further qualification of the destination of the travel for a terrorist purpose where this is justified to achieve the before-mentioned objectives.

51. In some legal systems, the act of travelling for the purpose of terrorism could normally be criminalised as a preparatory act to the main terrorist offence, or – depending on the circumstances – as an attempt to commit a terrorist offence. However, having examined this issue, the drafters of the Protocol held that the wording of Operative Paragraph 6 (a) of UNSCR 2178, does not contain an obligation for States to criminalise the act of travelling "for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts, or the providing or receiving of terrorist training" as a separate criminal offence; nor does the wording of Operative Paragraph 6 (a) of UNSCR 2178 preclude States from treating this activity under their domestic laws as a preparatory act to a terrorist offence or an attempt to commit a terrorist offence.

52. Bearing in mind the differences in legal systems referred to in the previous paragraph, the Parties are free to choose the manner including the language in which Article 4 of the Protocol is transposed in their domestic legislations. The drafters decided to use language in line with the Convention itself as substitute for the formulation "the perpetration, planning, or preparation of, or participation in, terrorist acts, or the providing or receiving of terrorist training" contained in Operative Paragraph 6 (a) of UNSCR 2178. Thus, the word "commission" has been used instead of "perpetration", and "contribution" has been used to replace both "planning" and "preparation". The phrase "terrorist offences" is used instead of "terrorist acts". Finally, the phrase "terrorist training" has been replaced by "training for terrorism". It should be underlined that this slightly different wording of Article 4, paragraph 1, of the Protocol is not intended to add to, or subtract from, the meaning contained in the formulation used by the UN Security Council and cited above.

53. In the case of this offence, the drafters considered it necessary to criminalise attempt, cf. Article 4, paragraph 3. The offence of attempt must be established not only under but also in accordance with the domestic law of a Party. Parties may choose to criminalise the attempt to travel under existing provisions as a preparatory act or an attempt to the main terrorist offence. In so far as the mental elements required for attempt are furnished by domestic law, the notion of attempt may differ from Party to Party. However, the drafters decided not to criminalise the aiding or abetting of the offence. Parties are however free to do so, if they consider it appropriate in their domestic legal systems.

54. Finally, the drafters noted that Article 26, paragraphs 4 and 5 of the Convention apply accordingly to the Protocol. The activities of armed forces during an armed conflict, as those terms are understood under international humanitarian law, which are governed by that law, are not governed by the provisions of this Protocol, neither are the activities undertaken by military forces of a Party in the exercise of their official duties, inasmuch as they are governed by other rules of international law.

**Article 5 – Funding travelling abroad for the purpose of terrorism**

55. The wording of Article 5, paragraph 1, is based on wording found in Operative Paragraph 6 (b) of UNSCR 2178 and in Article 2, paragraph 1, of the International Convention for the Suppression of the Financing of Terrorism of the United Nations of 1999.

56. Article 5 of the Protocol provides for the criminalisation of the act of funding "travelling abroad for the purpose of terrorism" as defined in Article 4, paragraph 1, of the Protocol. The criminal act is committed by "providing or collecting" funds fully or partially enabling any person to commit the crime of travelling abroad for the purpose of terrorism. The drafters noted that according to wording of the provision, the funds may come from a single source, e.g. as a loan or a gift which is provided to the traveller by a person or legal entity, or from various sources through some kind of collection organised by one or more persons or legal entities. The funds may be provided or collected "by any means, directly or indirectly". In addition to acting intentionally and unlawfully, cf. Article 5, paragraph 2, of the Protocol, the perpetrator must "know" that the funds are fully or partially intended to finance the travelling abroad for the purpose of terrorism, cf. Article 5, paragraph 1 in fine. As regards the definition of "funds", the drafters refer to the definition contained in Article 1, paragraph 1 of the International Convention for the Suppression of the Financing of Terrorism.

57. Article 5 of the Protocol shall be applied without prejudice to Article 2, paragraph 1, of the International Convention for the Suppression of the Financing of Terrorism.

58. The offence in Article 5 can be criminalised as a preparatory act or as aiding or abetting to the main offence.

59. The drafters did not consider it necessary to criminalise the attempt or the aiding or abetting of this offence, cf. also Article 9 of the Protocol. Parties are however free to do so, if they consider it appropriate in their domestic legal systems.

**Article 6 – Organising or otherwise facilitating travelling abroad for the purpose of terrorism**

60. The wording of Article 6 of the Protocol is based on Operative Paragraph 6 (c) of UNSCR 2178. It provides for the criminalisation any act of "organisation or facilitation" which assists a person who is committing the crime described in Article 4, paragraph 1, of the Protocol. The term "organisation" is self-explanatory and covers a variety of conducts related to practical arrangements connected with travelling, such as the purchase of tickets and the planning of itineraries. The term "facilitation" is used to cover any other conduct than those falling under "organisation" which assists the traveller in reaching his or her destination. As an example, the act of assisting the traveller in unlawfully crossing a border could be mentioned. In addition to acting intentionally and unlawfully, cf. Article 6, paragraph 2, of the Protocol, the perpetrator must "know" that the assistance is rendered for the purpose of terrorism.

61. The offence in Article 6 can be criminalised as a preparatory act or as aiding or abetting to the main offence.

62. The drafters did not consider it necessary to criminalise the attempt or the aiding or abetting of this offence, cf. also Article 9 of the Protocol. Parties are however free to do so, if they consider it appropriate in their domestic legal systems.

**Article 7 – Exchange of information**

63. This provision, which is, to some degree, inspired by Article 35 of the Budapest Convention on Cybercrime (CETS No. 185), takes as is basis the call by the Security Council of the United Nations for States "to intensify and accelerate the exchange of operational information regarding actions or movements of terrorists or terrorist networks, including foreign terrorist fighters, especially with their States of residence or nationality, through bilateral or multilateral mechanisms, in particular the United Nations" (cf. Operative Paragraph 3, of UNSCR 2178).

64. The 24/7 points of contact are conceived as a very light mechanism, essentially a list of contact points designated by the Parties to the Protocol, which is kept and updated by the Secretariat of the Council of Europe. The contact points are only intended for the exchange of police information between Parties concerning persons alleged to have committed the crime of travelling abroad for the purpose of terrorism, cf. Article 4. Unlike what applies to the aforementioned 24/7 network under the Budapest Convention on Cybercrime, the 24/7 points of contact are not intended to act as a communication channel for exchanging requests for mutual legal assistance, including spontaneous information and extradition. Co-operation on such matters is regulated in Articles 17, 19 and 22 of the Convention.

65. The wording "without prejudice to Article 3, paragraph 2, letter a, of the Convention" at the very beginning of Article 7, paragraph 1, is meant to exclude any effect of this latter provision on the national exchange of information provided for in Article 3, paragraph 2, letter a, of the Convention.

66. The provisions of sentences 1 and 2 of paragraph 1, Article 7, should be read in conjunction with each other. Both the operation of the exchange of information and the 24/7 points of contact shall be in accordance with the domestic legislation of Parties and international obligations. The notion of domestic legislation encompasses in some legal systems also regulations at a lower level. The respect of domestic legislation or international obligations may include the possibility for Parties to impose conditions on the use of the information. Parties, which are also Parties to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (CETS No. 108), or other international instruments providing an equivalent protection, shall observe the rules governing the protection of personal data, as laid down in these instruments.

67. When designating a contact point, Parties may use already existing contact points or other relevant mechanisms for the purpose of Article 7 of the Protocol, and the actual operation of the points of contact is left to their discretion.

68. Parties must ensure that their designated contact points have the capacity to communicate with their counterparts on an expedited basis.

**Article 8 – Conditions and safeguards**

69. Even though the corresponding provision in the Convention, namely Article 12, would normally apply automatically to the Protocol, the drafters considered that there was a need to further strengthen the visibility of the human rights and the rule of law principles stated in that provision in the Protocol itself.

70. Hence it was decided to repeat the wording of Article 12 of the Convention verbatim in Article 8 of the Protocol, with the important addition of the right to freedom of movement, which the drafters considered essential in the context of the Protocol. For the comments on Article 8, reference is made to paragraphs 143 to 152 of the Explanatory Report to the Convention, reproduced hereafter.

71. This is one of the key provisions of the Protocol by which the negotiators purport to enhance the efficiency of the fight against terrorism while ensuring the protection of human rights and fundamental freedoms.

72. This article requires Parties to ensure respect for human rights in establishing and applying the offences set forth in Articles 2 to 6.

73. A number of international instruments are listed that provide relevant human rights standards to which Parties to the Protocol must adhere as they represent obligations arising from international law. The list is not exhaustive.

74. These instruments include the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and its additional Protocols Nos. 1, 4, 6, 7, 12 and 13 (ETS Nos. 005, 009, 046, 114, 117, 177 and 187), in respect of European States that are Parties to them. Of particular relevance for this Protocol are Articles 6 and 7 of the ECHR which encompass, inter alia, the principle of legality covering the requirement of non-retroactivity, precision, clarity and foreseeability in criminal law, as well as the presumption of innocence which requires that the burden of proof lies with the prosecution. This is particularly relevant for instance in relation to the element of “purpose” in the criminalisation under Articles 2 to 6.

75. They also include other applicable human rights instruments in respect of States in other regions of the world (for example, the 1969 American Convention on Human Rights and the 1981 African Charter on Human Rights and Peoples’ Rights) which are Parties to these instruments, as well as the International Covenant on Civil and Political Rights (ICCPR) and other universal human rights instruments, including the Convention on the Rights of the Child which may be of particular relevance due to the young age of some persons traveling with terrorist purpose. In addition, similar protection is provided under the legislation of most States.

76. The term “where applicable” is used here to indicate that, because the Protocol is open to non-member States of the Council of Europe, the human rights framework in the ECHR would not be applicable to non-member States which are Parties to the present Protocol. Rather, non-member States of the Council of Europe will implement this paragraph pursuant to obligations they have undertaken with respect to the ICCPR, other applicable human rights instruments to which they are party, customary law, and their respective domestic laws.

77. An additional safeguard is provided by paragraph 2, which requires that the establishment, implementation and application of the criminalisation under Articles 2 to 6 “be subject to the principle of proportionality, with respect to the legitimate aims pursued and to their necessity in a democratic society”, while excluding “any form of arbitrariness or discriminatory or racist treatment”.

78. The principle of proportionality shall be implemented by each Party in accordance with the other relevant principles of its domestic law. For member States of the Council of Europe, this will be derived from the principles of the ECHR, its applicable case-law, and national legislation and case law. This principle requires that the power or procedure shall be proportional to the nature and circumstances of the offence.

79. For non-member States, the principle of proportionality is applied through constitutional or other domestic legal norms applied for the purposes of fixing an appropriate range of potential punishments in light of the conduct aimed at, and of imposing an appropriate sentence in an individual criminal prosecution. The exclusion of arbitrary, discriminatory or racist treatment is similarly to be carried out through the application of relevant constitutional or other domestic legal norms.

**Article 9 – Relation between this Protocol and the Convention**

80. This article clarifies the relationship between the Protocol and the Convention.

81. This article ensures uniform interpretation of this Additional Protocol and the Convention by providing that the words and expressions used in the Protocol shall be interpreted within the meaning of the Convention.

82. This article further clarifies the relationship between the provisions of the Convention and those of this Additional Protocol, i.e. as between the Parties to this Protocol, the provisions of the Convention, with the exception of its Article 9, "Ancillary offences", shall apply to the extent that they are compatible with the provisions of this Additional Protocol, in accordance with the general principles and norms of international law.

83. The drafters have decided to specifically include the exception of Article 9 of the Convention, "Ancillary offences". Thus, for the Parties to the Protocol, it is expressly provided in Article 4, paragraph 3 of the Protocol that attempt shall apply to the offence defined in this article ("travelling abroad for the purpose of terrorism"). On the contrary, the drafters have decided to exclude the application of attempt from the other provisions of substantial criminal law provided in Articles 2, 3, 5 and 6 of the Protocol. Moreover, concerning the other ancillary offences set forth in Article 9 of the Convention (Participating as an accomplice in an offence; Organising or directing others to commit an offence; Contributing to the commission of one or more offences covered by the Convention by a group of persons acting with a common purpose), the drafters considered that it was not appropriate to extend their application to the provisions of substantial criminal law set out in the Protocol.

84. However, this should not prevent Parties from introducing specific provisions in their national law should they wish to do so.

**Articles 10 to 14 – The Final Clauses**

85. With some exceptions, the provisions contained in Articles 10 to 14 of the Additional Protocol are, for the most part, based both on the "Model final clauses for conventions and agreements concluded within the Council of Europe" (http://conventions.coe.int/Treaty/EN/Treaties/Html/ClausesFinales.htm), which were approved by the Committee of Ministers at the 315th meeting of their Deputies in February 1980, and the final clauses of the Council of Europe Convention on the Prevention of Terrorism (CETS No. 196).

86. As most of Articles 10 to 14 either use the standard language of the model clauses or are based on long-standing treaty-making practice at the Council of Europe, they do not call for specific comments.

**Article 10 – Signature and entry into force**

87. This article provides the conditions for signature and entry into force of the Protocol.

88. It establishes that this Protocol shall be open for signature by Signatories to the Convention and that a Signatory may not ratify, accept or approve this Protocol unless it has previously ratified, accepted or approved the Convention, or does so simultaneously.

89. Since the provisions of the mother Convention apply to the Protocol, it is worth referring to its Article 23, paragraph 1, which provides for the possibility of the Convention being signed by member States of the Council of Europe, by the European Union and by the non-member States which have participated in its elaboration. Therefore, the same Signatories are also intended to be Signatories to the Additional Protocol.

90. This Protocol will enter into force three months after six Parties to the Convention have expressed their consent to be bound by it, including at least four member States of the Council of Europe.

91. Concerning any Signatory which subsequently deposits its instrument of ratification, acceptance or approval, paragraph 3 sets out the same period of three months after the date of the deposit for the Protocol to enter into force in its regard.

**Article 11 – Accession to the Protocol**

92. Taking into account the fact that the provisions of the mother Convention apply to the Additional Protocol, the procedure governing the accession to the Convention is intended to regulate the accession to the Additional Protocol. In this respect, it is worth referring to the Article 24 of the Convention, and to paragraphs 253 to 258 of its Explanatory Report, which describe the procedure.

93. Paragraph 2 defines the date of entry into force of the Protocol for the acceding State using the same terms as Article 10, paragraph 2.

**Article 12 – Territorial application**

94. The provisions contained in this article reproduce entirely the wording used in the Council of Europe Convention on the Prevention of Terrorism (Article 25).

**Article 13 – Denunciation**

95. This provision aims at allowing any Party to denounce this Protocol. The sole requirement is that the denunciation be notified to the Secretary General of the Council, in his or her role as depository of the Protocol.

96. This denunciation takes effect three months after it has been received, that is, as from the reception of the notification by the Secretary General.

97. Pursuant to paragraph 3, of this article, denunciation of the Convention automatically entails denunciation of this Protocol.

**Article 14 – Notification**

98. This provision, which is a standard final clause in Council of Europe treaties, concerns notifications to Parties. The Secretary General must inform Parties also of any other acts, notifications and communications, within the meaning of Article 77 of the Vienna Convention on the Law of Treaties, relating to the Protocol and not expressly provided for by this article.