
1400th meeting, 31 March 2021

10 Legal questions

10.3 Council of Europe Committee on Counter-Terrorism (CDCT)

b. Guidelines on the links between terrorism and transnational organised crime

*(Adopted by the Committee of Ministers on 31 March 2021
at the 1400th meeting of the Ministers' Deputies)*

The Committee of Ministers,

Considering that the aim of the Council of Europe is to achieve a greater unity between its member States, in particular by promoting the adoption of common rules in legal matters;

Considering the need to provide practical advice which could be taken into account and used by member States in order to help relevant national authorities to better prevent and fight terrorism, and to enhance their understanding of the links between terrorism and transnational organised crime;

Considering that these guidelines seek to provide a common framework rather than the harmonisation of national legislation of the member States;

Considering the need to respect the diversity of the legal systems of the member States;

Recognising that while significant progress has been made recently in combating terrorism, the fight against terrorism remains a pressing issue on global, regional and national agendas and that all member States must exercise vigilance;

Recognising the necessity to address the links between terrorism and transnational organised crime;

Recognising that effective co-ordination at national level between the competent agencies is vital to the prompt detection and neutralisation of both terrorism and organised crime and, if States are to succeed in countering terrorist attacks, they must work together in sharing relevant information and intelligence, including on the possible links between terrorism and organised crime;

Recognising that while there are links between terrorism and transnational organised crime, the question remains as to whether these links are based on a highly organised and well-defined structure or rather are opportunistic;

Recognising that, as they detain criminals and terrorists at the same time, prisons could create opportunities for collaboration, networking and "skills transfers" and that as a result, prison environments have the potential to consolidate the nexus between terrorists and criminals;

Recognising the importance for member States of examining the current problems posed by the links between terrorism and transnational organised crime and identifying areas where preventive operational and practical legal measures could be introduced or improved,

Adopts the following guidelines, designed as a practical tool for member States to help them address the problems stemming from the links between terrorism and transnational organised crime, with a particular focus on certain logistical aspects (arms trafficking, drug trafficking and human trafficking), and invites them to disseminate these guidelines widely with a view to their use by the relevant national authorities so as to better prevent and fight terrorism, and enhance their understanding of the links between terrorism and transnational organised crime. The measures and recommendations contained in these guidelines are aimed primarily at the relevant national judicial and law-enforcement authorities, as well as relevant national legislative entities.

Terminology used for the purpose of these guidelines

“Terrorism”,¹ in all its forms and manifestations, constitutes one of the most serious threats to international peace and security. All acts of terrorism are criminal and unjustifiable regardless of their motivation. For the purpose of these guidelines, reference should be made to the terminology set out in Article 1 of the Council of Europe Convention on the Prevention of Terrorism (CETS No. 196).

“Transnational organised criminal group” refers to a structured group of three or more persons operating in more than one State, existing for a period of time and acting in concert with the aim of committing one or more serious crimes, in order to obtain, directly or indirectly, a financial or other material benefit.²

“Serious crime” means conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty.³

I. Scope and fundamental principles

1. Terrorism and transnational organised crime, traditionally considered as two global threats with diverging objectives and interests, have seen growing operational convergence, leading to their co-operation and coexistence as each has learned and benefited from the modus operandi of the other.
2. Certain terrorist groups are transforming into organised criminal groups, and vice versa, and the boundary between the two is often unclear.
3. The nature of the links between terrorism and transnational organised crime depends on the local context.
4. Understanding the ways in which terrorism and transnational organised crime are linked should be a priority for member States in order to adequately target the phenomenon. It is important to put sufficient resources and effort into dealing with this growing trend given the unpredictable nature of its spread and the potential danger it represents for society.
5. These guidelines should be considered in accordance with the relevant Council of Europe instruments and conventions, in full compliance with the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5) and in accordance with the case law of the European Court of Human Rights, standards of international law, United Nations instruments and other existing guidelines.⁴ Respect for human rights and the rule of law is an essential part of any successful counter-terrorism effort.

¹ Please refer to: UNSC S/RES/1373 (2001); UNGA A/RES/49/60 (1994); UNSC S/RES/1566 (2004); UNSC S/RES/2482 (2019), Council of Europe Convention on the Prevention of Terrorism (CETS No. 196). A sub-group was set up by the Council of Europe Committee on Counter-Terrorism (CDCT) for the purpose of examining the feasibility of elaborating a definition of terrorism to replace or augment the current wording of Article 1 of the Council of Europe Convention on the Prevention of Terrorism and/or its appendix. A report on the matter was issued at the end of 2019.

² For the purpose of these guidelines, the above definition comes from the combination of the definition of an “organised crime group” contained in Recommendation Rec(2001)11 of the Committee of Ministers to member States concerning guiding principles on the fight against organised crime, and in the United Nations Convention against Transnational Organized Crime (UNTOC), and of the definition of “transnational” contained in Article 3.2.a of the UNTOC, which defines it as an activity occurring in more than one State.

³ For the purpose of these guidelines, the above definition comes from the United Nations Convention against Transnational Organized Crime.

⁴ Including notably the Global Counterterrorism Forum (GCTF), “Addendum to The Hague Good Practices on the Nexus between Transnational Organized Crime and Terrorism – Focus on Criminal Justice” [link] and the Security Council Guiding Principles on Foreign Terrorist Fighters (the 2015 Madrid Guiding Principles) and its addendums S/2015/939 and S/2018/1177.

II. Principles relating to the criminal justice system

6. Since terrorism is often a form of organised crime, member States should target it by using the operational methods and legal instruments that already have proved to be effective in the fight against transnational organised crime, and vice versa.

Policies

7. Member States should enhance their efforts to fight terrorism and transnational organised crime, taking account of the potential links and local context and characteristics.

Legal instruments and frameworks

8. Member States should ensure that national legislation for combating terrorism and transnational organised crime is consistent with regional and international instruments relating to terrorism and transnational organised crime so as to make effective use of the various existing legal frameworks.

Monitoring/intelligence

9. Member States should, where appropriate, develop and implement specialised investigative tools capable of coping with changes in criminal conduct, particularly with regard to criminals adopting newly developed technology.

10. Member States should consider using information from law-enforcement agencies, in particular prison and financial intelligence, and the assessment of new information-gathering methods. Prison intelligence is a vital source since prisons can be places for recruitment, radicalisation and “skills transfers”, both for transnational organised criminal groups and for terrorists. Financial intelligence plays a major role in monitoring terrorism and transnational organised crime, particularly when it comes to analysing financial flows used to prepare for or conduct terrorist operations.

11. The observation of cyberspace is vital for the fight against terrorism and transnational organised crime. Member States are encouraged, where appropriate, to develop effective means to counter the use of the internet for terrorist purposes and other forms of information and communication technology, including the latest achievements in new technology, the advances in artificial intelligence and the developments of unmanned vehicles, including aerial, in enabling terrorists and transnational organised criminal groups to co-ordinate their activities, plan attacks, radicalise, recruit and provide financing. Efforts should also be aimed at involving the private sector where appropriate.

Investigations

12. Member States are encouraged to use special investigation techniques and draw on the principles and measures set out in the appendix to Recommendation CM/Rec(2017)6 of the Committee of Ministers to member States on “special investigation techniques” in relation to serious crimes including acts of terrorism.

13. Member States should, where appropriate, develop and implement specialised investigative tools, in particular in the areas of finance and new technologies, capable of adapting to changes in criminal conduct.

14. Although many aspects of the tasks of law enforcement, security services and other relevant authorities demand a high degree of secrecy, transparent oversight by judicial authorities or other competent authorities is necessary in order to guarantee public trust and ensure that all measures comply fully with human rights, fundamental freedoms and the rule of law.

Substantive criminal law

15. In order to better address the legal issues related to the nature of the links between terrorism and organised crime, member States are encouraged, where possible, to improve the use of and the correlation between their national criminal law applicable to terrorism and criminal law applicable to organised crime.

16. Member States could consider establishing a specific offence of participation in a terrorist association, which would make it possible to punish any participation in organised crime for the purpose of financing terrorist activity, preparing the commission of a terrorist act or recruiting or otherwise facilitating the process of radicalisation for the purpose of terrorism.

17. Member States could consider establishing in their national criminal law system an aggravating circumstance for a connection with a terrorist offence involving organised crime. Depending on the local context, the sanctions for the commission of and/or the contribution to the offences of drug or arms trafficking could be increased where such offences are committed for the purpose of terrorism.

18. Member States could consider establishing sanctions for offences that are committed by organised criminal groups and which terrorist groups rely upon to finance or commit a terrorist act or other terrorist activities. These offences could include, *inter alia*:

- i. trafficking in arms;
- ii. trafficking in human beings;
- iii. smuggling of migrants;
- iv. drug trafficking;
- v. trafficking of natural resources;
- vi. trafficking of cultural property;
- vii. smuggling and extortion;
- viii. trafficking in chemical, biological, radiological and nuclear substances.

19. To strengthen efforts to counter terrorism and prevent the commission of terrorist acts, member States could consider, if necessary, the introduction of provisions relating to persons who turn State's evidence, encouraging the reporting of terrorist acts under preparation, as regards both their substance and the individuals involved in such preparation, in particular through exemptions or reduced penalties.

Protection of witnesses, collaborators of justice and whistle-blowers

20. Member States should be encouraged to introduce mechanisms to protect witnesses, collaborators of justice and whistle-blowers or to enhance the already existing ones, such as Recommendation Rec(2005)9 of the Committee of Ministers to member States on the protection of witnesses and collaborators of justice.

Asset recovery

21. Member States should enhance existing mechanisms in order to counteract the economic structures which support terrorism and transnational organised crime as well as the mechanisms to facilitate asset recovery. In this respect, member States are encouraged to ratify the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS No. 141) and the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No. 198).

Corruption

22. Corruption may in some cases directly or indirectly provide support to – or facilitate – terrorism and transnational organised crime. Member States should increase efforts to prevent and fight against corruption, in particular through the effective implementation of relevant international instruments and standards, notably those of the Council of Europe, including the country-specific recommendations of the Group of States against Corruption (GRECO) and the United Nations Convention against Corruption.

Prisons

23. Member States should ensure the dissemination, promotion and use of the "Council of Europe Handbook for prison and probation services regarding radicalisation and violent extremism", which recommends measures to be taken by prison and probation services in order to prevent persons under their responsibility from being radicalised into accepting violent extremist views which may lead to terrorist acts, as well as to detect, manage and reintegrate radicalised persons, including the development of specific programmes when necessary.

24. Member States should pay particular attention to the activities of individuals belonging to criminal and/or terrorist organisations in prisons and ensure that there are appropriate means of monitoring and collecting intelligence on potential radicalisation or recruitment in prisons.
25. Prison and probation services, and other prison system experts, should prevent any co-operation or transfer of skills or know-how between terrorists and transnational organised criminal groups.
26. Member States should support and step up rehabilitation and reintegration programmes.

Capacity building

27. Due to the often transnational nature of the links between terrorism and organised crime, member States are encouraged to ensure a high degree of specialisation of the police officers, public prosecutors and judges involved in the fight against transnational organised crime and terrorism who, for instance, could be trained in recognising and detecting the links between terrorism and transnational organised crime.
28. Member States are encouraged to raise awareness among, and build the capacities of, all those involved in fighting transnational organised crime and terrorism, for example by providing training and creating networks to enable them to share relevant information as appropriate.
29. Capacity building in the area of financial investigations should cover the detection of illicit financial flows, the application of interim measures and the seizure and confiscation of the proceeds from crime.

Specific aspects relating to arms trafficking

30. Arms trafficking is both a means for committing terrorist attacks and a means of financing for transnational organised crime.
31. Member States should combat the trafficking, illegal sale and illegal flow of small and light weapons, which have become a major problem because of the ease with which radicalised individuals and terrorists can obtain them.
32. Member States should enhance their commitment to combating the illicit availability of small arms and light weapons, including by sharing information about the acquisition and movement of such weapons and by introducing or maintaining adequate controls on the domestic possession and transfer of such weapons as well as introducing or maintaining strict controls on imports, exports and transit, and a system for their marking and tracing.
33. Member States should apply existing international legal commitments regarding arms transfers in order to mitigate the risks of arms being diverted into the hands of terrorist groups.

III. Principles relating to enhanced co-operation and co-ordination at national level

34. Member States are encouraged to enhance co-operation and co-ordination between the competent authorities at national level, police services and intelligence agencies, while respecting democracy, human rights and the rule of law.
35. Member States are invited to establish effective communication channels and strategies with a view to encouraging and improving information sharing and the quick transmission of information, in particular in the areas of finance and new technologies, including with a view to strengthening cross-border co-operation.
36. In particular, member States should encourage the design, use and updating of shared databases on terrorism and transnational organised crime.
37. Member States should consider setting up multidisciplinary teams comprising individuals with different skills, know-how and profiles.

38. Member States should encourage and facilitate co-operation, co-ordination and information sharing between institutional and relevant agencies involved in fighting terrorism and transnational organised crime.

39. Co-operation and co-ordination could be enhanced through the involvement of outside sources such as prison and financial intelligence, cross-border agencies, non-governmental organisations and the private sector, as appropriate.

40. Member States could consider further developing and encouraging partnerships, in particular between the public and private sectors, including agencies and stakeholders such as banks, accountants and lawyers.

IV. Principles relating to enhanced co-operation at international level

41. Member States are encouraged to further step up international co-operation in terms of prevention, investigation and prosecution in the fight against terrorism and transnational organised crime.

42. Member States should continue to improve their international judicial and law-enforcement co-operation on matters relating to terrorism and transnational organised crime. This co-operation should also encompass the exchange of information related to the financing of these offences, notably between Financial Intelligence Units (FIUs). Co-operation should be carried out in accordance with the principle of mutual trust, which is essential for the fight against terrorism and transnational organised crime.

43. Due to the often transnational nature of the links between terrorism and organised crime, member States should work together with relevant regional, sub-regional and international organisations to enhance co-operation and strategies to prevent terrorists from benefiting from transnational organised crime and to address the links between the two.

44. Member States should enhance information sharing through globalised information systems such as INTERPOL's I-24/7 secure global police communications system, the Egmont Group of Financial Intelligence Units and the Council of Europe 24/7 Network of Contact Points on Foreign Terrorist Fighters.

45. Member States are invited, as appropriate, to play an active part in promoting the setting up of joint investigation teams on the basis of the relevant provisions of the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (ETS No. 182). Member States that have not yet ratified the protocol should do so as quickly as possible for that purpose.

46. Member States should adhere to all relevant conventions and other legal instruments relating to the fight against transnational organised crime and terrorism so as to avoid legal loopholes and the impunity of criminals, especially in line with the *aut dedere aut judicare* principle.

V. Research

47. Promoting and developing more research into terrorism and transnational organised crime techniques, and the links between them, are essential tools for better understanding and preventing the phenomenon. Research could for example consider:

- i. the evolution of terrorism and transnational organised crime;
- ii. the organisational structures of criminal and terrorist networks, the contexts in which they meet, communication channels and strategies, recruitment and employment strategies, their sources and methods of financing;
- iii. the existing and emerging links between terrorism and transnational organised crime, and the ways these new links emerge, in particular as regards arms and drug trafficking;
- iv. the techniques and means of action of terrorists and transnational organised criminal groups;
- v. the identification of vulnerable members of society, both as perpetrators and as victims;
- vi. the development of specific responses;
- vii. the identification of legal gaps/loopholes.