



LE GOUVERNEMENT
du Grand-Duché de Luxembourg



EU Counter-Terrorism Offences: What Impact on National Legislation and Case-law?

Conference organized by ECLAN (European Criminal Law Academic Network)
and the Institute for European Studies (*Université Libre de Bruxelles*),

with the financial support of the European Commission (DG Justice)
and the Ministry of Justice of the Grand Duchy of Luxembourg

Brussels, Albert Borschette Conference Centre (27 May 2011)* and
Institut d'Etudes Européennes, ULB (28 May 2011)

Free entrance but mandatory registration by 20 May 2011

I. Purposes of the conference

This two-day conference is the first of two events planned in the framework of the **ECLAN II project**, financed by the European Commission (DG Justice) and the Ministry of Justice of the Grand Duchy of Luxembourg.¹

The purpose of this conference is to present and discuss the latest of counterterrorism policies at the EU level and evaluate their impact on the development of selected Member States' substantive criminal law and case law. Particular reference is made to the **Framework Decisions of 2002 and 2008** and the introduction of an EU definition of terrorism and the three new offences of provocation, training and recruiting for terrorism purposes.

Governments have often claimed that modern international terrorism cannot be handled adequately within the ordinary criminal justice system. Consequently criminal law had to be adapted to fight terrorism more effectively, which includes the criminalization of certain "abstract danger", preparatory activities such as terrorist training, membership in a terrorist organization etc.

¹ Following the agreement signed by the ULB with DG Justice of the European Commission and with the Grand Duchy of Luxembourg, ECLAN was recently awarded some funds in order to carry out the so-called ECLAN II project. The project aims at the improvement of the internal functioning of the Network: the creation of a pool of European young researchers in European criminal law in order to favour the dialogue among PhD students; the re-launch of the ECLAN web-site; the launch of a podcast of conferences and seminars on the Network web-site; the creation of a data-base with all research activities/projects carried out by universities in Europe and the organization of two conferences.

National legislation has evolved against the background of international and European instruments. The EU Framework Decision 2002/475/JHA on combating terrorism identifies a number of acts (such as physical attacks, kidnapping, seizure of aircraft, manufacture or possession of weapons or explosives, etc.) that must be qualified as terrorism where committed with a specific purpose. The EU Framework Decision 2002/475/JHA has also had a major impact on courts' decisions, legislators' choices and on the academic debate. This instrument then became the inspiration for national legislation. The EU Framework Decision 2008/919/JHA amends the latter and introduces the offences of 'public provocation to commit a terrorist offence', 'training for terrorism' and 'recruitment for terrorism', as demanded by the earlier Council of Europe Convention on the Prevention of Terrorism (2005).

On the first day, following an introductory overview of the European Framework Decisions, experts from the selected Member States will illustrate their national legislation and relevant case-law. They will thus analyze the impact that the new definition and offences have in real cases, whether causing problems or generating added value to investigations and prosecutions.

On the second day, representatives of ECLAN, EUROPOL and national prosecutors will firstly assess the advantages and shortcomings of the new provisions for the purpose of European cooperation, such as joint investigations. Secondly, session 3 will place the current changes in the broader picture of developments in criminal justice in Western Europe in recent years: in particular the shift toward prevention and the development of special techniques of investigation, which has substantially expanded in the context of contemporary counter-terrorism frameworks.

II. Method

This conference is the outcome of the activities of ECLAN, in the framework of the ECLAN II project.

On the one hand, the conference is to be seen in the framework of the studies of ECLAN on the evaluation of EU policies in the field of judicial cooperation in criminal matters aiming at the development of a methodology for the assessment of the implementation and impact of European criminal law. Particularly noteworthy are the two publications "*Comment évaluer le droit pénal européen*" (2006)² and "The evaluation of European criminal law - The example of the Framework Decision on combating trafficking in human beings" (2009)³. The conference and the following publication will apply the methodology developed in the framework of these two studies. On the other hand, the chosen topic is in line with the research project "*L'Union européenne et la prévention du terrorisme : impact sur le droit pénal et redéfinition de la relation entre le droit pénal européen et les droits pénaux nationaux*", conducted by the *Institut d'Etudes Européennes* with the financial support of the Belgian **Fond National pour la Recherche Scientifique (FNRS)**.

The conference will be the occasion to bring together academics and legal practitioners - judges, prosecutors, police officers, defense lawyers as well as civil servants- both as speakers and as targeted audience. In addition to academics and researchers coming from various Member States (for the majority contact persons or members of ECLAN), prosecutors and judges coming both from different jurisdictions, European senior officials, civil servants at Europol and Eurojust, human rights lawyers, and national experts will be invited.

² A Weyembergh and S De Biolley (eds), *Comment évaluer le droit pénal européen* (Éditions de l'Université de Bruxelles 2006).

³ A Weyembergh and V Santamaria (eds), *The evaluation of European criminal law - The example of the Framework Decision on combating trafficking in human beings* (Éditions de l'Université de Bruxelles 2009).

A number of EU Member States have been selected as the jurisdictions of comparison for the purpose of a comparative analysis. A first category is made of few jurisdictions which have experienced serious and long-lasting periods of political violence and terrorism, and thus developed specific terrorist offences, which allow interesting parallels with contemporary debates. These Member States have also been influential in providing a model for other governments in the world and shaping a counter-terrorism European common strategy. The second group is larger and encompasses states such as Belgium or the Netherlands which have defined terrorist offences as autonomous ones in their penal codes only after the attacks of September 11.

Papers on the legislation and case-law of the selected jurisdictions will follow a common grid of analysis. This will allow the drafting of a comprehensive and coherent conclusion as well as a number of policy recommendations at the end of the second conference day.

III. Expected outcomes

The conference will lead to the publication in 2012 of a collective book (Editions de l'Université Libre de Bruxelles).

IV. Provisional Programme

Day 1

9:00 - 9:30 **Arrival and registration of the participants**

9:30 - 10:00 **Welcoming speech** – Anne Weyembergh, *Professor at the IEE-ULB*

Introduction (purpose of the conference, method of analysis, eventual publication) – Francesca Galli, *FNRS Post-doctoral Researcher at the IEE-ULB*

Introductory Session: European legal instruments in the fight against terrorism – Introductory overview of the Framework decisions on combating terrorism: the new definition of terrorism and the offences of provocation, recruitment and training for terrorism purposes. Analysis of controversial points (eg vagueness of the definition, intent and recklessness, the concept of risk), state of play (eg similarities and differences with the 2005 Council of Europe Convention on the Prevention of Terrorism), envisaged future developments (eg aggravating circumstances, provocation via internet, offence of receiving a training).

Chairman: Olivier Tell, *Head of Unit, European Commission, DG Justice*

10.00 - 10.45 **Overview of the FDs 2002 and 2008 and possible new developments** – Damian Gadzinowski, *European Commission, DG Home*

The two framework decisions: a critical approach – Sabine Gless, *Professor at the University of Basel*

10.45 - 11.00 Coffee break

1st session: The interplay between counter-terrorism European instruments and domestic provisions

– The development of national legislation and case-law against the background of European instruments. Academics and practitioners will particularly analyze the impact that the new definition and offences have in real cases, whether causing problems or generating added value to investigations and prosecutions.

Chairman: Gisèle Vernimmen, *former Head of Unit at the European Commission and Scientific Collaborator at the IEE-ULB*

- 11.00 - 12.00**
- France** – Henry Labayle, *Professor at the University of Bayonne*
- Germany** – Martin Böse, *Professor at the University of Bonn*
- Italy** – Francesca Galli, *FNRS Post-doctoral Researcher at the IEE-ULB*
- 12.00 - 13.00**
- Spain** – Manuel Cancio Meliá, *Professor at the Universidad Autonoma de Madrid*
- United Kingdom** – John R. Spencer, *Professor at the University of Cambridge*
- Austria** – Robert Kert, *Professor at the University of Vienna*

13.00 - 14.30 **Lunch**

- 14.30 - 15.30**
- Belgium** – Anne Weyembergh, *Professor at the IEE-ULB*
- Denmark** – Jørn Vestergaard, *Professor at the University of Copenhagen*
- Hungary** – Katalin Ligeti, *Professor at the University of Luxembourg*
- 15.30 - 15.45** Debate
- 15.45 - 16.15** **The use of new offences in practice: analysis of the information transmitted by the Member States to Eurojust as required by the 2005 FD** – Michele Coninx, *Vice-President, Eurojust*
- 16.00 - 16.15** Coffee Break

2nd session: Harmonisation of terrorist offences and European cooperation

– Advantages and shortcomings of the new provisions for the purpose of a more effective European cooperation. Does the harmonisation of criminal offences facilitate the cooperation between Member States in the investigation and prosecution of terrorist offences?

Chairman: Valsamis Mitsilegas, *Professor at the Queen Mary University of London*

- 16.15 - 17.45**
- The impact of the new offences on European cooperation** – Gilles de Kerchove, *EU Counter Terrorism Coordinator*
- To what extent do the new offences facilitate police cooperation, including the intervention of Europol, in terrorism cases?** – Roland Genson, *Director, General Secretariat of the Council of the EU*

Administrative or judicial approach for the prevention of terrorism in relation with the EU offences? – Emmanuel Barbe, *Secrétaire général adjoint au Secrétariat général des Affaires européennes, France*

17.45 - 18.00 Debate

Day 2

3rd session: The shift towards prevention in the fight against terrorism – Current changes will be placed in the broader picture of developments in criminal justice in Western Europe in recent years: in particular the shift toward prevention and the development of special investigative techniques, which have substantially expanded in the context of contemporary counter-terrorism frameworks.

Chairman: Serge de Biolley, *Permanent Representation of Belgium to the EU*

9.30 - 10.30 **Towards an enemy criminal law?** – Stefan Braum, *Professor at the University of Luxembourg*

The impact of the new offences in concrete cases, and especially the question of evidence and of the use of classified evidence in court – Christophe Marchand, *Defense Lawyer at the Brussels Bar*

Inchoate offences, the sanctioning of an act prior to and irrespective of the commission of any harm – Katia Sugman, *Professor at the University of Ljubljana*

10.30 - 10.45 Coffee break

10.45 - 11.45 **Broader application of special investigative techniques** – Hans-Christian Jasch, *European Commission, DG Home*

The judicial approach to fight terrorism: the view of the ECtHR – Olivier De Schutter, *Professor at the UCL*

The shift towards prevention – Nicola Piacente, *Anti-terrorism Prosecutor, Milan*

11.45 - 12.15 Debate

12.15 - 12.45 **Concluding remarks** – Pedro Caeiro, *Professor at the University of Coimbra*

12.45 - 13.15 **Final discussion**

(*) At the Borschette Conference Centre interpretation will be available in English, German, French, Italian and Spanish