

EU contribution to the call for inputs Protection of Human Rights by Regional Organizations when Countering Terrorism

The European Union would like to thank the Special Rapporteur on Counter-terrorism and Human Rights for the call to provide inputs for the report on Protection of Human Rights by Regional Organizations when Countering Terrorism.

In order to provide an a comprehensive input as possible, the replies below reflect submissions by several EU institutions and Agencies, such as DG HOME, DG JUST, EUROJUST and the EEAS and as such contain different levels of information.

Questions to guide inputs

1) To what extent are the counter-terrorism and preventing/countering violent extremism (P/CVE) norms of the regional organization consistent with international human rights law, international humanitarian law, and international refugee law?

a. Consider, for example, definitions of terrorism and extremism and exclusion clauses in definitions, terrorism offences, criteria for listing terrorist organizations, obligations to cooperate, duties of prevention, and P/CVE.

b. Do any counter-terrorism norms or instruments refer to human rights, either generally or in specific detail, or are human rights omitted?

c. Consider all relevant norms: treaties, internal laws, resolutions, standards, ‘soft law’, declarations, policies, strategies and plans.

d. Consider all of the actors in the regional organization, such as commissions, councils, parliaments, secretariats, regulatory authorities and executive bodies.

e. Include critiques by any United Nations and regional human rights bodies, national courts, experts, academics and NGOs.

Human Rights and EU law

Article 2 of the Treaty on the European Union (TEU) underscores that human rights are a foundational value of the Union. Furthermore, article 6(2) of the TEU underscores that the rights enshrined into European Convention on Human Rights constitute general principles of EU law.¹ The EU has also enacted its own **Charter of Fundamental Rights**, which brings together the most important personal freedoms and rights enjoyed by citizens of the EU into one legally binding

¹ The article also states that ‘*the Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms*’. This process is currently at its final stages and a strong signal of the EU’s commitment to a human rights-based approach to all its internal and external action.

document. The Charter was declared in 2000, and came into force in December 2009 along with the Treaty of Lisbon.²

The Charter sets out the full range of civil, economic, political and social rights based on a) the rights recognised by the **European Convention on Human Rights** b) **the constitutional traditions of the EU Member States** c) **the Council of Europe's Social Charter** d) **the Community Charter of Fundamental Social Rights of Workers**, and e) **other international human rights conventions to which the EU or its Member States are parties**. It reflects established case-law of the Court of Justice of the European Union (CJEU) and the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).

The Charter binds national actors where they act within the scope of EU law. In these cases the Charter applies in addition to national constitutional guarantees of human rights and the obligations that EU Member States have under other international treaties, such as the ICCPR, CAT and the Convention on the Rights of the Child etc.

The EU institutions are bound by the Charter in all contexts, which gives it the potential to promote a stronger human rights culture within the EU. The **EU's accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms, which is at its final stages**, is another strong signal of the EU's commitment to a human rights-based approach to all its internal and external action.

The **Court of Justice of the European Union (CJEU)** constitutes the judicial authority of the European Union and, in cooperation with the courts and tribunals of the Member States, it ensures the uniform application and interpretation of EU law, including of the EU Charter on Fundamental Rights. As part of that mission, the Court of Justice of the European Union reviews the legality of the acts of the institutions of the European Union, ensures that the Member States comply with obligations under the EU Treaties, and interprets European Union law at the request of the national courts and tribunals.

The **European Union Agency for Fundamental Rights (FRA)** provides independent advice to EU institutions and Member States on the rights set out in the Charter. FRA also engages in legal and social science research to identify areas in the EU where further work needs to be done to meet international standards.

EU legislation on Counter terrorism impact on fundamental rights and human rights

The EU criminal law framework on counter-terrorism is mainly based on **the Directive (EU) 2017/541 on combating terrorism** (the 'Counter-terrorism Directive'). It establishes minimum rules concerning the definitions of offences and related sanctions in this area. It also introduces measures of protection, support and assistance for victims.

² The Charter of Fundamental Rights is not incorporated directly into the Treaty of Lisbon, but acquires a legally binding character through Article 6(1) TEU, which gives the Charter the same legal value as the Treaties ([4.1.2](#)).

The directive provides an exhaustive list of serious offences that EU countries must classify as terrorist offences in their national law when they are committed or there is a threat to commit them for a particular terrorist aim. Terrorist aims are described as any of the following:

- seriously intimidating a population;
- unduly compelling a government or an international organisation to perform or abstain from performing any act;
- seriously destabilising or destroying the fundamental political, constitutional, economic or social structures of a country or an international organisation.

In 2021, the EU evaluated the implementation of the directive, including its impact on human rights and fundamental rights. Overall, most stakeholders consulted for the external study found the implementation of the Directive to be in line with fundamental rights perspective.

Recital 35 of the Directive clearly spells out that it has to be implemented in accordance with Article 2 of the Treaty on European, the EU Charter on Fundamental rights, as well the European Convention for the Protection of Human Rights and Fundamental Freedoms, the International Covenant on Civil and Political Rights, and other human rights obligations under international law.

The Directive explicitly carves out a legal space for principled humanitarian action. Recital 38 emphasizes that the provision of humanitarian assistance by impartial humanitarian organisations is not considered terrorism.

This language in the Terrorism Directive is considered a positive example on how to avoid the adverse effects of CT measures on the ability of humanitarian organizations to serve people in need in accordance with international humanitarian law.

Recital 37 clarifies that the Directive should not have the effect of altering the rights, obligations and responsibilities of the Member States under international law, including international humanitarian law.

Moreover, Recital 39 lays down that the implementation of criminal law measures under the Directive should be proportional to the nature and circumstances of the offence, with respect to the legitimate aims pursued and their necessity in a democratic society.

On the dissemination of terrorist content online

The Terrorist Content Online Regulation applicable since June 2022 has had a major impact in limiting the dissemination of terrorist content that can lead to radicalisation and recruitment. The Regulation has strong safeguards to protect fundamental rights, notably freedom of expression and information. Under the regulation, platforms *and* competent authorities must publish annual transparency reports that include information on the removal orders and actions taken by them to address the dissemination of terrorist content

On the European Judicial Counter-Terrorism Register at Eurojust:

Eurojust established in 2019 the European Judicial Counter-Terrorism Register (CTR) based on Council Decision 2005/671/JHA. Regulation (EU) 2023/2131 provides a strong legal basis for the CTR, obliging competent authorities to share information about ongoing prosecution in terrorism cases. The amendment also includes high security standards for the transmission and strict retention periods for the storage of this information.

2) Have counter-terrorism sanctions of the organization respected human rights?

The EU framework for restrictive measures

EU restrictive measures (sanctions) are a tool of the EU's Common Foreign and Security Policy (CFSP) in defending universal values and international law, preserving peace and security and supporting democracy, the rule of law and human rights in line with the principles of the UN Charter.

EU sanctions are temporary and proportionate to the gravity of the situation they address. They are always targeted and carefully calibrated, aimed only at those responsible for the policies or actions the EU aims to influence, such as decision-makers, facilitators, supporters or company executives. They seek to bring about a change in the behaviour of those responsible for the policies or actions leading to the imposition of sanctions.

As such, EU restrictive measures are fully compliant with international law, including international human rights law, international humanitarian law (IHL) and international refugee law. EU Courts, which scrutinise the legality of EU restrictive measures, have consistently confirmed their compliance with international law, based on commonly accepted and objective criteria. There is no finding from the ICJ or any other authoritative source of international law pointing to the contrary.

EU sanctions fully respect rights of persons flowing from international human rights, including due process, as laid down for example in the International Covenant on Civil and Political Rights and customary international law. EU sanctions designations are based on specific listing criteria and require legally robust evidence. They must respect human rights and fundamental freedoms, as stipulated by the EU Treaties. Designations are accompanied by an explanation - statement of reasons - to enable the individual or entity concerned to understand the grounds for their listing. Listed persons and entities are notified about changes to their EU sanctions designation and given an opportunity to provide observations, submit requests for access to their file and make de-listing requests, which will be examined by the competent EU body³.

EU sanctions are subject to judicial review. Designated persons and entities or targeted third states may challenge EU restrictive measures before the Court of Justice of the EU, asserting their due process rights and their right to a fair trial.

³ Council of the European Union or in some cases European Commission

There is no difference in approach between the various frameworks of restrictive measures adopted at EU level. The pillars referenced above are also applicable to EU restrictive measures combating terrorism. They target persons, groups, bodies or entities involved in terrorist acts.

They follow a specific listing criteria and require legally robust evidence. Counterterrorism designations are accompanied by an explanation - statement of reasons - to enable the individual or entity concerned to understand the grounds for their listing. Those listed are notified about changes to their EU sanctions designation and given an opportunity to provide observations, submit requests for access to their file and make de-listing requests, which will be examined by the competent EU body. Such designations are also subject to judicial review, before the Court of Justice of the EU, which has confirmed that the designations are in line with international human rights law, in particular as regards due process and the right to a fair trial.⁴ At the same time, there have been judgements, which have annulled the listing of entities subject to counterterrorism sanctions.⁵ This shows that the process of judicial review works, the Council being obliged to follow the judgments Court of Justice of the EU and to take measures to ensure that the rights of those listed are respected.

Counter Terrorism and Humanitarian space including sanctions

In June 2022 the Commission adopted a guidance note providing practical direction on how to comply with EU restrictive measures, addressing some of the specific issues concerning the possible interaction of sanctions with the provision of humanitarian aid.

The guidance note is currently under review by the Commission to reflect the development following the adoption of UN Security Council Resolution 2664 (2022) creating a humanitarian carve-out from asset freeze measures in UN sanctions regimes This Resolution has ignited a change of approach for the EU, and the EU has introduced the humanitarian exemption into circa 2/3 of its sanctions regimes.

Following the adoption of UN Security Council Resolution 2664 (2022), in February 2024 the Council decided to insert the UNSCR 2664-style humanitarian exemption into the EU autonomous terrorism sanctions regime. The exemption is currently in force for an initial duration of 12 months and provides a humanitarian carve-out from asset freeze measures.

The EU-UN mixed sanctions regime combatting terrorism with respect to ISIL (Da'esh) and Al-Qaida also includes the UNSCR 2664 humanitarian exemption. Inserted initially for two years, this is set to expire in December 2024 unless otherwise prolonged.

Overall, all CT sanctions regime imposed by the EU have a humanitarian carve-out. They are also kept under six monthly or annual review, so that any possible humanitarian issues can be addressed during such reviews.

⁴ Recent examples include: case C-833/19 P - Council v Hamas, Judgment of the Court (Grand Chamber) of 23 November 2021; Joined Cases T-316/14 RENV and T-148/19, Judgment Of The General Court (Fourth Chamber, Extended Composition) of 30 November 2022

⁵ Recent examples include: case T-643/16 - Gamaa Islamiya Égypte v Council, Judgment of the General Court (First Chamber) of 10 April 2019, case C-599/14 P - Council v LTTE, Judgment of the Court (Grand Chamber) of 26 July 2017

3) To what extent has the regional organization acted consistently with international human rights law in its operational activities and practices, including legal and technical cooperation, sanctions, training, joint investigations, and joint exercises?

The European Commission **does not have an operational mandate**. National security remains a primary competence of Member States, as stated in Art. 4 of the Treaty on the Functioning of the European Union (TFEU). The EU Member States remain bound by the European Convention on Human Rights and other human treaties that the respective States have ratified in pursuit of sustaining national security, including counterterrorism measures. Their actions should also adhere to the EU Charter on Fundamental Rights.

Judicial cooperation between EU Member States for the prosecution of terrorist acts has developed via Eurojust (European Union Judicial Cooperation Unit), created in 2002. **EUROJUST assists national authorities on a daily basis**, in ensuring that judicial cooperation takes place in full compliance with applicable human rights standards in criminal matters, as established under EU law (Charter of Fundamental Rights of the EU) and the European Convention on Human Rights. Specific examples are provided below:

- a. Eurojust assists national authorities in relation to conflicts of jurisdiction and transfer of proceedings, as well as cases involving potential *ne bis in idem* issues. Eurojust helps facilitate preliminary contacts and consultations between competent authorities, coordinate their actions, encourage and expedite the exchange of information, and advise on which jurisdiction is the better placed to prosecute in the best interest of justice. For the latter, Eurojust has published a set of guidelines. The guidelines fully endorse the *ne bis in idem* principle and their key principles include, among others, that decisions on which jurisdiction is best placed to prosecute 'must always be fair, independent and objective, and must be made by taking into consideration the European Convention on Human Rights and the Charter of Fundamental Rights of the EU, ensuring that procedural guarantees of any defendant or potential defendant are protected'. Factors to be considered when making a decision on which jurisdiction should prosecute include, among others, the location of suspect(s)/accused person(s), the protection of witnesses, the interests of victims, etc.
- b. To prevent and resolve conflicts of jurisdiction, Eurojust is in a position to assist the competent authorities in examining whether related facts that are under investigation in two or more EU Member States may constitute the 'same acts' within the meaning of Article 54 of the Convention on the Implementation of the Schengen Agreement and Article 50 of the Charter of Fundamental Rights of the EU, in light of the interpretation given by the Court of Justice of the EU in its rulings. Depending on the outcome of such a preliminary examination, Eurojust can advise the national authorities to either continue the parallel proceedings or discontinue a proceeding in one EU Member State and/or to transfer it to another.

- c. Eurojust is particularly well-equipped to help build an agreement among the national authorities on which State is best placed to prosecute a case and to find practicable solutions to ensure the effectiveness of justice and compliance with the fundamental rights of the defence and the interests of victims. Further information, including on the safeguards of rights of victims and suspects can be found in the Eurojust Report on the transfer of proceedings in the European Union.
- d. In cases of competing requests for surrender and extradition, Eurojust can provide non-binding advice, including through the Eurojust Guidelines for deciding on competing requests for surrender and extradition. The guidelines are based on a number of legal instruments, including the Charter of Fundamental Rights of the EU (Article 19) and list the interests of victims and the prosecution of co-accused and/or prosecution of different members of a criminal organisation as two of the factors to be considered by national authorities when deciding on the execution of competing requests.
- e. Working on the frontline of investigations and prosecutions, Eurojust comes into regular contact with operational personal information. By applying the highest standards in data protection, Eurojust ensures that all information is handled with the greatest of care, ensuring that the rights of individuals are fully protected at all times.

The external dimension plays a vital role in the fight to counter terrorism. The Union has concluded cooperation clauses and agreements with third countries. It is also undertaking projects to aid and strengthen capabilities with strategic countries. **Adherence to human rights in counterterrorism policies and measures is a standing item in our bilateral counter-terrorism dialogues with partner countries**, as well as in the framework of our multilateral counter-terrorism engagement, including with the UN CT compact, ODIHR, the Global Coalition against Da'esh and the Global Counterterrorism Forum (GCTF), which the EU currently co-chairs. The importance of human rights is **reflected in our capacity building support to partners through the EU's Counter-Terrorism Facilities**, as well as bilateral and regional projects. Technical cooperation is offered to promote that human rights, gender equality and rule of law are integrated into partner countries' counterterrorism policies and to develop evidence-based criminal justice systems.

Similarly, the EU has sought to safeguard **civic space and civil society organisations** with regard to countering the financing of terrorism in its support to partners' efforts to comply with Financial Action Task Force (FATF) anti-money laundering and combatting the financing of terrorism (AML/CFT) standards. The promotion of respect, protection and fulfilment of human rights – with

an emphasis on freedom of expression, freedom of assembly, freedom of association, freedom of religion or belief, due process and legal safeguards, and an inclusive approach, with engagement of all parts of society – lie at the foundation of the EU's CT engagement with the UN. In particular, the EU is advocating for the implementation of a strong results framework by UNOCT and other UN CT entities, as mandated by the 8th GCTS review. This is urgently needed to allow not only for the tracking and monitoring of the effectiveness of their activities on the ground, but also to ensure that human rights and the other cross-cutting issues mentioned above are upheld throughout all activities.

Prevention is key, as only efforts that address the whole of society are effective in the long-term. Against this backdrop, the EU has been a strong supporter of the mandate of the Special Rapporteur on counterterrorism and human rights as well as the role of the ombudsperson and the humanitarian carve-out in UN CT sanctions mechanisms.

4) To what extent do the specialized counter-terrorism bodies of regional organizations (such as counter-terrorism committees, centres, units and working groups) have:

a. a mandate to consider human rights issues in their counter-terrorism work (e.g. in their constituent instruments or resolutions, terms of reference etc)?

b. human rights expertise, including dedicated human rights personnel or other personnel with training and knowledge in human rights?

c. sufficient resources, including necessary staff, to address human rights issues?

d. adequate coordination on human rights protection with other actors within the regional organization engaged in counter-terrorism?

As indicated above, the EU institutions remain bound by the European Charter on Fundamental Rights in all their actions. In the process of preparation of relevant legislation, such as the Counter-Terrorism Directive, the Commission consults relevant EU agencies to make sure human rights issues are considered. One of such agencies is the European Union Agency for Fundamental Rights (FRA). The FRA is an independent centre of reference and excellence for promoting and protecting human rights in the EU.

Impact assessment is an important regulation tool to help structure reflections and gather and analyse evidence to inform fact-based and effective decision-making at European level. It involves verifying the existence of a problem, identifying its underlying causes, assessing whether EU action is needed, and analysing the advantages and disadvantages of available solutions. Fundamental right impacts are always analysed and reported in impact assessments.

Furthermore, it should be noted that the EEAS manages a Network of EU CT/Security Experts deployed in EU Delegations in up to 20 priority countries. Some Experts have a regional portfolio, others have a multilateral focus. All EU CT/Security Experts undergo training on human rights and international law in EU external relations. The Experts work closely with the focal points on human rights within each EU Delegation on how best to integrate this dimension into their daily

work, as well as to ensure that CT-P/CVE projects on the ground are human rights- based and gender responsive.

5) Does the regional organization have a human rights due diligence policy that applies to its counter-terrorism activities (including in relations with third states) and does it use – and fully respect – it in practice?

a. Does the regional organization include human rights (a) training and (b) monitoring and evaluation in its counter-terrorism activities, whether for member states or third states?

6) Has the regional organization taken adequate measures to prevent the conditions conducive to terrorism, including ‘prolonged unresolved conflicts, dehumanization of victims of terrorism in all its forms and manifestations, lack of the rule of law and violations of human rights, ethnic, national and religious discrimination, political exclusion, socio-economic marginalization and lack of good governance’?

The EU and its Member States, collectively, **remain the largest provider of official development assistance** with EUR 92.8 billion in 2022. The EU is committed to a human rights-based approach to its development assistance.

The Russian attack on Ukraine was an attack on the basic tenets of our European Union: the rules-based global order and the universal values of freedom, democracy, rule-of-law, and human rights. The EU acted swiftly, offering rapid humanitarian, military and macroeconomic support. A new EU Military Assistance Mission was launched, and, along with other initiatives, an additional EUR 500 million support package was adopted under the European Peace Facility. Our entire Union rose in solidarity, opening its borders to people fleeing the war and providing them with shelter, medical support and the ability to work and study. There was a lifeline for the most vulnerable people in Ukraine through the largest ever EU Civil Protection Mechanism operation and increased funding for our humanitarian partners on the ground.

Second, the attack on Ukraine reinforced the EU’s role as an anchor of **peace and stability** and pushed enlargement policy to the top of the EU agenda. Recognising the importance of our partners in the east and our common strategic interests, the Union granted EU candidate status to Ukraine and Moldova at the end of the year and recognised the European perspective of Georgia. EU Leaders also called for the acceleration of the accession process for the Western Balkans. In 2022, the EU stepped up the implementation of the EUR 77 billion Economic and Investments Plans for the Eastern Partnership, Southern Neighbourhood and the Western Balkans, putting the focus on small and medium-sized companies, green transition, climate change resilience, and connectivity.

The EU has also been steadfast in addressing the global consequences of the Russian war of aggression against Ukraine in countries around the world. The shockwaves of war disrupted vital supply chains in the grain, fertilizer, and energy markets, increased prices for consumers and reduced the revenues available for governments to support their citizens. The EU reacted quickly and swiftly mobilised Member States to respond jointly to the needs of the most vulnerable

countries, as Russia's increased information manipulation and disinformation further aggravated the dire geopolitical situation. In 2022, the EU stepped up support for our partners on food security with a EUR 18 billion Team Europe commitment through to 2024, with disbursements of more than EUR 7 billion in 2022 alone and frontloaded resources in the regions that urgently needed help.

At the same time, the EU has continued to ensure **humanitarian funding** in support of the most vulnerable around the world. Despite all-time high humanitarian needs, largely rooted in conflict and increasingly impacted by climate change, the EU has continued to reach out to the most vulnerable populations and communities such as in the Sahel and the Horn of Africa, and the displaced people in Türkiye and Syria, Yemen and Uganda. As a leading global donor, the EU has continued to mobilise the international community to achieve fairer and more sustainable distribution of global responsibilities to help the most vulnerable to survive.

Regarding peace and stability, the EU also addressed some of the main conflicts and post-crisis contexts in the world through actions in the areas of access to natural resources, stabilisation, confidence building, and cyber security. Interventions also aimed to tackle disinformation, stop sexual violence and improve accountability. This has included actions in countries such as Armenia/Azerbaijan, Afghanistan, Pakistan, Ecuador, Somalia, and Yemen.

Furthermore, the [Global Gateway strategy](#) offers both soft and hard infrastructure investments necessary to support our partners' ambitions to achieve the necessary green and digital transitions, reduce inequalities and foster prosperity around the world.

More on the EU's financial instruments and the EU priorities can be found in [the Annual Report on the implementation of the European Union's External Action Instruments](#).

When it comes to **counter-terrorism**, we underscore that the EU is an active member and donor of the three GCTF-inspired institutions (the Hedayah Centre in Abu Dhabi, the Global Community Engagement and Resilience Fund in Geneva/GCERF, and the International Institute for Justice and the Rule of Law in Malta/IIJ) that mainstream a human rights-based and 'whole of society' approach in supporting the development of P/CVE programmes. The EU-funded 'Strengthening Resilience to Violent Extremism Programme' (STRIVE Global) was renewed for a period of another three years, 2022-2025. The overall purpose of this program is to build the capacity of state and non-state actors to effectively challenge radicalization and recruitment to terrorism while continuing to respect human rights and international law. One of the programme strands developed a CVE curriculum, in partnership with Search for Common Ground, to introduce government officials and CSOs to CVE and collaborative approaches.

Counter-Terrorism Platform for Human Rights Engagement (CT – PHARE) focuses explicitly on human rights and CT, including in promoting fair counterterrorism trials, while other CT projects and Facilities mainstream human rights protection and gender considerations as cross-cutting objective in the design and guidance of those projects.

7) How has the regional organization addressed gender equality and non-discrimination in its counter-terrorism norms and activities?

8) How has the regional organization assisted and protected victims of terrorism and has this been consistent with human rights and best practice on victims?

Victims' rights

The [EU Victims' Rights Directive](#) is the main EU instrument that lays down rights for all victims of crime, including victims of terrorism. The Directive aims to ensure that victims of crime are recognised and treated in a respectful, sensitive, tailored, professional and non-discriminatory manner.

The Counter-Terrorism Directive provides victims of terrorism with additional rights to support, protection and assistance that respond more directly to their specific needs.

To ensure that all victims of crime, including victims of terrorism, can fully benefit from their rights, the Commission has adopted the first **EU Strategy on Victims' Rights (2020-2025)**.

An important action under the Strategy is the adoption of the proposal for the revision of the Victims' Rights Directive. The Commission published the proposal in July 2023 to further strengthen the rights of all victims of all crime. The following amendments are particularly relevant for victims of terrorism:

- improved individual assessment of victims' needs,
- strengthened support for the most vulnerable victims and
- facilitated participation in criminal proceedings for victims.

In 2020, the Commission set up the **EU Victims' Rights Platform** to bring together the main EU level actors on victims' rights from EU institutions, international organisations, and civil society. The Platform meets regularly to discuss topics relevant for victims' rights, including for victims of terrorism.

Another important initiative is the **EU Centre of Expertise for Victims of Terrorism (EUCVT)** which offers training and support to national authorities and victim support organisations. It has trained around one thousand people in the EU on the rights of victims of terrorism, published the EU handbook on victims of terrorism and set up a hub of expertise to exchange knowledge and experience among experts. The Commission is currently implementing the next stage of the EUCVT until 2025.

EUROJUST remains an important EU entity in sharing best practices, promoting exchange of experience and identifying challenges from a judicial cooperation perspective. In 2022, the Agency did a mapping exercise on victims' rights in the EU. The [Report on Eurojust's casework on victims' rights](#) included specific chapters on victims of terrorism (see in particular section 2.6., page 16). Eurojust can also provide assistance when a case impacts victims within the context of

a cross-border investigation or involves victims of different countries in a national investigation. It can contribute to ensuring an adequate level of victims' rights protection in cross-border criminal proceedings. Through coordinating judicial cooperation, Eurojust can facilitate early identification of the victims, adequate participation by victims of terrorism in legal proceedings - including in mass trials - and proper redress.

The EU annually organises the European Remembrance Day for Victims of Terrorism on 11 March, the day of the 2004 Madrid attacks in the Atocha train station, to show solidarity with victims and survivors of terrorism and present EU initiatives in their support.

9) To what extent have member states of the regional organization implemented regional counter-terrorism standards in national law?

a. Is national implementation consistent with international human rights law?

b. Does the regional organization actively monitor and assess national implementation of its counter-terrorism standards, including for consistency with human rights? Does the organization seek to remedy non-compliance?

The Commission assesses the legislation of the Member States and engages with those which do not correctly transpose the obligations on the Counter-Terrorism Directive, including by launching infringement proceedings.

There are four main types of infringement to EU law:

- non-communication (failure to notify national measures transposing a directive);
- non-conformity cases (non-conformity of national transposition law with EU directives);
- infringement of the Treaties, regulations and decisions;
- incorrect or bad application of directives (cases where the Member State fails to achieve the result intended by a directive, while the directive is correctly transposed into national law).

Any breach of EU law on the part of a Member State, by means of an action or by omission (failure to act), can form the subject of the infringement procedure. Breaches of EU law may also consist of administrative practices (if they are of a consistent and general nature) or non-binding acts contrary to EU law.

The infringement proceedings are characterised by different stages which allows for Member States to provide explanations/take action to correct the shortcomings.

The first of these steps is the letter of formal notice through which the Commission informs a Member State of a breach of EU law. The Member State has usually two months to reply, following which the Commission can issue a reasoned opinion, a detailed legal reasoning about

the breach. The Member State has again usually two months to reply. If the Commission still considers that the issue persists, it can refer the case to the Court of Justice which can find that the MS has breached EU law. In certain circumstances, the Court of Justice can impose financial sanctions.

The Decisions on the different stages of the infringement procedure are normally adopted at the level of the College, i.e. by the Members of the Commission as a whole. The Commission informs the public of these decisions, but the content of infringement proceedings is confidential. The decisions are made public through the Commission Spokesperson's Service and available on <https://ec.europa.eu/commission/presscorner>. The judgements of the Court of Justice are public and available on the website of the Court: <https://curia.europa.eu>

10) Have any particular member states, or groups of member states, within a regional organization: (a) shown particular leadership on protecting human rights with the organization's counter-terrorism work, or (b) sought to undermine protection of human rights within the organization in relation to counter-terrorism?

11) How have the national political and legal systems of the member states of the regional organization shaped its attitude towards protecting human rights in counter-terrorism?

Regional military operations

12) Have military operations to counter-terrorism by regional organizations (such as NATO and the AU), and ad hoc regional arrangements (such as various missions in the Sahel) complied with human rights law and international humanitarian law?

a. To what extent has human rights and humanitarian law been included in the training, orders, and rules of engagement of such missions?

b. To what extent are the disciplinary and accountability processes and mechanisms of such missions consistent with international law?

Civil Society Participation

13) How has the regional organization engaged with civil society (including international, regional, national or local civil society organizations) on counter-terrorism and P/CVE issues?

a. Does the regional organization provide sufficient information to the public about its counter-terrorism activities?

b. Does the regional organization provide opportunities for effective and regular consultation with civil society on counter-terrorism issues, including input into standard setting as well as operational activities?

The protection and promotion of a safe and enabling civic space is a pillar of the EU's global human rights policy, in line with the Action Plan on Human Rights and Democracy 2020-2024. Civil society is both a partner of the EU in the implementation of its global human rights work and a beneficiary for EU action, particularly with regards to protecting and promoting civic space.

The EU engages with a wide network of civil society actors before political dialogues, human rights dialogues, international conferences and other policy spaces to have their views and recommendations on priority issues to be addressed. Civil society is also involved in evaluating the implementation of the EU's country programming and human rights related policies.

The EU highlights the essential role of civil society in prevention and de-radicalisation, hence the need to involve them regularly. The EU closely engages with different civil society stakeholders as part of its multilateral engagement at the UN, e.g. in the context of the review of the UN Global Counter-Terrorism Strategy. When it comes to its own counterterrorism framework, it is important to note that civil society was invited to participate in the evaluation of the application of the CT Directive (Directive on combating terrorism) in 2021, in particular regarding respect of fundamental rights. Moreover, the Fundamental Rights Agency prepared a report evaluating the CT Directive from the fundamental rights angle in 2020, which served as a background for the evaluation.

We also liaise with civil society actors on specific topics on an ad-hoc basis. As an example, we have closely involved civil society in the formulation of the GCTF Framework Document on Oversight and Accountability mechanisms in counterterrorism (see accountability below). The so called Reference Group, which supported the drafting exercise of the Framework Document involved civil society and human rights experts during the entire process

In February 2024, the EU and Kenya hosted Civil Society Consultations ahead of the 23rd GCTF Coordinating Committee Meeting. The discussions focused specifically on Prosecution, Rehabilitation and Reintegration (PRR) in the context of counterterrorism. Building on the strategic priorities of the GCTF Co-Chairs, the Civil Society Consultation provided an opportunity for engagement between GCTF Members, Regional States, representatives of regional mechanisms on one hand, and civil society representatives on the other, to reflect on the vital role local communities play in rehabilitation and reintegration efforts.

Accountability

14) Does the regional organization have any oversight and accountability mechanisms (specific or general) in relation to its counter-terrorism norms, bodies and activities?

As noted above, EU has an independent judiciary that provides full judicial review and oversight of the implementation of EU treaty law, including the European Charter on Fundamental Rights. Additionally, there are specialised oversight bodies such as the [European Data Protection Supervisor](#) (who monitors all law enforcement related work through Europol, including CT) and the EU [Ombudsperson](#). There is also political oversight provided by the European Parliament.

With respect to policy guidance on accountability, please also note that the EU has initiated and sponsored the Initiative on Oversight and Accountability in Counterterrorism in the framework of the Global Counterterrorism Forum (GCTF). With the support of the International Institute for Justice and the Rule of Law (IJJ), through the EU's Counter-Terrorism Platform for Human Rights Engagement (CT Phare), a Framework Document has been drafted. It provides recommendations and highlights good practices on how to improve the roles, responsibilities, independence and effectiveness of oversight and accountability mechanisms with view of ensuring respect, protection and fulfilment of human rights in the context of counterterrorism measures.

15) How has any regional human rights mechanism (such as a court, commission, agency, or commissioner) contributed to: (a) the protection of human rights in individual cases involving counter-terrorism; and (b) more general standard setting and development of jurisprudence on human rights in counter-terrorism?

a. To what extent have the regional human rights mechanisms been: (a) more, or (b) less progressive than international human rights jurisprudence (e.g. United Nations human rights bodies, International Court of Justice).

The European Court of Human Rights has for many decades and through more than four hundred individual cases elaborated a clear, integrated and articulated body of case law on responses to terrorism from a human rights and rule of law perspective. This jurisprudence is highly relevant for the implementation of the Counter-terrorism Directive, which should be in line with obligations under the ECHR.

On sanctions, the case-law of the Court of Justice of the EU has significantly contributed to the respect and protection of human rights of designated persons and entities, included those listed for involvement in terrorist acts. The majority of case-law focuses on whether the rights of defence and effective judicial protection of those listed has been respected.⁶ It is this case-law that has set the standard for ensuring the rights of persons and entities targeted by restrictive measures in field of counterterrorism. This standard, as developed by the Court of Justice of the EU and as presented in answers to previous questions, is now followed by EU decisions makers when adopting designations.

16) How has the regional organization assisted and protected victims of counter-terrorism and has this been consistent with human rights law and best practice?

Please see reply to question 8.

International Issues

⁶ See for example Joined Cases C-402/05 P and C-415/05 P Kadi vs Council, Judgment of the Court (Grand Chamber) of 3 September 2008 and Joined Cases C-584/10 P, C-593/10 P and C-595/10 P COM vs Kadi, Judgment of the Court (Grand Chamber) of 18 July 2013; C-79/15 P - Council v Hamas, Judgment of the Court (Grand Chamber) of 26 July 2017; C-599/14 P - Council v LTTE, Judgment of the Court (Grand Chamber) of 26 July 2017

17) Have regional organizations respected human rights and humanitarian law when implementing United Nations Security Council counter-terrorism resolutions?

Please see replies above to Questions 1 and 2.

18) To what extent has the engagement of United Nations counter-terrorism bodies with regional organizations enhanced or undermined regional human rights protection?

19) To what extent have regional counter-terrorism standards or practices influenced

(a) international standards or practices and

(b) the standards or practices of other regional organizations; and what have been the impacts on human rights?

The Counterterrorism Directive was adopted following the growing terrorist threat, particularly the increasing phenomenon of returning 'foreign terrorist fighters' and the legal obligations on the European Union and its Member States under international law. The Directive transposed international obligations laid down in UNSC Resolution 2178 (2014) and the Additional Protocol to the Council of Europe Convention on the prevention of terrorism (2015) into EU law.

20) How have regional organizations contributed to (a) enhancing or (b) undermining the protection of human rights at the international level, for example in their advocacy or voting in the United Nations or other multilateral bodies?

The EU remains a strong defender of human rights and of the UN's human rights architecture. Our collective action is based on the [EU Action Plan on Democracy and Human Rights](#). To ensure its implementation the EU acts in many ways:

- Political dialogue, policy dialogue, economic diplomacy
- Human rights dialogue with partner countries
- Statements, campaigns, public events
- Human rights and democracy country strategies in coordination with EU member countries
- Human rights guidelines: the EU has published 11 human rights guidelines
- Trial observation
- Electoral monitoring
- [Protection of Human Rights defenders](#)
- Human rights- based approach to development cooperation
- The Action plan is also rolled out through specific thematic funding for human rights, that is [The Human Rights and Democracy Thematic Programme of the EU](#)

- Specific trade measures such as the [EU Directive on Torture Free Trade](#) and [Generalised Scheme of Preferences](#).

More information on how the EU engages on human rights at country level can be found in the [EU Annual report on Human Rights and Democracy in the World](#).

The EU Action Plan underscores that human rights will be promoted consistently throughout counter-terrorism measures and other action. Some examples were already provided in the answers to question number 3. Please **also note that the adverse effects of counter-terrorism measures and activities are also within the scope of the Human Rights Dialogues that the EU holds with some 60 countries across the globe**. These dialogues are used to express concerns, give recommendations and offer technical assistance for improved human rights adherence in CT responses.

Additionally, the EU supports and funds programs and projects across the world aiming at the strengthening of the independence and capacity of the judiciary, promoting of civic space, eradication of torture, protection human rights defenders and reform the law enforcement and broader security sector reform. Many of these projects and programs have an important link to human rights compliant counter-terrorism measures and actions in partner countries.

21) Where a state is a member of multiple regional organizations engaged in counter-terrorism (e.g. overlapping memberships of the EU, CoE and OSCE; or of the Arab League, OIC and AU), have any inconsistencies arisen in relation to the counter-terrorism obligations owed to the different organizations, including in national implementation, and particularly in relation to adverse impacts on human rights?

