



## EUROPEAN UNION

<p>Does the country or institution have their own list of designated, banned, or proscribed groups?</p>	<p>Yes.</p>
<p>What type of system does the country or institution use?</p>	<p>Designation is used, through the linked list.<sup>73</sup></p>
<p>What is the definition of “terrorism” the country or institution employs?</p>	<p>The definition of a terrorist offence is provided in Directive 2017/541 on Combating Terrorism.<sup>74</sup></p> <ul style="list-style-type: none"> <li>● A “terrorist offence” is one of the “intentional acts” listed under Art. 3.1 of the Directive, when conducted in view of terrorist aims (as listed in Art. 3.2)</li> <li>● The EU definition of a terrorist offence is thus an exhaustive list of serious acts that member states are to classify as terrorist in their national law when said acts have “particular terrorist aims” – whether an act is committed or there is a threat to commit it.</li> <li>● “Terrorist aims” are defined as:             <ul style="list-style-type: none"> <li>○ seriously intimidating a population;</li> <li>○ unduly compelling a government or an international organisation to perform or abstain from performing any act;</li> <li>○ seriously destabilising or destroying the fundamental political, constitutional, economic or social structures of a country or an international organisation.</li> </ul> </li> </ul>
<p>How does the designation process relate to the relevant authority’s definition of terrorism?</p>	<p>Proposals (which can be made by Member states or third states) for listing/delisting entities are reviewed by the Working Party on Restrictive Measures to Combat Terrorism (COMET working party),<sup>75</sup> which makes recommendations to the Council. The working party considers whether the persons, groups or entities in question are <b>involved in terrorist acts</b> as defined above.</p> <p>These recommendations are based on a decision by a judicial or relevant entity concerning an individual or entity convicted for a terrorist act or concerning the initiation of an investigation or prosecution for a terrorist act/ attempt to carry out a terrorist act/ facilitate such act.</p>
<p>Does the country follow UN or EU (if relevant) designation lists and sanctions?</p>	<p>The EU maintains three designation lists for terrorism:</p> <ul style="list-style-type: none"> <li>● The EU terrorist list,<sup>76</sup> itself sub-divided into lists of internal and external terrorists, which lists individuals and entities that the Council of EU has designated as terrorists.</li> <li>● Implementation of the UN Security Council Resolutions (1267 Regime)</li> <li>● Autonomous sanctions measures against Islamic State and al-Qaeda.</li> </ul>

<sup>73</sup> Terrorist Designation List, European Union.

<sup>74</sup> Directive 2017/541 on Combating Terrorism, European Union, 2017.

<sup>75</sup> Working Party on restrictive measures to combat terrorism (COMET), European Council and Council of the European Union.

<sup>76</sup> Terrorist Designation List, European Union.





<p><b>Does designation have an effect on the online realm? Is content created by terrorist groups illegal?</b></p>	<p>The EU Directive on Combating Terrorism requires Member States to take the necessary measures to ensure that public provocation to commit a terrorist offence is punishable as a criminal offence when committed internationally.<sup>77</sup> Member States are to take the necessary measures to prompt removal of online content constituting a public provocation to commit a terrorist offence including by blocking or removing such content (Art. 21).</p> <p>Regulation 2021/784 on addressing the dissemination of terrorist content online (TERREG) defines what constitutes terrorist content in Article 2.<sup>78</sup></p> <p>Neither the proposed Digital Safety Act (DSA) nor TERREG make explicit reference to designated terrorist groups, and therefore content produced by these groups is not necessarily illegal.</p> <p>EU designation lists are focused on financial sanctions as well as on increased judicial and police cooperation, with no direct implication for terrorist content online. However, as the definition of terrorist content under Article 2 of TERREG includes soliciting “to participate in the activities of a terrorist group”, competent authorities could consider designated terrorist groups to fall under this definition.</p>
<p><b>Is online content that incites acts of terrorism illegal?</b></p>	<p>Yes. According to the Directive, content is to be assessed according to the content itself and the message it transmits, or in relation to a terrorist group as defined in Art. 2.3, not necessarily according to designation lists.</p>
<p><b>Is online content that supports designated terrorist groups illegal?</b></p>	<p>This is complex. Terrorist content, as defined by TERREG in article 2, includes content that incites the commission of terrorist offences or that solicits a person to participate in the activities of a terrorist group. General support for designated terrorist groups is therefore not necessarily illegal.</p>
<p><b>Is there a sufficient balance between far-right and violent Islamist groups and individuals?</b></p>	<p>No. At the time of writing there are 15 persons and 21 groups and entities on the EU terrorist list. Whilst several violent Islamist groups are included in the list, no far-right groups have been included.</p>
<p><b>Are there human rights-compliant mechanisms in place for delisting a group?</b></p>	<p>The EU lists are reviewed at least every 6 months. Proposals for delisting can be made by the listed persons or entities, or by the states that had originally proposed the listing. A decision on delisting is made by the Council and published in the official journal with a statement on the reasons. While listed entities and persons can propose their delisting, there does not seem to be an autonomous or rigorous appeals process. However, the inclusion of individuals or entities on EU sanctions lists can be challenged before EU courts (General Court, and on appeal the ECJ), many of these having been successful.<sup>79</sup></p>
<p><b>What are the weaknesses in the designation process?</b></p>	<ul style="list-style-type: none"> <li>• There is no direct tie to online regulation, leaving the judgement of removing terrorist content on tech companies.</li> <li>• There are currently no far-right groups designated.</li> </ul>

<sup>77</sup> Directive 2017/541 on Combating Terrorism, European Union, 2017.

<sup>78</sup> Regulation 2021/784 addressing the dissemination of terrorist content online, European Union, 2021.

<sup>79</sup> De-listing, European Union Sanctions,





**What do we recommend?**

- TERREG has made welcome progress on prohibiting terrorist content online. However, we advise TERREG to more clearly define terrorist content to consider the source of the content to ensure that official content from designated terrorist groups can be included. This would tie designation to online regulation and thus provide tech companies with a clear legal and factual basis for removing terrorist content.
- Regulatory bodies at the national level should be advised by the EU to provide more clarity for tech companies on the practical steps tech companies can take to identify and remove illegal terrorist content. The regulator would also have punitive measures available to enforce compliance.
- We recommend prioritising designation as a counter-terrorism strategy and providing the ability to designate a variety of entities, creating a balance between listing Islamist and far-right groups, as well as including other terrorist ideologies.
- We advise working with the UN to provide strategic leadership in setting online speech norms, so that tech companies are informed about what type of material they should consider terrorist and moderate as such.
- The EU should be commended for its relatively transparent and regular review process of designations. However, we suggest designing a flexible and adaptive designation system, in which the list reflects the changing terrorist threat landscape and makes it easy to delist groups when relevant. This proposed system should involve civil society, counterterrorism specialists, member states, and human rights lawyers in designation process.
- We strongly recommend that the EU designate more far-right groups.
- We advise the EU to consider designating lone actors and criminalising content they produce (especially manifestos and livestreams).
- We recommend that the EU consider other types of terrorist ideologies beyond far-right, far-left, separatist, and Islamist actors, such as incel attackers who have been deemed terrorists by certain governments.
- We advise keeping records so that the designation of a group, actor, or content occurs transparently and to implement a system whereby such records can be made available for judicial oversight.

**Further information and comments**

A definition of what constitutes a “Terrorist group” is provided in Directive 2017/541 on Combating Terrorism (Art. 2.3): “a structured group of more than two persons, established for a period of time and acting in concert to commit terrorist offences; ‘structured group’ means a group that is not randomly formed for the immediate commission of an offence and that does not need to have formally defined roles for its members, continuity of its membership or a developed structure.”<sup>80</sup>

<sup>80</sup> Directive 2017/541 on Combating Terrorism, European Union, 2017.

