



Recommendation of the Council on  
the Establishment of a Check-List  
of Criteria to define Terrorism  
for the Purpose of  
Compensation

**OECD Legal  
Instruments**

This document is published under the responsibility of the Secretary-General of the OECD. It reproduces an OECD Legal Instrument and may contain additional material. The opinions expressed and arguments employed in the additional material do not necessarily reflect the official views of OECD Member countries.

This document, as well as any data and any map included herein, are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.

For access to the official and up-to-date texts of OECD Legal Instruments, as well as other related information, please consult the Compendium of OECD Legal Instruments at <http://legalinstruments.oecd.org>.

**Please cite this document as:**

OECD, *Recommendation of the Council on the Establishment of a Check-List of Criteria to define Terrorism for the Purpose of Compensation*, OECD/LEGAL/0331

Series: OECD Legal Instruments

© OECD 2018

---

This document is provided free of charge. It may be reproduced and distributed free of charge without requiring any further permissions, as long as it is not altered in any way. It may not be sold.

This document is available in the two OECD official languages (English and French). It may be translated into other languages, as long as the translation is labelled "unofficial translation" and includes the following disclaimer: *"This translation has been prepared by [NAME OF TRANSLATION AUTHOR] for informational purpose only and its accuracy cannot be guaranteed by the OECD. The only official versions are the English and French texts available on the OECD website <http://legalinstruments.oecd.org>"*

---

## **Date(s)**

Adopted on 09/12/2004

## **Background Information**

Recommendation on the Establishment of a Check-list of Criteria to Define Terrorism for the Purpose of Compensation was adopted by the OECD Council on 9 December 2004 on the proposal of the Insurance Committee (now called Insurance and Private Pensions Committee). It follows from the events of 11 September 2001, when various actors in the insurance world suddenly became aware of the need to redefine and scrupulously assess their commitments with respect to terrorism risk before any new major terrorism attack might occur. Hence the Recommendation defines the concept of terrorism for the purpose of compensation by providing a checklist in its Appendix of key elements of definition which Adherents could take into consideration. This checklist is illustrative, and can be adapted by the various parties concerned to meet the needs of their specific market and regulatory frameworks as well as their policy objectives.

**THE COUNCIL,**

**HAVING REGARD** to Article 5 b) of the Convention on the Organisation for Economic Co-operation and Development of 14 December 1960;

**CONSIDERING** that, on the occasion of the OECD meeting at Ministerial Level on 15-16 May 2002, Ministers mandated the OECD to develop "policy analysis and recommendations on how to define and cover terrorism risks and to assess the respective roles of the insurance industry, financial markets and governments, including for the coverage of 'mega-terrorism' risks" [See OECD Council at Ministerial Level, 15-16 May 2002: Final Communiqué PAC/COM/NEWS(2002)58];

**CONSIDERING** that this Recommendation does not aim at a general definition of terrorist acts, but at an attempt to define the concept of terrorism for the purpose of compensation;

**CONSIDERING** that this Recommendation does not aim at proposing a single and exhaustive international definition, but at developing a checklist of key elements of definition which OECD and non-OECD countries could take into consideration; noting that this checklist is therefore illustrative, and can be adapted by the various parties concerned to meet the needs of their specific market and regulatory frameworks or policy objectives; recognising that certain countries may also wish to take other criteria into consideration, to help distinguish terrorism from other types of offence;

**CONSIDERING** that the definition criteria are not binding and that the consideration of these elements may be useful for governments establishing a scheme for the compensation of terrorism related losses and for private sector insurance entities;

**CONSIDERING** that it is left to each country/entity to define its own criteria more precisely, possibly quantitatively or qualitatively when relevant, according to their specific policy and technical consideration;

**On the proposal of the Insurance Committee:**

**RECOMMENDS** that Member countries and private sector entities involved in the compensation of terrorism related losses consider, when defining terrorism for the purpose of compensation, the checklist of criteria for definition which is set out in the Appendix to this document of which it forms an integral part.

**INVITES** non-members to take due account of the terms of this Recommendation.

## APPENDIX

### CHECK-LIST FOR A DEFINITION OF TERRORISM FOR THE PURPOSE OF COMPENSATION

This check-list is meant to help private sector entities as well as governments involved in terrorism compensation to define terrorist acts and criteria relevant to determine which terrorist acts can be indemnified, be it through private insurance mechanisms or through other compensation mechanisms. This check-list is illustrative, and neither binding nor exhaustive; it can be adapted by the various parties concerned to mirror specific market and regulatory frameworks or policy objectives.

The following criteria may be considered when defining terrorism acts for the purpose of compensation.

#### **A) Elements of Definition of a Terrorist Act, which could include<sup>a</sup>:**

##### ***Criterion 1 - Means and Effects***

A terrorist act is:

- An act, including but not limited to the use of force or violence, causing serious<sup>b</sup> harm to human life, or to tangible or intangible property,
- Or a threat thereof entailing serious<sup>b</sup> harm;

##### ***Criterion 2 - Intention***

A terrorist act is committed or threatened:

- With the intent to influence or destabilize any government or public entity and/or to provoke fear and insecurity in all or part of the population<sup>b</sup>;
- In support of a political, religious, ethnic, ideological or similar goal.

#### **B) Factors of Insurability, which could include:**

***Criterion 3 - Technical Insurability<sup>c</sup>***, including in principle:

- Assessability (probability and severity of losses should be quantifiable);
- Randomness (the time at which the insured event occurs should be unpredictable when the policy is underwritten, and the occurrence itself should be independent of the will of the insured);
- Mutuality (numerous persons exposed to a given hazard should be able to join together to form a risk community within which the risk is shared and diversified).

***Criterion 4 - Economic Insurability<sup>c</sup>***, which could depend on the following elements:

- Magnitude of potential losses: it should in principle not exceed the capacity of the private insurance/reinsurance market or the capacity of a mix of private and public multi-layer mechanisms when these exist. The insurability of the risk will be assessed against the maximum aggregate amount of funds made available by the various potential stakeholders (insurers, reinsurers and, possibly, pooling mechanisms allowing (inter)national spreading of risks, and governments) reflecting their respective capacity. The quantitative segmentation of risks, i.e. The threshold/sub limits (the nature and the amount of sub-limits, and the basis on which they should be calculated) should be defined *ex ante*;
- Nature of the potential losses: to be insurable, potential losses should correspond to the lines of business that the available insurance mechanisms are able to cover. The

list of business lines to be covered should be defined through an *ex-ante* qualitative segmentation of risks.

- Price of cover: for the risk to be insurable, it should be possible to set an adequate and actuarially fair insurance premium;

#### **Criterion 5 - Legal/Regulatory Insurability**

Regulatory authorities may decide that a given risk, or type of risk (e.g. worker compensation, business interruption), is -- explicitly or implicitly -- defined as insurable, for instance through a certification procedure and/or if insurance against this risk is made compulsory. In this case, a risk may be labelled as insurable while other insurability criteria may not be met.

#### **C) Factors of Compensability (Insurance Excluded), which could include:**

##### **Criterion 6 - Compensability by the State**

States need to decide about the possibility of compensation on the basis of their own public policy concerns. The risk should not exceed in magnitude the maximum financial involvement that the State is able or willing to supply for the compensation of losses entailed by terrorism.

##### **Criterion 7 - Compensability through Non-Governmental Mechanisms**

The technical characteristics of the risk should allow it to be covered through financial mechanisms other than insurance, for instance bonds placed on capital markets.

- 
- <sup>a</sup> Certain countries may wish to take other criteria into consideration. The criterion of affiliation to a group or organisation, for instance, has been successfully used in several Member countries to define terrorism acts. Similarly, certain countries may wish not to take into account certain elements mentioned for their own definition of terrorist acts. For instance, the concept of "threat" of terrorism is not considered as a relevant element of definition of terrorism acts in certain countries.
- <sup>b</sup> It is left to each country/entity to define the criteria more precisely, possibly quantitatively or qualitatively when relevant, according to their specific policy and technical consideration. It should however be noted that at least one OECD country has adopted a definition of terrorism based exclusively on qualitative criteria.
- <sup>c</sup> It should be remembered that, unless terrorism risk insurance has been made compulsory, the determination of the insurability of a risk by private entities ultimately depends on internal analysis and appreciation of the insurance/reinsurance company(ies) at stake. A (re)insurer may decide, for commercial or strategic purposes in particular, to cover a risk that may not easily meet the theoretical criteria of insurability. It may also decide not to cover a risk, to take into account for instance concerns regarding its solvency situation or the balance of its risk portfolio at a given moment in time.

## Adherents\*

### OECD Members

Australia  
Austria  
Belgium  
Canada  
Chile  
Czech Republic  
Denmark  
Estonia  
Finland  
France  
Germany  
Greece  
Hungary  
Iceland  
Ireland  
Israel  
Italy  
Japan  
Korea  
Latvia  
Luxembourg  
Mexico  
Netherlands  
New Zealand  
Norway  
Poland  
Portugal  
Slovak Republic  
Slovenia  
Spain  
Sweden  
Switzerland  
Turkey  
United Kingdom  
United States

### Non-Members

---

\* Additional information and statements are available in the Compendium of OECD Legal Instruments:  
<http://legalinstruments.oecd.org>

## About the OECD

The OECD is a unique forum where governments work together to address the economic, social and environmental challenges of globalisation. The OECD is also at the forefront of efforts to understand and to help governments respond to new developments and concerns, such as corporate governance, the information economy and the challenges of an ageing population. The Organisation provides a setting where governments can compare policy experiences, seek answers to common problems, identify good practice and work to co-ordinate domestic and international policies.

The OECD Member countries are: Australia, Austria, Belgium, Canada, Chile, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea, Latvia, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, the Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, the United Kingdom and the United States. The European Union takes part in the work of the OECD.

## OECD Legal Instruments

Since the creation of the OECD in 1961, around 450 substantive legal instruments have been developed within its framework. These include OECD Acts (i.e. the Decisions and Recommendations adopted by the OECD Council in accordance with the OECD Convention) and other legal instruments developed within the OECD framework (e.g. Declarations, international agreements).

All substantive OECD legal instruments, whether in force or abrogated, are listed in the online Compendium of OECD Legal Instruments. They are presented in five categories:

- **Decisions:** OECD legal instruments which are legally binding on all Members except those which abstain at the time of adoption. While they are not international treaties, they entail the same kind of legal obligations. Adherents are obliged to implement Decisions and must take the measures necessary for such implementation.
- **Recommendations:** OECD legal instruments which are not legally binding but practice accords them great moral force as representing the political will of Adherents. There is an expectation that Adherents will do their utmost to fully implement a Recommendation. Thus, Members which do not intend to do so usually abstain when a Recommendation is adopted, although this is not required in legal terms.
- **Declarations:** OECD legal instruments which are prepared within the Organisation, generally within a subsidiary body. They usually set general principles or long-term goals, have a solemn character and are usually adopted at Ministerial meetings of the Council or of committees of the Organisation.
- **International Agreements:** OECD legal instruments negotiated and concluded within the framework of the Organisation. They are legally binding on the Parties.
- **Arrangement, Understanding and Others:** several ad hoc substantive legal instruments have been developed within the OECD framework over time, such as the Arrangement on Officially Supported Export Credits, the International Understanding on Maritime Transport Principles and the Development Assistance Committee (DAC) Recommendations.