

**RESTRICTED****STATEMENT OF CASE ALLOWING TERRORIST DESIGNATION OF EUSKADI TA ASKATASUNA (ETA) TO EXPIRE****PURPOSE**

1. This paper sets out the case concluding Euskadi Ta Askatasuna (ETA) no longer meets the statutory criteria for the renewal of its designation as a terrorist entity within New Zealand pursuant to the Terrorism Suppression Act 2002 (TSA).

**STRUCTURE OF THIS PAPER**

2. This paper details current information about ETA's lack of recent involvement in terrorist activity and relevant changes and developments to the organisation since its original designation 10 February 2010, and renewal on 11 February 2013, 9 February 2016, 30 January 2019, and 14 December 2021.
3. This updated information, together with the information contained in the original designation paper and previous renewal papers, provides the basis for the conclusion that ETA no longer meets the legal criteria for renewal of its designation as a terrorist entity under the TSA.

**STATUTORY CRITERIA FOR DESIGNATION RENEWAL UNDER THE TSA**

4. Section 29B of the TSA provides that a designation of a terrorist entity expires three years after the date of designation unless it is earlier revoked, or renewed by the Prime Minister. The original designation is made pursuant to s 22 of the TSA, which provides that the Prime Minister may designate an entity as a terrorist entity if the Prime Minister believes on reasonable grounds that the entity has knowingly carried out, or has knowingly participated in the carrying out of, one or more terrorist acts. Carrying out a terrorist act includes the planning, preparation, or credible threat to carry out the act, whether it is actually carried out or not (s 5A(a) and (b)) and also includes an attempt to carry out the act (s 5A(c)).
5. The Prime Minister may renew that designation for a further three years under s 29B(2) if satisfied that there are still reasonable grounds as set out in s 22 for the entity to be designated under that section.
6. Before the expiry of an order made under s 29B(2), the Prime Minister may make another order under s 29B(3) renewing the designation concerned for a further three years. The Prime Minister may make any number of orders under s 29B(3) in respect of the same designation (s 29B(5)).

**CREDIBILITY OF SOURCES**

7. This paper has been prepared using open or unclassified sources which have a reputation for careful and unbiased reporting. These include Euronews, and The New European.
8. Think tank Global Voices is referred to, as well as regional news source Naiz.
9. Other sources utilised include the Publications Office of the European Union, and Green Left.

**RESTRICTED****EVIDENCE TO SUPPORT DESIGNATION RENEWAL UNDER THE TSA****Renewal in December 2021**

10. ETA was most recently designated as a terrorist entity on 14 December 2021. The associated statement of case observed that as in 2016 and 2019, there was no information about specific terrorist acts carried out in the preceding three-year period. In each period officials were required to ensure that ‘all available information about the entity’ was considered, in order to enable the Prime Minister to reach a conclusion that there were reasonable grounds to believe that the ETA still qualified for designation because it had knowingly carried out a terrorist act.
11. In support of the argument for designation it was noted that there was continued activity on behalf of the ‘Abertzale Left’ (a term used to refer to the range of parties and organisations making the Basque socialist and ethno-nationalist/separatist left wing of Basque regional politics), that promoted ETA ideology and provided support to imprisoned members.
12. This activity was compared to information in the 2021 EUROPOL terrorism situation report, which warned of an increased risk of Basque separatist violence.<sup>1</sup> This violence was evident in a range of protests and activism on the part of groups within the Abertzale Left, and while critically questioned by officials, on balance and after thorough analysis of available information, it could not be determined that all elements of ETA had entirely resiled from violent extremism.<sup>2</sup> The 2021 Statement of Case for renewal of the ETA designation also noted ongoing concerns about weapons caches.
13. The Prime Minister considered that there were still reasonable grounds as set out in s 22 of the TSA for ETA to be designated, and therefore legal criteria for renewal of ETA designation as a terrorist entity under s 29B were met.

**Recent history and developments**

14. A brief recent history, and developments since the last renewal, are provided below.

*2021 to 2024*

15. By the tenth anniversary of the cessation of armed conflict by ETA on 20 October 2011, media sources in Spain and the Basque Country were reporting a general lowering of residual tension left by the conflict.<sup>3</sup> On 18 October 2021 Arnaldo Otegi, a convicted member of ETA and now leader of the political party EH Bildu, read a statement acknowledging the suffering caused by ETA during its period of violence.<sup>4</sup> This statement was regarded as a step beyond previous declarations that had avoided the topic of ETA’s actions.<sup>5</sup>
16. The statement was largely welcomed by political figures and civil society, however some said the statement did not go far enough.<sup>6</sup>

*Democratic Participation instead of armed conflict*

17. Two issues create ongoing controversy in regard to ETA; the status of ETA prisoners, including released prisoners, and the involvement of released prisoners in Spanish regional politics.<sup>7</sup> Neither of these two issues, while causing heated debate within Spain, are believed to be indicative of any potential violent extremism. The Terrorist Designations Working Group assesses they instead indicate a willingness of former ETA members to participate in democratic processes. In one case as many of 44 people convicted of belonging to or collaborating with ETA were on electoral lists for local and regional elections. While their

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inclusion was controversial within Spain, they were deemed to be able to do so legally because they had served their time.<sup>8</sup>

18. In 2017 ETA agreed to fully disarm, intending to hand over all its weapons by 8 April 2017. While the 2021 Statement of Case for renewal of the ETA designation noted ongoing concerns about weapons caches and the potential for a return to violence, this concern has not been borne out.<sup>9</sup> The unconfirmed existence of ETA weapons caches does not provide reasonable cause to believe that the group has current involvement in terrorist activity.
19. Basque separatist and pro-independence parties including EH Bildu (whose membership includes former ETA members) are today supporting the national coalition government of the centre-left party Spanish Socialist Workers' Party (PSOE), Sumar (a left-leaning 'electoral alliance') and Junts (a pro-independence Catalan party).<sup>10</sup>

**20. LAW OF ARMED CONFLICT (LOAC)**

21. Armed conflict exists where there is a substantial level of deliberate, organised, concerted and sustained armed violence. For the period in which hostilities were occurring in Spain, the situation was never recognised as amounting to an armed conflict. Certainly, today, where hostilities have ceased, the current environment does not amount to one of armed conflict. Accordingly, in the current circumstances, the exception under s 5(4) of the TSA cannot apply for acts that might otherwise be defined as terrorist acts.

**CONCLUSION**

22. On the evidence set out above, this paper concludes that there are no longer reasonable grounds as set out in s 22 of the TSA for ETA to be designated as a terrorist entity.
23. ETA ceased its violent activity in 2010, disbanded in 2018, and has conducted no serious violence since designation was last renewed in December 2021. There is no evidence that ETA has continued to carry out activities since December 2021 which meet the definition of terrorist acts in ss 5 and 5A of the TSA, including planning, threatening and attempting attacks.
24. Accordingly, given there are no longer reasonable grounds to believe ETA has knowingly carried out, or has knowingly participated in the carrying out of, 1 or more terrorist acts as set out in s 22 of the TSA, ETA is not considered to meet the legal criteria for renewal of its designation as a terrorist entity under s 29B.
25. The designation will expire on 14 December 2024.

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<sup>1</sup> European Union Terrorism Situation and Trend report, Publications Office of the European Union, Luxembourg, 2021, pp.23-24.

<sup>2</sup> STATEMENT OF CASE TO RENEW THE DESIGNATION OF EUSKADI TA ASKATASUNA (ETA) AS A TERRORIST ENTITY 2021 (restricted and legally privileged).

<sup>3</sup> (19 October 2021) Koldo Casla, “Basque separatist group ETA lowered its weapons 10 years ago. Has reconciliation truly happened?”, *Global Voices*, accessed via <https://globalvoices.org/2021/10/19/basque-separatist-group-eta-lowered-its-weapons-10-years-ago-has-reconciliation-truly-happened/> on 17/09/2024.

<sup>4</sup> (18 October 2021) “Declaration of October 18”, English-language version accessed via [https://www.naiz.eus/media/asset\\_publics/resources/000/840/618/original/Declaration\\_of\\_October\\_Eighteen.pdf](https://www.naiz.eus/media/asset_publics/resources/000/840/618/original/Declaration_of_October_Eighteen.pdf) on 17/09/2024.

<sup>5</sup> (3 November 2021) Dick Nichols, “Basque left: Pain caused by ETA ‘should never have happened’”, *Green Left*, accessed via <https://www.greenleft.org.au/content/basque-left-pain-caused-eta-should-never-have-happened> on 17/9/2024.

<sup>7</sup> (20/07/2023) Callum Tennant, “Do former ETA members belong in parliament?”, *The New European*, accessed via <https://www.theneweuropean.co.uk/do-former-eta-members-belong-in-parliament/> on 17/09/2024.

<sup>8</sup> (19/05/2023) Laura Lich, “Spanish elections re-open deep wounds, as ETA terrorists run for political office”, *Euro News*, accessed via <https://www.euronews.com/2023/05/19/spanish-elections-re-open-deep-wounds-as-eta-terrorists-run-for-political-office> on 17/09/2024.

<sup>9</sup> STATEMENT OF CASE TO RENEW THE DESIGNATION OF EUSKADI TA ASKATASUNA (ETA) AS A TERRORIST ENTITY 2021 (restricted and legally privileged).

<sup>10</sup> (10/11/2023) “Spanish Socialists and Catalan Junts reach deal for government support, amnesty”, *Reuters*, accessed via <https://www.reuters.com/world/europe/spanish-socialists-reach-deal-with-catalan-junts-government-support-tve-2023-11-09/> on 7/10/2024.