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| From: | Presidency |
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| Subject: | Proposal for a Directive of the European Parliament and of the Council on combating terrorism and replacing Council Framework Decision 2002/475/JHA on combating terrorism - Follow up of the third trilogue of 28 September 2016 |

On 28 September 2016 the third trilogue on the Terrorism Directive took place. Further progress was made on a certain number of issues and confirmation on the provisional agreement on the issues that were discussed at the technical meeting of 20 September 2016 (Article 1, 2, 4, 6, 12-14 (structure), 15, 17, 18, 19 and 20) was confirmed. In a follow up to the trilogue the, the Presidency would like to bring to discussion with delegations the following issues:

1. *Outstanding issues* - travelling (Article 9) and exchange of information (Article 21c)¹
2. *Drafting suggestions*² - public provocation (Article 5), receiving of training (Article 8), terrorist offences (Article 3), measures on Internet (Article 14a), victims' rights (Article 22 and 23), falsification of documents (Article 14), aggravating circumstances (Article 5a).

¹ NB: The Presidency would like to allow sufficient time for discussion on those issues with the MSs. Therefore the Presidency does not plan to present the text proposals on those issues at the next trilogue of 11 October 2016.

² Changes introduced by the GA are marked **in bold**, changes introduced by the EP are marked in ***bold italic***; new text is marked in **bold underlined**

3. *Information on the outcome of the trilogue* - financing of terrorism (Article 11), jurisdiction (Article 21), prevention (Article 21b), technical issues (Article 1, 2, 4, 6, 12-14 (structure), 15, 17, 18, 19 and 20).

Outstanding issues

Travelling for terrorism purposes - Article 9

Thus far, the DROIPEN discussions have demonstrated that criminalising travel to the territory of a MS (inbound travel) raises most of the issues for the MSs, whereas outbound travel and intra EU travel to another MS meets more support.

At the last trilogue of 28 September, the EP rapporteur has expressed certain flexibility to consider approaching the security threat posed by inbound travel, in particular by returning foreign terrorist fighters from a different point of view in order to respond to some of the concerns raised by the MSs. Notably, that travel as such is a neutral act and being the only objective element of the offence it is not sufficient to justify criminalisation at such an early stage, which in addition is too remote from the commission of a terrorist offence. The Rapporteur indicated that addressing inbound travel as a planning activity of committing for example a terrorist attack could be considered.

In view of the position of the EP and taking into account the positions expressed by MSs, the Presidency presents two options for consideration of delegations offering different approach to addressing inbound travel.

Option 1

A provision modelled on the concept of planning of a terrorist offence or joining a terrorist group that is added respectively in Article 3 and Article 4 is suggested. Such a provision would reflect in a better way the proximity of the terrorist offence and would also add an objective element to the offence, since planning requires already objectifying the criminal intent and the specific terrorism purpose that could be inferred from objective circumstances in the specific case. In addition, the provision is drafted in a way that would allow flexibility in choosing the approach to make this behaviour punishable, insofar as it addresses the terrorist activity at an earlier stage. As a consequence, Article 9 will be limited only to outbound and intra-EU travel.

Article 9: Travelling abroad for *the purpose of* terrorism

(1) Member States shall take the necessary measures to ensure that **travelling to a country, which is not that of the traveller's nationality or residence, either directly or by transiting through one or several Member States**, for the purpose of the commission of or contribution to a terrorist offence referred to in Article 3, the participation in the activities of a terrorist group **with knowledge of the fact that such participation will contribute to the criminal activities of such a group** as referred to in Article 4, or the providing or receiving of training for terrorism referred to in Articles 7 and 8 is punishable as a criminal offence when committed intentionally.

New paragraph 3 to Article 3

(3) Each Member state shall take the necessary measures to ensure that planning of an offence, as referred to in this article is made punishable.

New paragraph 2 to Article 4

(2) Each Member state shall take the necessary measures to ensure that planning of an offence, as referred to in paragraph 1 is made punishable.

Option 2

This option keeps the broad scope of Article 9, thus including inbound travel, next to outbound and intra-EU travel, while providing an exception clause in paragraph 2 with regard to fundamental principles. This new provision is modelled on Article 21a of the general approach on fundamental principles relating to freedom of press and other media.

Article 9: Travelling ~~abroad~~ for *the purpose of* terrorism

(1) Member States shall take the necessary measures to ensure that **any travel to a country, within or outside the European Union, directly or by transiting through one or several Member States of the Union**, for the purpose of the commission of or contribution to a terrorist offence referred to in Article 3, the participation in the activities of a terrorist group **with knowledge of the fact that such participation will contribute to the criminal activities of such a group** as referred to in Article 4, or the providing or receiving of training for terrorism referred to in Articles 7 and 8 is punishable as a criminal offence when committed intentionally .

(2) Member States may establish conditions required by and in line with fundamental principles relating to the criminalisation of travel to their territory.

Member States are invited to indicate their views on the proposed options.

Exchange of information - Article 21c

As already indicated, the provision on exchange of information is among the most high profile political elements in the Directive for the EP. In this respect, the Presidency would like to continue work with delegations on the basis of the more limited option proposed at the last meeting. Namely, introducing an amending provision to the Council Decision 2005/671/JHA on the exchange of information and cooperation concerning terrorist offences, strengthening in particular the existing rules set out in Article 2(6) on exchange of information between MSs.

At the last meeting delegations raised a number of specific concerns in this respect. To address these concerns and to facilitate the progress on this issue, the Presidency would like to present for the consideration of the MSs some elements and basic principles that could constitute the basis for the revised provision on information exchange.

1. It should be noted that the proposed approach does not aim to set up new obligations, but to **strengthen the existing framework** for exchange of information between MSs concerning terrorist offences, as set out in Council decision 2005/671/JHA. Therefore, the general principles, procedural guarantees and safeguards for exchange of information, stemming from existing legal frameworks remain intact and are fully applicable.
2. **Type of proceedings:** Only information collected in the context of criminal investigation or prosecution in connection with terrorist offences falls into the scope of the provision.
3. **Competent authorities:** the provision is limited to law enforcement and judicial authorities in the context of criminal proceedings
4. **Modalities of the exchange:** in accordance with national law and relevant international instruments. This principle is in line with the general framework for spontaneous exchange of information between law enforcement authorities of the MSs under FD 2006/960/JHA. Article 7 thereof stipulates that "*The modalities of such spontaneous exchange shall be regulated by the national law of the Member States providing the information*".
5. **Specific safeguards and conditions:** the provision will not be applicable where the sharing of information would:
 - jeopardise current investigations or,
 - harm essential national security interests or,

- jeopardise the source of the information;
- specific conditions on the use of the transmitted information, such as the obligation to get the prior consent before the information can be shared with the competent authorities of another Member State or a third country could be established.

A possible text in line with the principles outlined above could read as follows:

Proposal for an amending provision to Council decision 2005/671/JHA:

Article 2, paragraph 6 is replaced by the following:

6. Each Member State shall take the necessary measures to ensure that any relevant information **collected by its law enforcement or judicial authorities in the framework of a criminal investigation or prosecution** in connection with terrorist offences **is** made accessible as soon as possible to the **respective** competent authorities of another Member State, **where there are reasons to believe that the information could be used in the prevention, detection, investigation or prosecution of terrorist offences, referred to in Directive .../.../EU on combatting terrorism in that Member State, either upon request or spontaneously,** and in accordance with national law and relevant international legal instruments.

A new paragraph 7 is introduced, which reads as follows:

7. Paragraph 6 is not applicable where the sharing of information would jeopardise current investigations, **nor when it would harm essential national security interests or jeopardise the source of the information. In addition, the providing Member State may set specific conditions on the use of the transmitted information, such as the obligation to get its prior consent before the information can be shared with the competent authorities of another Member State or a third country.**

Delegations are invited to indicate whether a provision in the operative text based on the principles and elements outlined above could be acceptable as a compromise on exchange of information.

Proposal for a
DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
on combating terrorism and replacing Council Framework Decision 2002/475/JHA on combating terrorism

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| Recitals | | | | |
| (1) The European Union is founded on the universal values of human dignity, freedom, equality and solidarity, respect for human rights and fundamental freedoms. It is based on the principle of democracy and the principle of the rule of law, principles which are common to the Member States. | (1) The European Union is founded on the universal values of human dignity, freedom, equality and solidarity, respect for human rights and fundamental freedoms. It is based on the principle of democracy and the principle of the rule of law, principles which are common to the Member States. | (1) The European Union is founded on the universal values of human dignity, freedom, equality <i>between women and men</i> and solidarity, respect for human rights and fundamental freedoms. It is based on the principle of democracy and the principle of the rule of law, principles which are common to the Member States. | | |
| (2) Acts of terrorism constitute one of the most serious violations of the universal values of human dignity, freedom, equality and solidarity, enjoyment of human rights and fundamental freedoms on which the European Union is founded. It also represents one of the most serious attacks on democracy and the rule of law, principles | (2) Acts of terrorism constitute one of the most serious violations of the universal values of human dignity, freedom, equality and solidarity, enjoyment of human rights and fundamental freedoms on which the European Union is founded. It also represents one of the most serious attacks on democracy and the rule of law, principles | (2) Acts of terrorism constitute one of the most serious violations of the universal values of human dignity, freedom, equality and solidarity, enjoyment of human rights and fundamental freedoms on which the European Union is founded. It also represents one of the most serious attacks on democracy and the rule of law, principles | identical | |

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| which are common to the Member States and on which the European Union is based. | which are common to the Member States and on which the European Union is based. | which are common to the Member States and on which the European Union is based. | | |
| (3) Council Framework Decision 2002/475/JHA ³ is the cornerstone of the criminal justice response to counter terrorism. A legal framework common to all Member States, and in particular, a harmonised definition of terrorist offences, serves as a benchmark for information exchange and cooperation between the competent national authorities under Council Framework Decision 2006/960/JHA, ⁴ Council Decision 2008/615/JHA ⁵ and Council Decision 2005/671/JHA, ⁶ Regulation (EU) No 603/2013 of the European Parliament and of the Council, ⁷ Council | (3) Council Framework Decision 2002/475/JHA ¹⁰ is the cornerstone of the criminal justice response to counter terrorism. A legal framework common to all Member States, and in particular, a harmonised definition of terrorist offences, serves as a benchmark for information exchange and cooperation between the competent national authorities under Council Framework Decision 2006/960/JHA, ¹¹ Council Decision 2008/615/JHA ¹² and Council Decision 2005/671/JHA, ¹³ Regulation (EU) No 603/2013 of the European Parliament and of the Council, ¹⁴ Council | (3) Council Framework Decision 2002/475/JHA ¹⁷ is the cornerstone of the criminal justice response to counter terrorism. A legal framework common to all Member States, and in particular, a harmonised definition of terrorist offences, serves as a benchmark for information exchange and cooperation between the competent national authorities under Council Framework Decision 2006/960/JHA, ¹⁸ Council Decision 2008/615/JHA ¹⁹ and Council Decision 2005/671/JHA, ²⁰ Regulation (EU) No 603/2013 of the European Parliament and of the Council, ²¹ Council | identical | |

³ Council Framework Decision of 13 June 2002 on combating terrorism (OJ L 164, 22.6.2002, p. 3).

⁴ Council Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union (OJ L 386, 29.12.2006, p. 89).

⁵ Council Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime (OJ L 210, 6.8.2008, p. 1).

⁶ Council decision 2005/671/JHA on the exchange of information and cooperation concerning terrorist offences (OJ L 253, 29.9.2005, p. 22).

⁷ Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and

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| Framework Decision 2002/584/JHA ⁸ and Council | Framework Decision 2002/584/JHA ¹⁵ and Council | Framework Decision 2002/584/JHA and Council | | |

on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (OJ L 180, 29.6.2013, p. 1).

- 10 Council Framework Decision of 13 June 2002 on combating terrorism (OJ L 164, 22.6.2002, p. 3).
- 11 Council Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union (OJ L 386, 29.12.2006, p. 89).
- 12 Council Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime (OJ L 210, 6.8.2008, p. 1).
- 13 Council decision 2005/671/JHA on the exchange of information and cooperation concerning terrorist offences (OJ L 253, 29.9.2005, p. 22).
- 14 Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (OJ L 180, 29.6.2013, p. 1).
- 17 Council Framework Decision of 13 June 2002 on combating terrorism (OJ L 164, 22.6.2002, p. 3).
- 18 Council Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union (OJ L 386, 29.12.2006, p. 89).
- 19 Council Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime (OJ L 210, 6.8.2008, p. 1).
- 20 Council decision 2005/671/JHA on the exchange of information and cooperation concerning terrorist offences (OJ L 253, 29.9.2005, p. 22).
- 21 Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (OJ L 180, 29.6.2013, p. 1).
- 8 Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ L 190, 18.7.2002, p. 1).

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| Framework Decision 2002/465/JHA. ⁹ | Framework Decision 2002/465/JHA. ¹⁶ | Framework Decision 2002/465/JHA. | | |
| | | <i>(3a) The Additional Protocol to the Council of Europe Convention on the prevention of terrorism adopted in May 2015 requires parties to that Convention to criminalise participation in an association or group for the purpose of terrorism, receiving training for terrorism, travelling or attempting to travel for terrorist purposes, providing or collecting funds for such travels and organising and facilitating such travels. The Union signed the Additional Protocol and the Convention on 22 October 2015.</i> | | |
| (4) The terrorist threat has grown and rapidly evolved in recent years. Individuals referred to as "foreign terrorist fighters" travel abroad for terrorism purposes. Returning foreign terrorist fighters pose a heightened security threat to | (4) The terrorist threat has grown and rapidly evolved in recent years. Individuals referred to as "foreign terrorist fighters" travel abroad for terrorism purposes. The United Nations Security Council has expressed its | (4) The terrorist threat has grown and rapidly evolved in recent years. Individuals referred to as "foreign terrorist fighters" travel abroad for terrorism purposes. Returning foreign terrorist fighters pose a heightened security threat to | | |

¹⁵ CouncilFrameworkDecision2002/584/JHA of 13 June 2002 on theEuropeanarrestwarrant and the surrender procedures between Member States (OJ L 190, 18.7.2002, p. 1).

⁹ CouncilFrameworkDecision2002/465/JHA of 13 June 2002 on joint investigation teams (OJ L 162, 20.6.2002, p. 1).

¹⁶ CouncilFrameworkDecision2002/465/JHA of 13 June 2002 on joint investigation teams (OJ L 162, 20.6.2002, p. 1).

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| <p>all EU Member States. Foreign terrorist fighters have been linked to several recent attacks or plots, including the attacks in Paris on 13 November 2015. In addition, the European Union and its Member States face increased threats from individuals inspired or instructed by terrorist groups abroad but who remain within Europe.</p> | <p>concern in UNSCR 2178 (2014) in relation to the foreign terrorist fighters. The Council of Europe has, in this respect, adopted in 2015 the Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism (CETS No 217). Returning foreign terrorist fighters pose a heightened security threat to all EU Member States. (...) In addition, the European Union and its Member States face increased threats from individuals inspired or instructed by terrorist groups abroad but who remain within Europe.</p> | <p>all EU Member States. Foreign terrorist fighters have been linked to several recent attacks or plots, including the attacks in Paris on 13 November 2015 <i>and in Brussels on 22 March 2016.</i> In addition, the European Union and its Member States face increased threats from individuals inspired or instructed by terrorist groups abroad but who remain within Europe.</p> | | |
| | | <p><i>(4a) Paragraph 6 of the UN Security Council Resolution (UNSCR) 2178(2014) requires all UN Member States to ensure that their domestic laws and regulations establish serious criminal offences to prosecute travel to a third country with the purpose of contributing to committing terrorist acts or providing or receiving</i></p> | | |

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| | | <i>training, as well as the funding, organisation or facilitation of such travel. In order to avoid prosecution gaps inside the Union, a harmonised implementation of UNSCR 2178(2014) is needed.</i> | | |
| | | <i>(4b) The fight against terrorism remains primarily a matter for Member States. However, the terrorist attacks in Europe in 2015 and 2016 have highlighted the need for coordinated action on the part of the Member States to combat terrorism and address the threat which foreign fighters pose within the Union.</i> | | |
| | | <i>(4c) A harmonised classification of criminal sanctions for terrorist crimes would offer a common legal framework which could be used as a reference for several Union agencies. An effective coordinating mechanism between Europol, Eurojust, SIS, OLAF and EJN should therefore be put in place.</i> | | |
| | | <i>(4d) Member States should</i> | | |

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| | | <p><i>strengthen the professionalism of security forces, law enforcement agencies and justice institutions. They should also ensure an effective oversight and accountability of such bodies, in conformity with international human rights law and the rule of law. This includes human rights training given to security forces, such as on how to respect human rights within the context of measures taken to counter violent extremism and terrorism.</i></p> | | |
| <p>(5) Taking account of the evolution of terrorist threats and legal obligations to the Union and Member States under international law, the definition of terrorist offences, including offences related to a terrorist group and offences related to terrorist activities, should be further approximated in all Member States, so that it covers more comprehensively conduct related to in particular foreign terrorist fighters and terrorist financing. These forms of</p> | <p>(5) Taking account of the evolution of terrorist threats and legal obligations to the Union and Member States under international law, the definition of terrorist offences, (...)offences related to a terrorist group and offences related to terrorist activities, should be further approximated in all Member States, so that it covers more comprehensively conduct related to in particular foreign terrorist fighters and terrorist financing. These forms of</p> | <p>(5) Taking account of the evolution of terrorist threats and legal obligations to the Union and Member States under international law, the definition of terrorist offences, offences related to a terrorist group and offences related to terrorist activities, should be further approximated in all Member States, so that it covers more comprehensively conduct related to, in particular, foreign terrorist fighters, <i>the increasing misuse of the internet for</i></p> | | |

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| behaviour should be punishable also if committed through the Internet, including social media. | behaviour should be punishable also if committed through the Internet, including social media. | <i>terrorist purposes (e.g. for recruitment, propaganda and training)</i> and terrorist financing. These forms of behaviour should be punishable if committed <i>by any means, whether on- or offline, while respecting the principle of proportionality and necessity.</i> | | |
| | | <i>(5a) The threat of nuclear and radiological terrorism remains a significant challenge to international security. Countering this evolving threat demands strengthened international cooperation and increased support for the central role of the International Atomic Energy Agency, as well as stringent safety measures.</i> | | |
| (6) The offences related to terrorist activities are of a very serious nature as they have the potential to lead to the commission of terrorist offences and enable terrorists and terrorist groups to maintain and further develop their criminal activities, justifying the criminalisation of such conduct. | (6) The offences related to terrorist activities are of a very serious nature as they have the potential to lead to the commission of terrorist offences and enable terrorists and terrorist groups to maintain and further develop their criminal activities, justifying the criminalisation of such conduct. | (6) The offences related to terrorist activities are of a very serious nature as they have the potential to lead to the commission of terrorist offences and enable terrorists and terrorist groups to maintain and further develop their criminal activities, justifying the criminalisation of such conduct | identical | |

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| | | <p><i>(6a) Measures designed to combat terrorism will not be fully effective until they are accompanied by an effective, dissuasive and coordinated set of criminal justice measures implemented in all Member States. By criminalising terrorist acts carried out abroad by terrorist organisations, Member States will equip themselves with the tools needed to address the terrorist radicalisation of citizens of the Union and the phenomenon of foreign fighters. Law enforcement and judicial authorities should have the resources needed to prevent, detect and punish such acts. Their staff should receive ongoing effective training in dealing with terrorism-related crimes.</i></p> | | |
| | | <p><i>(6b) This Directive should not have the effect of altering the rights, obligations, and responsibilities of Member States and organisations under international law, including under international humanitarian law. Actions by armed forces during periods</i></p> | | |

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| | | <i>of armed conflict, which are governed by international humanitarian law within the meaning of those terms under that law, and, insofar as they are governed by other rules of international law, actions by the armed forces of a State in the exercise of their official duties are not governed by this Directive.</i> | | |
| | | <i>(6c) The provision of humanitarian assistance by impartial humanitarian organisations recognised by international law, including international humanitarian law, should not be considered as contributing to the criminal activities of a terrorist group, while taking into account the case law of the Court of Justice of the European Union.</i> | | |
| (7) The offenses related to public provocation to commit a terrorist offence act comprise, inter alia, the glorification and justification of terrorism or the dissemination of messages or images including those related to the victims of terrorism as a | (7) The offenses related to public provocation to commit a terrorist offence act comprise, inter alia, the glorification and justification of terrorism or the dissemination of messages or images including those related to the victims of terrorism as a | (7) The offences related to public provocation to commit a terrorist offence act comprise, inter alia, the glorification and justification of terrorism or the dissemination of messages or images <i>on- and offline as a way to gather support</i> for a | | |

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| <p>way to gain publicity for the terrorists cause or seriously intimidating the population, provided that such behaviour causes a danger that terrorist acts may be committed.</p> | <p>way to gain publicity for the terrorists cause or seriously intimidating the population, provided that such behaviour causes a danger that terrorist acts may be committed. To strengthen actions against public provocation to commit a terrorist offence, and also taking into account the increased use of technology, in particular the Internet, it seems appropriate for Member States to take measures to remove or to block access to webpages publicly inciting to commit terrorist offences. Where such measures are taken, they must be set by transparent procedures and provide adequate safeguards, in particular to ensure that restrictions are limited to what is necessary and proportionate.</p> | <p>terrorist cause or seriously intimidating the population. Such behaviour <i>should be punishable when it</i> causes a danger <i>in a concrete case</i> that a terrorist <i>offence</i> may be committed.</p> | | |
| | | <p><i>(7a) Where an information society service is provided that consists of the transmission in a communication network of information provided by a recipient of the service, or the provision of access to a</i></p> | | |

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| | | <p><i>communication network, Member States should ensure that the service provider is not liable for the information transmitted or stored in accordance with Directive 2000/31/EC of the European Parliament and of the Council^{1a}.</i></p> <p>^{1a}<i>Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce') (OJ L 178, 17.7.2000, p. 1).</i></p> | | |
| | | <p><i>(7b) An effective means of combatting terrorism on the internet is to remove illegal terrorist content at source. In that context, this Directive is without prejudice to voluntary action taken by the internet industry to prevent the misuse of its services or to any support for such action by Member States, such as detecting and flagging illegal content. Member States</i></p> | | |

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| | | <p><i>should take all necessary measures to remove or to block access to web pages publicly inciting others to commit terrorist offences. Where such measures are taken, they should be in line with transparent procedures and subject to adequate safeguards under the control of independent authorities. Member States should use their best endeavours to cooperate with third countries in seeking to secure the removal of such content from servers within their territory. However, when removal of illegal content at its source is not possible, Member States should be able to put in place measures to block access from Union territory to web pages identified as containing or disseminating terrorist content. Member States should consider legal action against internet and social media companies and service providers which deliberately refuse to comply with a legal order to delete illegal content extolling terrorism from their</i></p> | | |

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| | | <p><i>internet platforms after being duly notified about such content. Any refusal should be punishable by effective, proportionate and dissuasive sanctions. The right to judicial review should be guaranteed to the internet and social media companies and service providers.</i></p> | | |
| <p>(8) Considering the seriousness of the threat and the need to in particular stem the flow of foreign terrorist fighters, it is necessary to criminalise the travelling abroad for terrorist purposes, being not only the commission of terrorist offences and providing or receiving training but also to participate in the activities of a terrorist group. Any act of facilitation of such travel should also be criminalised.</p> | <p>(8) Considering the seriousness of the threat and the need to in particular stem the flow of foreign terrorist fighters, it is necessary to criminalise the travelling abroad to a country outside the Union for terrorist purposes, not only in order to commit terrorist offences and provide or receive training but also to participate in the activities of a terrorist group. The criminalisation under this Directive is limited to the travel to countries outside the Union as the destination where the person concerned intends to engage in terrorist activities and offences. The travel to the State of destination may be direct or by transiting other</p> | <p>(8) <i>While it is not indispensable to criminalise the act of travelling as such,</i> considering the seriousness of the threat and the need to, in particular, stem the flow of foreign terrorist fighters, it is necessary to criminalise the travelling abroad for terrorist purposes, being not only the commission of terrorist offences and providing or receiving training but also to participate in the activities of a terrorist group. <i>Such act should be criminalised under specific conditions and only when the terrorist purpose of the travel is proven by inferring from objective circumstances. Facilitating or organising</i> such travel should also be criminalised.</p> | | |

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| | States en route. Any act of facilitation of such travel should also be criminalised. It is not indispensable to criminalise the act of travelling as such. | | | |
| (9) Criminalisation of the receiving training for terrorism complements the existing offence of providing training and specifically addresses the threats resulting from those actively preparing for the commission of terrorist offences, including those ultimately acting alone. | (9) Criminalisation of the receiving training for terrorism complements the existing offence of providing training and specifically addresses the threats resulting from those actively preparing for the commission of terrorist offences, including those ultimately acting alone. | (9) Criminalisation of <i>wilfully</i> receiving training for terrorism, <i>including obtaining knowledge, documentation or practical skills, whether or not in the form of self-study</i> , complements the existing offence of providing training and specifically addresses the threats resulting from those actively preparing for the commission of terrorist offences, including those ultimately acting alone. It should therefore be criminalised. | | |
| | | (9a) Cyber attacks carried out for terrorist purposes or by a terrorist organisation should be punishable in Member States. | | |
| (10) Terrorist financing should be punishable in the Member States and cover the financing of terrorist acts, the financing of a terrorist group, as well as other offences related to | (10) Terrorist financing should be punishable in the Member States. Criminalisation should cover the financing of terrorist acts, the financing of a terrorist group, as well as | (10) Without prejudice to Directive (EU) 2015/849 of the European Parliament and of the Council^{1a} , terrorist financing should be punishable in the Member | | |

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| terrorist activities, such as the recruitment and training, or travel for terrorist purposes, with a view to disrupting the support structures facilitating the commission of terrorist offences. Aiding and abetting or attempting terrorist financing should also be punishable. | other offences related to terrorist activities, such as the recruitment and training, or travel for terrorist purposes, with a view to disrupting the support structures facilitating the commission of terrorist offences. (...) | States and cover <i>not only the financing of terrorist acts, but also</i> the financing of a terrorist group, as well as other offences related to terrorist activities, such as the recruitment and training, or travel for terrorist purposes, with a view to disrupting the support structures facilitating the commission of terrorist offences. Aiding and abetting or attempting terrorist financing should also be punishable | | |
| | | <i>(10a) The increasing convergence and nexus between terrorism and organised crime and the links between criminal and terrorist groups constitute a growing security threat to the Union. Member States should, therefore, ensure that the financing and the support of terrorist crimes by means of organised crime is made punishable and that the links between organised crime and terrorist activities and terrorist financing are more explicitly taken into account</i> | | |

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| | | <i>by the authorities of the Member States involved in criminal proceedings.</i> | | |
| | | <p><i>(10b) Illicit trade in firearms, oil, drugs, cigarettes, counterfeit goods and artworks and other cultural objects, as well as trade in human beings, racketeering and extortion have become very lucrative ways for terrorist groups to obtain funding. In seeking to combat terrorist financing, therefore, the process by which terrorist organisations generate funding should also be addressed.</i></p> <p><i>While avoiding an undue administrative burden for economic actors, Member States should take the necessary measures to ensure that terrorist groups may not benefit from any trading in goods. Appropriate and proportionate due diligence, monitoring and reporting requirements could have a preventative effect by materially impairing the trading activities of organised criminal groups and terrorist</i></p> | | |

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| | | <p><i>groups and by helping to track and prosecute organised crime and other commercial activities of terrorist organisations more effectively. Where appropriate, Member States should provide for penalties for breaches of those requirements.</i></p> | | |
| | | <p><i>(10c) Financial investigations are fundamental to uncovering the facilitation of terrorist offences and the networks and structure of terrorist organisations. Such investigations can be very productive, particularly when tax and customs authorities, financial intelligence units and judicial authorities are involved at an early stage of the investigation. Member States should aim to make financial investigations a standard component of all counter-terrorist investigations and to share relevant financial information among competent authorities. In their efforts to prevent, investigate and combat</i></p> | | |

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| | | <p><i>terrorist financing, Member States should make utmost use of Europol's financial intelligence and counter-terrorist financing capabilities. They should also endeavour to ensure a more efficient and coordinated approach, for instance by establishing specialised units at national level to deal with financial investigations linked to terrorism, which may have considerable added value and contribute substantially to securing successful prosecutions.</i></p> | | |
| <p>(11) Furthermore, the provision of material support for terrorism through persons engaging in or acting as intermediaries in the supply or movement of services, assets and goods, including trade transactions involving the entry into or exit from the Union should be punishable in the Member States, as aiding and abetting terrorism or as terrorism financing if performed with the knowledge that these operations or the proceeds thereof are intended</p> | <p>(11) Furthermore, the provision of material support for terrorism through persons engaging in or acting as intermediaries in the supply or movement of services, assets and goods, including trade transactions involving the entry into or exit from the Union, such as sale, acquisition or exchange of a cultural object of archaeological, artistic, historical or scientific interest illegally removed from an area controlled by a</p> | <p>(11) The provision of material support for terrorism through persons engaging in or acting as intermediaries in the supply or movement of services, assets and goods, including trade transactions involving the entry into or exit from the Union, should be punishable in the Member States as aiding and abetting terrorism or as terrorism financing if performed with the <i>clear intention or</i> knowledge that these operations or the proceeds thereof are intended</p> | | |

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| to be used, in full or in part, for terrorist purposes or will benefit terrorist groups. | terrorist group at the time of the removal , should be punishable in the Member States, as aiding and abetting terrorism or as terrorist financing if performed with the knowledge that these operations or the proceeds thereof are intended to be used, in full or in part, for terrorist purposes or will benefit terrorist groups. Further measures may be necessary with a view to effectively combat the illicit trade in cultural goods as a source of income for terrorist groups. | to be used, in full or in part, for terrorist purposes or will benefit terrorist groups. | | |
| (12) The attempt to travel abroad for terrorist purposes, should be punishable, as well as the attempt to provide training and recruitment for terrorism. | (12) The attempt to travel abroad for terrorist purposes, should be punishable, as well as the attempt to provide training and recruitment for terrorism. | (12) The attempt to travel abroad for terrorist purposes, should be punishable, as well as the attempt to provide training and recruitment for terrorism. | identical | |
| (13) With regard to the criminal offences provided for in this Directive, the notion of intention must apply to all the elements constituting those offences. The intentional nature of an act or omission may be inferred from objective, factual | (13) With regard to the criminal offences provided for in this Directive, the notion of intention must apply to all the elements constituting those offences. The intentional nature of an act or omission may be inferred from objective, factual | (13) With regard to the criminal offences provided for in this Directive, the notion of intention must apply to all the elements constituting those offences. The intentional nature of an act or omission may be inferred from objective, factual | identical | |

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| circumstances. | circumstances. | circumstances | | |
| (14) Furthermore, penalties should be provided for natural and legal persons having committed or being liable for such offences, which reflect the seriousness of such offences. | (14) Furthermore, penalties should be provided for natural and legal persons having committed or being liable for such offences, which reflect the seriousness of such offences. | (14)(...)Penalties should be provided for natural and legal persons having committed or being liable for such offences, which reflect the seriousness of such offences. | | |
| (15) Jurisdictional rules should be established to ensure that the terrorist offence may be effectively prosecuted. In particular, it appears necessary to establish jurisdiction for the offences committed by the providers of training for terrorism, whatever their nationality, in view of the possible effects of such behaviours on the territory of the Union and of the close material connexion between the offences of providing and receiving training for terrorism. | (15) Jurisdictional rules should be established to ensure that the offences laid down in this Directive may be effectively prosecuted. In particular, it appears appropriate to establish jurisdiction for the offences committed by the providers of training for terrorism, whatever their nationality, in view of the possible effects of such behaviours on the territory of the Union and of the close material connexion between the offences of providing and receiving training for terrorism. | (15) Jurisdictional rules should be established to ensure that terrorist <i>offences</i> may be effectively prosecuted. In particular, it appears necessary to establish jurisdiction, for the offences committed by the providers of training for terrorism <i>of citizens of the Union and persons residing in the Union</i> , whatever the nationality <i>of the providers may be</i> , in view of the possible effects of such behaviours on the territory of the Union and of the close material connexion between the offences of providing and receiving training for terrorism. <i>Any prosecution of a third-country national should respect the agreements on extradition and on police and judicial cooperation in criminal matters with the</i> | | |

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| | | <p><i>third countries concerned.</i></p> <p><i>(15a) Information relevant for the detection, prevention, investigation or prosecution of the offences referred to in this Directive often concerns more than one Member State and can require urgent action. In order to prevent and combat terrorism, a closer cross-border cooperation among the competent national authorities and Union agencies is needed with regard to expedient exchange of any relevant information from criminal and court records or other available sources on either radicalised or violent extremist individuals who are suspects of a criminal offence or who are or have been subject to criminal proceedings or asset freezing for any of the offences referred to in this Directive, including those who have been denied admission to the territory of a Member State or who have been deported on suspicion of involvement in crimes as</i></p> | | |

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| | | <p><i>referred to in this Directive. The competent national and Union authorities should therefore exchange this information in an efficient and timely manner while respecting applicable data protection law. Furthermore, Member States and their competent authorities should increase their utilisation of available systems and databases, provided for by relevant agencies, both in quantitative and qualitative terms, to enhance their prevention and counter-terrorism capabilities. They should do so by sharing all relevant information and by conducting systematic strategic and operational analyses, in accordance with the applicable law and related safeguards.</i></p> | | |
| | <p>(15a) To ensure the success of investigations and the prosecution of terrorist offences, offences related to a terrorist group or offences related to terrorist activities, those responsible for investigating and</p> | <p><i>(15b) To ensure the success of investigations and prosecution of terrorist offences, offences related to a terrorist group and offences related to terrorist activities, the competent authorities responsible for investigating</i></p> | | |

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| | <p>prosecuting such offences should have the possibility to make use of effective investigative tools such as those which are used in combating organised crime or other serious crimes. Such tools should, where appropriate, while taking into account the principle of proportionality and the nature and seriousness of the offences under investigation in accordance with national law, include, for example, the search of any personal property, the interception of communications, covert surveillance including electronic surveillance, the taking and the fixing of audio recordings in private or public vehicles and places, and of visual images of persons in public vehicles and places, (...) and financial investigations(...). The right to the protection of personal data should be respected.</p> | <p><i>and prosecuting such offences should have the opportunity to make use of effective investigative tools such as those used in combating organised crime or other serious crimes. Taking into account, inter alia, the principle of proportionality, the use of such tools, in accordance with national law, should be targeted and proportionate to the nature and gravity of the offences under investigation.</i></p> | | |
| | | <p><i>(15c) Member States should strengthen the timely exchange of any available</i></p> | | |

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| | | <p><i>relevant information concerning persons travelling abroad for the purpose of terrorism. They should also systematically consider all cases involving the offences set out in this Directive as adequate, relevant and important within the meaning of Article 21 of Council Decision 2007/533/JHA^{1a} to enter an alert in the Schengen Information System. Furthermore, Members States should, as a rule, consider all cases involving the offences set out in this Directive as relevant and necessary within the meaning of Article 9 of Directive (EU) 2016/681 of the European Parliament and of the Council^{1b} for the purpose of sharing the results of processing PNR data with the other Member States concerned in accordance with that Directive.</i></p> <p>^{1a} <i>Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the</i></p> | | |

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| | | <p><i>second generation Schengen Information System (SIS II) (OJ L 205, 7.8.2007, p. 63).</i> ^{1b} <i>Directive (EU) 2016/681 of the European Parliament and of the Council of 27 April 2016 on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime (OJ L 119, 4.5.2016, p. 132).</i></p> | | |
| | | <p><i>(15d) The fact that terrorist organisations rely heavily upon various electronic tools, the internet and social media to communicate, promote, and incite terrorist acts, to recruit potential fighters, to collect funds, or to arrange for other support for their activities, creates challenges in investigations and prosecutions of terrorist offences. Member States should therefore cooperate with each other notably through Eurojust and Europol and with the Commission to ensure a coordinated approach in dealing with the gathering,</i></p> | | |

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| | | <i>sharing, and admissibility of electronic evidence.</i> | | |
| (16) Member State should adopt specific measures of protection, support and assistance responding to the specific needs of victims of terrorism, further qualifying and deepening the rights already contained in the Directive 2012/29/EU of the European Parliament and the Council ²² . Victims of terrorism are those defined in Article 1 of the Directive 2012/29/EU, in relation to terrorist offences as referred to in Article 3. The measures to be taken by Member States should ensure that in the event of a terrorist attack, the victims of terrorism will obtain emotional and psychological support, including trauma support and counselling, and any relevant | (16) Member States should adopt (...) measures of protection, support and assistance responding to the specific needs of victims of terrorism, in accordance with Directive 2012/29/EU of the European Parliament and the Council ²³ and as further qualified by this Directive . Victims of terrorism are those defined in Article 2 of Directive 2012/29/EU being a natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a terrorist offence, and family members of a person whose death was directly caused by a terrorist offence and who have suffered harm as a result of | (16) Member States <i>should ensure that the status of the victims of terrorism is adequately recognised before, during and after criminal proceedings and</i> should adopt specific measures of protection, support and assistance, <i>with respectful and fair treatment of the victims,</i> responding to the specific needs of victims of terrorism, further qualifying and deepening the rights already contained in the Directive 2012/29/EU of the European Parliament and the Council ²⁸ . Victims of terrorism are those defined in Article 2 of the Directive 2012/29/EU, in relation to terrorist offences as referred to in <i>this Directive</i> . The measures to be taken by Member States should ensure | | |

²² Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA of 15 March 2001(OJ L 315, 14.11.2012 p. 37).

²³ Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA of 15 March 2001(OJ L 315, 14.11.2012 p. 57).

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| legal, practical or financial information and advice. | that person's death. (...) Family members of surviving victims of terrorism, as defined in Article 2 of Directive 2012/29/EU, have access to victim support services and protection measures in accordance with Directive 2012/29/EU. | that in the event of a terrorist attack, the victims of terrorism will obtain emotional and psychological support, including trauma support, and any relevant legal, practical or financial information and advice <i>and adequate aid.</i> <i>Members States should encourage specific training for persons responsible for assisting victims of terrorist acts, as well as granting the necessary resources to that effect. Furthermore, each Member State should take into account the risks of intimidation of and retaliation against victims and persons who may give testimony in criminal proceedings relating to terrorist offences. Victims of terrorism should also be granted legal aid in all Members States where they are parties to criminal proceedings or other legal proceedings to obtain a decision on compensation.</i> | | |
| | | <i>(16a) Member States should set up and develop a one-stop</i> | | |

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| | | <p><i>shop for information and advice for victims of terrorism, not merely to meet victims' needs on acquiring information and advice, but also to provide them with psychological first aid and referral possibilities, as well as with assistance and support in dealing with media attention that they receive.</i></p> | | |
| | <p>(16a)Member States should ensure that relevant mechanisms or protocols are in place allowing for activation of support services which are able to address the specific needs of victims of terrorism immediately after a terrorist attack and for as long as necessary thereafter. Such support services should take into account that specific needs of victims of terrorism may evolve in time. In that regard, the Member States should ensure that support services will address in the first place at least the emotional and psychological needs of the most vulnerable victims of terrorism, and will</p> | | | |

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| | inform all victims of terrorism about the availability of further emotional and psychological support including trauma support and counselling. | | | |
| | | <i>(16b) Member States should, while fully respecting freedom of expression, exchange best practices on how to deal with the media and journalists in order to protect the private life of victims and their family members and to cooperate with specialised services providing assistance and support to victims to help them deal with the media attention they receive.</i> | | |
| (17) Member States should cooperate among each-other to ensure that access to information about the victims' rights, about available support services and about accessible compensation schemes is provided to all victims of terrorism. Moreover the Member States should ensure that victims of terrorism have access to a long-term support services in the country of their | (17) Member States' should (...) ensure that all victims of terrorism have access to information about the victims' rights, about available support services and (...) compensation schemes in the Member State where the terrorist offence was committed. Member States concerned should take appropriate action to facilitate cooperation with | (17) Member States should cooperate among each-other to ensure that access to information about the victims' rights, about available support services and about accessible compensation schemes is provided to all victims of terrorism. Moreover the Member States should ensure that victims of terrorism have access to a long-term support services in the country of their | | |

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| residence, even if the terrorist offence took place in another EU country. | each other in order to ensure that victims of terrorism, who are residents of a Member State other than that where the terrorist offence was committed have effective access to such information. Moreover the Member States should ensure that victims of terrorism have access to a long-term support services in the country of their residence, even if the terrorist offence took place in another EU country. | residence, even if the terrorist offence took place in another EU country. | | |
| | | <i>(17a) Member States should cooperate with each other to ensure that access to information on the victims' rights, support services and compensation schemes is provided to all victims of terrorism. Moreover, Member States should ensure that victims of terrorism have long-term access to support services in their country of residence, even if the terrorist offence took place in another Member State.</i> | | |
| | | <i>(17b) Improved cooperation between Member States in combating terrorism should</i> | | |

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| | | <p><i>also involve intensive exchanges and cooperation between their judicial authorities and with Eurojust. The resources of the Eurojust Coordination Centre, which should play a crucial role in promoting joint actions on the part of Member States' judicial authorities as regards the collection of evidence, should be strengthened. More use should therefore be made of the joint investigation teams instrument, both among Member States and between Member States and third countries with which Eurojust has established cooperation agreements.</i></p> | | |
| | | <p><i>(17c) The prevention of radicalisation and recruitment of citizens of the Union by terrorist organisations requires a long-term, proactive and comprehensive approach, combining measures in the area of criminal justice with policies in the field of education, social inclusion and integration, as well as the provision of effective</i></p> | | |

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| | | <p><i>deradicalisation and exit programmes. Member States should share good practices on effective measures and projects in this field.</i></p> <p><i>Furthermore, Member States should share good practices on the use of effective, alternative measures within the judicial approach to prevent citizens of the Union and third-country nationals legally residing in the Union from leaving the Union for terrorist purposes or to control their return to the Union from conflict zones. They should share such good practices not only with each other but also, where appropriate, with third countries, as well as with relevant Union agencies.</i></p> | | |
| | | <p><i>(17d) Member States should pursue their efforts to prevent terrorism by coordinating their strategies and sharing the information and experience at their disposal, by implementing good practices at both Union and national level and by updating national prevention</i></p> | | |

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| | | <i>policies in accordance with the Union strategy for combating radicalisation and recruitment to terrorism. The Commission should, where appropriate, provide support to national, regional and local authorities in developing prevention policies.</i> | | |
| (18) Given that the objectives of this Directive cannot be sufficiently achieved by the Member States unilaterally and can therefore, because of the need for European-wide harmonised rules, be better achieved at the level of the Union, the Union may adopt measures, in accordance with the principle of subsidiarity, as set out in Article 5 of the Treaty on the European Union. In accordance with the principle of proportionality, as set out in that Article 5, this Directive does not go beyond what is necessary in order to achieve those objectives. | (18) Given that the objectives of this Directive cannot be sufficiently achieved by the Member States unilaterally and can therefore, because of the need for European-wide harmonised rules, be better achieved at the level of the Union, the Union may adopt measures, in accordance with the principle of subsidiarity, as set out in Article 5 of the Treaty on the European Union. In accordance with the principle of proportionality, as set out in that Article 5, this Directive does not go beyond what is necessary in order to achieve those objectives. | (18) Given that the objectives of this Directive cannot be sufficiently achieved by the Member States unilaterally and can therefore, (...) be better achieved at the level of the Union, the Union may adopt measures, in accordance with the principle of subsidiarity, as set out in Article 5 of the Treaty on the European Union. In accordance with the principle of proportionality, as set out in that Article 5, this Directive does not go beyond what is necessary in order to achieve those objectives. | | |
| | | <i>(18a) The fight against terrorism is an essential and global effort that demands an international answer, thus</i> | | |

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| | | <i>obliging the Union to act in cooperation with third countries.</i> | | |
| <p>(19) This Directive respects the principles recognised by Article 2 of the Treaty on the European Union, respects fundamental rights and freedoms and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union, including those set out in Chapters II, III, V and VI thereof which encompass inter alia the right to liberty and security, freedom of expression and information, freedom of association and freedom of thought conscience and religion, the general prohibition of discrimination in particular on grounds of race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, the right to respect for private and family life and the right to protection of personal data, the principle of legality and proportionality of criminal</p> | <p>(19) This Directive respects the principles recognised by Article 2 of the Treaty on the European Union, respects fundamental rights and freedoms and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union, including those set out in Titles II, III, V and VI thereof which encompass inter alia the right to liberty and security, freedom of expression and information, freedom of association and freedom of thought conscience and religion, the general prohibition of discrimination in particular on grounds of race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, the right to respect for private and family life and the right to protection of personal data, the principle of legality and proportionality of criminal</p> | <p>(19) This Directive and its implementation respect the principles recognised by Article 2 of the Treaty on the European Union, respect fundamental rights and freedoms and observe the principles recognised in particular by the Charter of Fundamental Rights of the European Union, including those set out in Chapters II, III, V and VI thereof which encompass, inter alia, the right to liberty and security, freedom of expression, including freedom of speech, freedom of information, freedom of association and freedom of thought, conscience and religion, the general prohibition of discrimination in particular on grounds of race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, the right to respect for private and family life and the right to protection of personal</p> | | |

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| <p>offences and penalties, covering also the requirement of precision, clarity and foreseeability in criminal law, the presumption of innocence as well as freedom of movement as set forth in Article 21(1) of the Treaty on the Functioning of the European Union and Directive 2004/38/EC. This Directive has to be implemented in accordance with these rights and principles.</p> | <p>offences and penalties, covering also the requirement of precision, clarity and foreseeability in criminal law, the presumption of innocence as well as freedom of movement as set forth in Article 21(1) of the Treaty on the Functioning of the European Union and Directive 2004/38/EC. This Directive has to be implemented in accordance with these rights and principles. This Directive has to be implemented in accordance with these rights and principles taking also into account 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.</p> | <p>data, the principle of legality and proportionality of criminal offences and penalties, covering also the requirement of precision, clarity and foreseeability in criminal law, the presumption of innocence <i>and the right to a fair trial, the outcome of the trial being determined by the individual circumstances of the case, and the principles recognised in the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)</i>, as well as freedom of movement as set forth in Article 21(1) of the Treaty on the Functioning of the European Union and Directive 2004/38/EC^{1a}, <i>recognising that exceptions can be made to the freedom of movement on the grounds of public policy or national security. Any limitation on the exercise of those rights and freedom is to be subject to the respect of the conditions enshrined in Article 52(1) of the Charter.</i></p> | | |
| | | <i>(19a) This Directive should</i> | | |

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| | | <i>not have the effect of requiring Member States to take measures which would result in any form of discrimination.</i> | | |
| | (19a) This Directive should not have the effect of altering the rights, obligations and responsibilities of the Member States under international law, including under international humanitarian law. The activities of armed forces during periods of armed conflict, which are governed by international humanitarian law within the meaning of these terms under that law, and, inasmuch as they are governed by other rules of international law, activities of the military forces of a State in the exercise of their official duties are not governed by this Directive. | | | |
| | | <i>(19b) Nothing in this Directive should be interpreted as being intended to reduce or restrict the Union acquis with regard to</i> | | |

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| | | <i>the procedural rights of suspects or accused persons in criminal proceedings, including Directive (EU) 2016/343 of the European Parliament and of the Council^{1a}. Persons suspected of committing the offences laid down in this Directive should not bear the burden of proof.</i> | | |
| (20) The implementation of the criminalisation under this Directive should be proportional to the nature and circumstances of the offence, with respect to the legitimate aims pursued and to their necessity in a democratic society, and should exclude any form of arbitrariness or discrimination. | (20) The implementation of the criminalisation under this Directive should be proportional to the nature and circumstances of the offence, with respect to the legitimate aims pursued and to their necessity in a democratic society, and should exclude any form of arbitrariness, racism or discrimination. | (20) The implementation of the criminalisation under this Directive should be proportional to the nature and circumstances of the offence and of each case , with respect to the legitimate aims pursued and to their necessity in a democratic society, and should exclude any form of arbitrariness or discrimination. | | |
| | (20a) Nothing in this Directive should be interpreted as being intended to reduce or restrict the dissemination of information for scientific, academic or reporting purposes. The expression of radical, polemic or | (19c) Nothing in this Directive should be interpreted as being intended to reduce or restrict the dissemination of information for the expression of an opinion or for scientific, academic or reporting purposes, as well as the | | |

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| | controversial views in the public debate on sensitive political questions, falls outside the scope of this Directive and, in particular, of the definition of public provocation to commit terrorist offences. | <i>expression of polemic or controversial views in public debate on sensitive political questions.</i> | | |
| (21) The Directive should replace Framework Decision 2002/475/JHA ²⁴ for the Member States bound by this Directive. | (21) The Directive should replace Framework decision 2002/475/JHA ²⁵ for the Member States bound by this Directive. | (21) <i>This</i> Directive <i>replaces</i> Framework Decision 2002/475/JHA for the Member States bound by this Directive. | | |
| | | <i>(21a) Sanctions in the area of terrorist offences, offences related to a terrorist group and offences related to terrorist activities should in no circumstances be used by Member States as a ground to circumvent their international obligations under the Geneva Convention Relating to the Status of Refugees of 28 July 1951, as supplemented by the New York Protocol of 31 January 1967.</i> | | |
| (22) In accordance with | (22) In accordance with | | | |

²⁴ As amended by Council Framework Decision 2008/919/JHA of 28 November 2008 amending Framework Decision 2002/475/JHA (OJ L 330, 9.12.2008, p. 21).

²⁵ As amended by Council Framework Decision 2008/919/JHA of 28 November 2008 amending Framework Decision 2002/475/JHA (OJ L 330, 9.12.2008, p. 21).

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| <p>Article 3 of the Protocol (No 21) on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on the European Union and to the Treaty on the Functioning of the European Union, the United Kingdom and Ireland have notified their wish to take part in the adoption and application of this Directive.</p> <p>AND/OR</p> | <p>Article 3 of the Protocol (No 21) on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on the European Union and to the Treaty on the Functioning of the European Union, the United Kingdom and Ireland have notified their wish to take part in the adoption and application of this Directive.</p> <p>AND/OR</p> | | | |
| <p>(23) In accordance with Articles 1 and 2 of the Protocol (No 21) on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on the European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, the United Kingdom and Ireland are not taking part in the adoption and application of this Directive and are not bound by it or subject to its application.]</p> | <p>(23) In accordance with Articles 1 and 2 of the Protocol (No 21) on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on the European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, the United Kingdom and Ireland are not taking part in the adoption and application of this Directive and are not bound by it or subject to its application.</p> | | | |

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| (24) In accordance with Articles 1 and 2 of the Protocol (No 22) on the position of Denmark annexed to the Treaty on the European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application. Framework Decision 2002/475/JHA shall continue to be binding upon and applicable to Denmark. | (24) In accordance with Articles 1 and 2 of the Protocol (No 22) on the position of Denmark annexed to the Treaty on the European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application. Framework Decision 2002/475/JHA shall continue to be binding upon and applicable to Denmark. | | | |
| TITLE I: SUBJECT MATTER AND DEFINITIONS | | | | |
| <i>Article 1</i> Subject matter | | | | |
| This Directive establishes minimum rules concerning the definition of criminal offences and sanctions in the area of terrorist offences, offences related to a terrorist group and offences related to terrorist activities, as well as specific measures of protection of and assistance to victims of terrorism. | This Directive establishes minimum rules concerning the definition of criminal offences and sanctions in the area of terrorist offences, offences related to a terrorist group and offences related to terrorist activities, as well as (...) measures of protection of and assistance to victims of terrorism. | This Directive establishes minimum rules concerning the definition of criminal offences and sanctions in the area of terrorist offences, offences related to a terrorist group and offences related to terrorist activities, as well as specific measures of protection of and assistance <i>and support</i> to victims of terrorism. | <i>Technical issue</i> The EP of addition of " <i>and support</i> " which is consistent with the scope of the Victims' rights provisions in the GA is tentatively agreed. | |

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| <i>Article 2</i> Definitions | | | | |
| <p>For the purposes of this Directive, the following definitions shall apply:</p> <p>(a) "funds" means assets of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including, but not limited to, bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts, letters of credit,</p> | <p>For the purposes of this Directive, the following definitions shall apply:</p> <p>(a) "funds" means assets of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including, but not limited to, bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts, letters of credit,</p> | <p>For the purposes of this Directive, the following definitions shall apply:</p> <p>(a) "funds" means assets of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including, but not limited to, bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts, letters of credit,</p> | Identical | |
| <p>(b) "legal person" means any entity having legal personality under the applicable law, except for States or public bodies in the exercise of State authority and for public international organisations,</p> | <p>(b) "legal person" means any entity having legal personality under the applicable law, except for States or public bodies in the exercise of State authority and for public international organisations,</p> | <p>. b) "legal person" means any entity having legal personality under the applicable law, except for States or public bodies in the exercise of State authority and for public international organisations,</p> | Identical | |

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| (c) "terrorist group" shall mean: a structured group of more than two persons, established over a period of time and acting in concert to commit terrorist offences | (c) "terrorist group" shall mean: a structured group of more than two persons, established over a period of time and acting in concert to commit terrorist offences; "Structured group" shall mean 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. | c) "terrorist group" shall mean: a structured group of more than two persons, established over a period of time and acting in concert to commit terrorist offences | <i>Technical issue:</i> Tentative agreement on Council text | |
| (d) "Structured group" shall mean 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. | (d) merged with letter "c" | d) "Structured group" shall mean 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. | | |
| | | <i>(da) "victim" means:</i> <i>(i) a natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence;</i> | <i>Technical issue:</i> Tentative agreement on addressing the definition of victims, as in recital 16 of the GA. | |

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| | | <i>(ii) family members of a person whose death was directly caused by a criminal offence and who have suffered harm as a result of that person's death;</i> | | |
| TITLE II: TERRORIST OFFENCES AND OFFENCES RELATED TO A TERRORIST GROUP | | | | |
| Article 3 Terrorist offences | | | | |
| <p>1. Each Member State shall take the necessary measures to ensure that the intentional acts referred to in paragraph 2, as defined as offences under national law, which, given their nature or context, may seriously damage a country or an international organisation are defined as terrorist offences where committed with the aim of one or more of the following:</p> <p>(a) seriously intimidating a population;</p> <p>(b) unduly compelling a Government or international organisation to perform or abstain from performing any act,</p> <p>(c) seriously destabilising or destroying the fundamental</p> | <p>1. Each Member State shall take the necessary measures to ensure that the intentional acts referred to in paragraph 2, as defined as offences under national law, which, given their nature or context, may seriously damage a country or an international organisation are defined as terrorist offences where committed with the aim of one or more of the following:</p> <p>(a) seriously intimidating a population;</p> <p>(b) unduly compelling a Government or international organisation to perform or abstain from performing any act,</p> <p>(c) seriously destabilising or destroying the fundamental</p> | <p>1. Each Member State shall take the necessary measures to ensure that the intentional acts referred to in paragraph 2, as defined as offences under national law, which, given their nature or context, may seriously damage a country or an international organisation are defined as terrorist offences where committed with the aim of one or more of the following:</p> <p>(a) seriously intimidating a population;</p> <p>(b) <i>using violence or the threat of violence to compel or seek to compel</i> a government or international organisation to perform or abstain from performing any act,</p> | <p>The Presidency maintained the Council position and in particular that introducing substantive amendments to Article 3, which is a fundamental provision is not acceptable.</p> <p>The EP amendment to letter "b" is particularly problematic. It seems it limits the scope of this provision, thus falling short of existing standards. The EP would be able to accept the Council text, provided that it is clarified in recitals that "unduly</p> | |

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| political, constitutional, economic or social structures of a country or an international organisation. | political, constitutional, economic or social structures of a country or an international organisation. | (c) seriously destabilising or destroying the fundamental political, constitutional, economic or social structures of a country or an international organisation. | compelling" does not interfere with the freedom of expression of political views and the right of protest, including in street demonstrations. | |
| 2. Intentional acts referred to in paragraph 1 are (a) Attacks upon a persons' life which may cause death; (b) attacks upon the physical integrity of a person; (c) kidnapping or hostage taking; (d) causing extensive destruction to a Government or public facility, a transport system, an infrastructure facility, including an information system, a fixed platform located on the continental shelf, a public place or private property likely to endanger human life or result in major economic loss; (e) seizure of aircraft, ships or other means of public or goods transport; (f) manufacture, possession, acquisition, transport, supply or use of weapons, explosives or of nuclear, biological or chemical weapons, as well as | 2. Intentional acts referred to in paragraph 1 are (a) Attacks upon a persons' life which may cause death; (b) attacks upon the physical integrity of a person; (c) kidnapping or hostage taking; (d) causing extensive destruction to a Government or public facility, a transport system, an infrastructure facility, including an information system, a fixed platform located on the continental shelf, a public place or private property likely to endanger human life or result in major economic loss; (e) seizure of aircraft, ships or other means of public or goods transport; (f) manufacture, possession, acquisition, transport, supply or use of weapons, explosives or of nuclear, biological or chemical weapons, as well as | 2. Intentional acts referred to in paragraph 1 are (a) Attacks upon a persons' life which may cause death or injury ; (b)attacks upon the physical and psychological integrity of a person; (c) kidnapping or hostage taking; (d) causing extensive destruction to a Government or public facility, a transport system, an infrastructure facility, including an information system, a fixed platform located on the continental shelf, a public place or private property likely to endanger human life or result in major economic loss; (e) seizure of aircraft, ships or other means of public or goods transport; | | |

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| <p>research into, and development of, biological and chemical weapons;</p> <p>(g) release of dangerous substances, or causing fires, floods or explosions the effect of which is to endanger human life;</p> <p>(h) interfering with or disrupting the supply of water, power or any other fundamental natural resource the effect of which is to endanger human life;</p> <p>(i) threatening to commit any of the acts listed in points (a) to (h).</p> | <p>research into, and development of, biological and chemical weapons;</p> <p>(g) release of dangerous substances, or causing fires, floods or explosions the effect of which is to endanger human life;</p> <p>(h) interfering with or disrupting the supply of water, power or any other fundamental natural resource the effect of which is to endanger human life;</p> | <p>(f) manufacture, possession, acquisition, transport, supply or use of weapons, explosives or of radiological, nuclear, biological or chemical weapons, as well as research into, and development of nuclear, biological and chemical weapons;</p> <p>(g) release, or threatened release, of dangerous substances, including radiological or biological material, or causing fires, floods or explosions, the effect of which is to endanger human life or to cause widespread fear and alarm;</p> <p>(h) interfering with or disrupting the supply of water, power or any other fundamental natural resource through a cyber- or any other form of attack the effect of which is to endanger human life;</p> | <p>The addition of "radiological" in letter "f" does not seem to be a substantive change. It is consistent with the current definition of CBRN policies at EU level - see CBRN action plan and the 2014 Communication on a new approach to the detection and mitigation of CBRN-E risks at EU level.</p> <p>According to the CBRN Glossary developed by the COM in implementation of the CBRN Action plan: <i>CBRN is an acronym for chemical, biological, radiological, and nuclear issues that could harm the society through their accidental or deliberate release, dissemination, or impacts. The term CBRN is a replacement for the cold war term NBC (nuclear, biological, and chemical), which had replaced the previous term ABC (atomic, biological, and chemical) that was used in the fifties. "N" covers the impact by an explosion of nuclear bombs and the misuse of fissile</i></p> | <p>Article 3, par. 2</p> <p>(f) manufacture, possession, acquisition, transport, supply or use of weapons, explosives or of radiological, nuclear, biological or chemical weapons, as well as research into, and development of nuclear, biological and chemical such weapons;</p> |

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| | <p>(i) illegal system interference, as referred to in Article 4 of Directive 2013/40/EU on attacks against information systems in cases where Article 9, paragraph (3) or (4)(b) or (c) of the said Directive apply, and illegal data interference, as referred to in Article 5 of Directive 2013/40/EU on attacks against information systems in cases where Article 9, paragraph (4)(c) of the said Directive applies;</p> <p>(j) threatening to commit any of the acts listed in points (a) to (i).</p> | <p><i>(ha) attacks against information systems as defined in Articles 3 to 7 of Directive 2013/40/EU of the European Parliament and of the Council^{1a};</i></p> <p>(i) <i>seriously</i> threatening to commit any of the acts listed in points (a) to (h); <i>such threat being established on the basis of objective, factual circumstances.</i></p> | <p><i>material, "R" stands for dispersion of radioactive material e.g. by a dirty bomb.</i></p> <p>The Presidency suggests accepting the EP addition to letter "f", while streamlining the second part of the offence that relates to the development of such weapons.</p> <p>The Presidency maintained the Council position on this issue.</p> | |

| COM proposal (doc. 14926/15) | Council GA (doc. 6655/16) | LIBE Orientation vote | Observations | Drafting suggestion |
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| Article 4 | | | | |
| Offences relating to a terrorist group | | | | |
| Each Member State shall take the necessary measures to ensure that the following acts, when committed intentionally, are punishable as a criminal offence: (a) directing a terrorist group; (b) participating in the activities of a terrorist group, including by supplying information or material resources, or by funding its activities in any way, with knowledge of the fact that such participation will contribute to the criminal activities of the terrorist group. | Each Member State shall take the necessary measures to ensure that the following acts, when committed intentionally, are punishable as a criminal offence: (a) directing a terrorist group; (b) participating in the activities of a terrorist group, including by supplying information or material resources, or by funding its activities in any way, with knowledge of the fact that such participation will contribute to the criminal activities of the terrorist group. | Each Member State shall take the necessary measures to ensure that the following acts, when committed intentionally and unlawfully , are punishable as a criminal offence: (a) directing a terrorist group; (b) participating in the activities of a terrorist group, including by supplying information or material resources, or by funding its activities in any way, with knowledge of the fact that such participation will contribute to the criminal activities of the terrorist group, whether these activities take place within a Member State or a third country. | <i>Technical issue:</i> Tentative agreement on Council text. The Commission will propose a recital stressing the international character of terrorism. | |
| TITLE III: OFFENCES RELATED TO TERRORIST ACTIVITIES | | | | |
| Article 5 | | | | |
| Public provocation to commit a terrorist offence | | | | |
| Member States shall take the necessary measures to ensure | Member States shall take the necessary measures to ensure | Member States shall take the necessary measures to ensure | The compromise text proposed by the Council could be | Article 5 Member States shall take the |

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| <p>that the distribution, or otherwise making available, of a message to the public, with the intent to incite the commission of one of the offences listed in points (a) to (h) of Article 3(2), where such conduct, whether or not directly advocating terrorist offences, causes a danger that one or more such offences may be committed, is punishable as a criminal offence when committed intentionally.</p> | <p>that the distribution, or otherwise making available, of a message to the public, with the intent to incite the commission of one of the offences listed in points (a) to (i) of Article 3(2), where such conduct directly, or indirectly, such as by the glorification of terrorist acts, advocates the commission of terrorist offences thereby causing a danger that one or more such offences may be committed, is punishable as a criminal offence when committed intentionally.</p> | <p>that the distribution, or otherwise making available by any means, whether on- or offline, of a message to the public, with the intent to incite the commission of one of the offences listed in points (a) to (h) of Article 3(2), where such conduct, advocating the commission of terrorist offences, causes a danger in a concrete case that one or more such offences may be committed, is punishable as a criminal offence when committed intentionally.</p> | <p>tentatively accepted by the EP, subject to a minor change in recital 7.</p> | <p>necessary measures to ensure that the distribution, or otherwise making available by any means, whether on- or offline, of a message to the public, with the intent to incite the commission of one of the offences listed in points (a) to (i) of Article 3(2), where such conduct, directly or indirectly, such as by the glorification of terrorist acts, advocates the commission of terrorist offences, thereby causing a danger that one or more such offences may be committed, is punishable as a criminal offence when committed intentionally.</p> <p>Recital 7 The offenses related to public provocation to commit a terrorist offence act comprise, inter alia, the glorification and justification of terrorism or the dissemination of messages or images on- and offline including those related to the victims of terrorism as a way to gather support for the terrorists cause or seriously intimidating the population.</p> |

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| | | | | Such behaviour <i>should be punishable when it</i> causes a danger that terrorist acts may be committed. In each concrete case, when considering whether such danger is caused, the nature of the author <u>the individual characteristics of the author</u> and of the addressee of the message, as well as the context in which the offence is committed should be taken into account. The significance and the credible nature of the danger should be also considered when applying this provision. |
| <i>Article 5a Aggravating circumstances</i> | | | | |
| | | <i>Member States shall take the necessary measures to ensure that it is regarded as an aggravating circumstance when the commission of a criminal offence referred to in Article 6 or 7 targets vulnerable natural persons, including children.</i> | Could delegations accept including such a provision in the Directive, provided that a reference to national law is included? The draft is modelled on the similar provision under Article 9(5) of the Directive on attacks against information systems. | <u>Member States shall take the necessary measures to ensure that when the offences referred to in Articles 6 and 7 are directed to children, this may, in accordance with national law, be regraded as aggravating circumstance.</u> |

| COM proposal (doc. 14926/15) | Council GA (doc. 6655/16) | LIBE Orientation vote | Observations | Drafting suggestion |
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| Article 6 Recruitment for terrorism | | | | |
| Member States shall take the necessary measures to ensure that soliciting another person to commit one of the offences listed in points (a) to (h) of Article 3(2), or in Article 4 is punishable as a criminal offence when committed intentionally. | Member States shall take the necessary measures to ensure that soliciting another person to commit one of the offences listed in points (a) to (i) of Article 3(2), or in Article 4 is punishable as a criminal offence when committed intentionally. | Member States shall take the necessary measures to ensure that soliciting another person to commit <i>or contribute to the commission of</i> one of the offences listed in points (a) to (h) of Article 3(2), or in Article 4 is punishable as a criminal offence when committed intentionally. | <i>Technical issue</i> Tentative agreement on the EP text. | |
| Article 7 Providing training for terrorism | | | | |
| Member States shall take the necessary measures to ensure that providing instruction in the making or use of explosives, firearms or other weapons or noxious or hazardous substances, or in other specific methods or techniques, for the purpose of committing of or contributing to one of the offences listed in points (a) to (h) of Article 3(2), knowing that the skills provided are intended to be used for this purpose, is punishable as a criminal offence when committed intentionally. | Member States shall take the necessary measures to ensure that providing instruction in the making or use of explosives, firearms or other weapons or noxious or hazardous substances, or in other specific methods or techniques, for the purpose of committing of or contributing to one of the offences listed in points (a) to (i) of Article 3(2), knowing that the skills provided are intended to be used for this purpose, is punishable as a criminal offence when committed intentionally. | Member States shall take the necessary measures to ensure that providing instruction in the making or use of explosives, firearms or other weapons or noxious or hazardous substances, or in other specific methods or techniques, for the purpose of committing of or contributing to one of the offences listed in points (a) to (h) of Article 3(2), knowing that the skills provided are intended to be used for this purpose, is punishable as a criminal offence when committed intentionally. | Identical | |

| COM proposal (doc. 14926/15) | Council GA (doc. 6655/16) | LIBE Orientation vote | Observations | Drafting suggestion |
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| Article 8 Receiving training for terrorism | | | | |
| <p>Member States shall take the necessary measures to ensure that to receive instruction, from another person in the making or use of explosives, firearms or other weapons or noxious or hazardous substances, or in other specific methods or techniques, for the purpose of committing of or contributing to the commission of one of the offences listed in points (a) to (h) of Article 3(2) is punishable as a criminal offence when committed intentionally.</p> | <p>Member States shall take the necessary measures to ensure that to receive instruction, from another person in the making or use of explosives, firearms or other weapons or noxious or hazardous substances, or in other specific methods or techniques, for the purpose of committing of or contributing to the commission of one of the offences listed in points (a) to (i) of Article 3(2) is punishable as a criminal offence when committed intentionally.</p> | <p>Member States shall take the necessary measures to ensure that to receive <i>training or instruction, including by obtaining knowledge, documentation or practical skills</i>, in the making or use of explosives, firearms or other weapons or noxious or hazardous substances, or in other specific methods or techniques, for the purpose of committing of or contributing to the commission of one of the offences listed in points (a) to (h) of Article 3(2) is punishable as a criminal offence when committed intentionally.</p> | <p>The compromise recital 9 could be tentatively accepted by the EP, including the clarification that for example simply visiting of a website or collecting information for academic purposes are not covered.</p> | <p><i>Article 8</i> Member States shall take the necessary measures to ensure that to receive instruction (...) in the making or use of explosives, firearms or other weapons or noxious or hazardous substances, or in other specific methods or techniques, for the purpose of committing of or contributing to the commission of one of the offences listed in points (a) to (i) of Article 3(2) is punishable as a criminal offence when committed intentionally.</p> <p>Recital 9 Criminalisation of the receiving training for terrorism complements the existing offence of providing training and specifically addresses the threats resulting from those actively preparing for the commission of terrorist offences, including those ultimately acting alone. Receiving of training for terrorism includes the</p> |

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| | | | | <p><i>obtaining of knowledge, documentation or practical skills. Self-study, including consulting the Internet or other teaching material, should also be considered training for terrorism, when committed with the intent to commit or contribute to the commission of a terrorist attack. This intention can for instance be inferred from the type of materials and the frequency of reference. <u>Only visiting websites or collecting materials for academic or research purposes is thus not covered by this Directive.</u></i></p> |
| <p><i>Article 9</i> Travelling abroad for terrorism</p> | | | | |
| <p>Member States shall take the necessary measures to ensure that travelling to another country for the purpose of the commission of or contribution to a terrorist offence referred to in Article 3, the participation in the activities of a terrorist group referred to in Article 4 or the providing or receiving of training for terrorism referred to in Articles 7 and 8 is punishable</p> | <p><u>Article 9:</u> Travelling abroad for the purpose of terrorism</p> <p>Member States shall take the necessary measures to ensure that travelling to a country outside the Union, directly or by transiting through one or several Member States of the Union, for the purpose of the commission of or contribution to a terrorist offence referred to in Article</p> | <p><u>Article 9:</u> Travelling abroad for <i>the purpose of</i> terrorism</p> <p>Member States shall take the necessary measures to ensure that <i>any travel to a country or a Member State, either directly or by transiting through one or several Member States, is punishable as a criminal offence when committed intentionally, when it can be objectively</i></p> | <p>See cover note.</p> | |

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| as a criminal offence when committed intentionally. | 3, the participation in the activities of a terrorist group with knowledge of the fact that such participation will contribute to the criminal activities of such a group as referred to in Article 4, or the providing or receiving of training for terrorism referred to in Articles 7 and 8 is punishable as a criminal offence when committed intentionally. | <i>demonstrated that it was made</i> for the purpose of the commission of or contribution to a terrorist offence referred to in Article 3, or for the participation in the activities of a terrorist group as referred to in Article 4, <i>with knowledge of the fact that such participation would contribute to the criminal activity of such a group, or for</i> providing or receiving of training for terrorism referred to in Articles 7 and 8. | | |
| Article 10 Organising or otherwise facilitating travelling abroad for terrorism | | | | |
| Member States shall take the necessary measures to ensure that any act of organisation or facilitation that assists any person in travelling abroad for the purpose of terrorism, as referred to in Article 9, knowing that the assistance thus rendered is for that purpose, is punishable as a criminal offence when | <u>Article 10:</u> <u>Organising or otherwise facilitating travelling abroad for the purpose of terrorism</u> Member States shall take the necessary measures to ensure that any act of organisation or facilitation that assists any person in travelling abroad for the purpose of terrorism, as referred to in Article 9, knowing that the assistance thus rendered is for that purpose, is punishable as a criminal offence when | <u>Article 10:</u> Organising or otherwise facilitating travelling abroad for <i>the purpose of</i> terrorism Member States shall take the necessary measures to ensure that any act of organisation or facilitation that assists any person in travelling abroad for the purpose of terrorism, as referred to in Article 9, knowing that the assistance thus rendered is for that purpose, is punishable as a criminal offence when | Identical | |

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| committed intentionally. | committed intentionally. | committed intentionally. | | |
| Article 11 Terrorist financing | | | | |
| <p>Member States shall take the necessary measures to ensure that providing or collecting funds, by any means, directly or indirectly, with the intent that they should be used, or knowing that they are to be used, in full or in part, to commit any of the offence(s) referred to in Articles 3 to 10 and 12 to 14 or 16 is punishable as a criminal offence when committed intentionally.</p> | <p>1. Member States shall take the necessary measures to ensure that providing or collecting funds, by any means, directly or indirectly, with the intent that they should be used, or knowing that they are to be used, in full or in part, to commit or to contribute to any of the offence(s) referred to in Articles 3 to 10(...) is punishable as a criminal offence when committed intentionally.</p> <p>2. Where terrorist financing as referred to in paragraph 1 concerns any of the offences laid down in Articles 3, 4 or 9, it shall not be necessary that the funds are in fact used, in full or in part, to commit or to contribute to any of these offences, nor shall it be required that the offender knows for which</p> | <p>1. Member States shall take the necessary measures to ensure that providing or collecting funds, by any means, directly or indirectly, with the intention that they be used, or <i>in the knowledge</i> that they are to be used, in full or in part, to commit <i>or to contribute to</i> any of the offences referred to in Articles 3 to 10 and 14 is punishable as a criminal offence when committed intentionally.</p> <p>2. Where the terrorist financing referred to in paragraph 1 concerns any of the offences laid down in Articles 3, 4 and 9, it shall not be necessary that the funds <i>be</i> in fact used, in full or in part, to commit or to contribute to any of those offences, nor shall it be required that the offender know for which specific <i>act</i></p> | <p>The Rapporteur maintained the EP position for a reference to the Directive 2014/42/EU on freezing and confiscation in the operative part of the text and the reference to Article 14. The Presidency upholds the Council position and will revisit the issue later in the course of the negotiations.</p> | |

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| | specific offence(s) the funds are to be used. | <i>or acts the funds are to be used. 3. Member States shall take the necessary measures to ensure the freezing or seizure and confiscation of any funds and other assets used or allocated for the purpose of committing or attempting to commit any of the offences referred to in this Directive.</i> | | |
| Article 12 Aggravated theft to commit a terrorist offence | | | | |
| Member States shall take the necessary measures to ensure that aggravated theft with a view to committing one of the offences listed in Article 3 is punishable as a criminal offence when committed intentionally. | <u>Article 12: Other offences related to terrorist activities</u> Each Member State shall take the necessary measures to ensure that offences related to terrorist activities include the following intentional acts: a) aggravated theft with a view to committing one of the offences listed in Article 3; b) extortion with a view to the perpetration of one of the offences listed in Article 3; c) drawing up false administrative | Member States shall take the necessary measures to ensure that aggravated theft with a view to committing one of the offences listed in Article 3 <i>and Article 4</i> is punishable as a criminal offence when committed intentionally. | <i>Technical issue</i> Tentative agreement on merging Articles 12, 13 and 14, as in the GA. Tentative agreement not to include references to article 4, as in the GA, having explained to EP that Art 11 sufficiently covers the financing of terrorist groups. | |

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| | documents with a view to committing one of the offences listed in points (a) to (i) of Article 3(2), point (b) of Article 4 and Article 9. | | | |
| Article 13 Extortion to commit a terrorist offence | | | | |
| Member States shall take the necessary measures to ensure that extortion with a view to committing one of the offences listed in Article 3 is punishable as a criminal offence when committed intentionally. | (merged with Article 12) | Member States shall take the necessary measures to ensure that extortion with a view to committing one of the offences listed in Article 3 and Article 4 is punishable as a criminal offence when committed intentionally. | Tentative agreement not to include references to article 4, as in the GA, having explained to EP that Art 11 sufficiently covers the financing of terrorist groups. | |
| Article 14 Drawing up false administrative documents to committing a terrorist offence | | | | |
| Member States shall take the necessary measures to ensure that drawing up false administrative documents with a view to committing one of the offences listed in points (a) to (h) of Article 3(2) and point | (merged with Article 12) | Article 14: Drawing up, possessing or using false administrative documents to committing a terrorist offence Member States shall take the necessary measures to ensure | Getting closer to the position of the EP on Article 14 can provide an important negotiating margin for the Council and could facilitate the solution on removing the reference to this Article in | Article 12, letter "c" c/ drawing up or using false administrative documents with a view to committing one of the offences listed in points (a) to (i) of Article |

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| (b) of Article 4 is punishable as a criminal offence when committed intentionally. | | that drawing up, <i>possessing or using</i> false administrative documents with a view to committing one of the offences listed in points (a) to (<i>ha</i>) of Article 3(2) and point (b) of Article 4, <i>as well as in Articles 9 and 10</i> , is punishable as a criminal offence when committed intentionally. | Article 11. In this respect, the Presidency proposes as compromise to add "using" in Article 12, letter "c" of the GA. | 3(2), point (b) of Article 4 and Article 9. |
| <i>Article 14a</i> <i>Measures against illegal terrorist content on the internet</i> | | | | |
| | | <i>1. Member States shall take the necessary measures to ensure the prompt removal of illegal content publicly inciting others to commit a terrorist offence, as referred to in Article 5, that is hosted in their territory. They shall also endeavour to obtain the removal of such content hosted outside of their territory. Where that is not feasible Member States may take the necessary measures to block the access to such content.</i> <i>2. Those measures must be in line with transparent procedures and subject to</i> | It is proposed to submit to the EP the revised text for Article 14a, as discussed at the last DROIPEN meeting. The text follows closer the structure and scope of Article 25 of Directive 2011/92/EU (Child abuse directive). In this respect, the reference to judicial redress is retained on the understanding that this concept provides certain flexibility for the MSs in setting up the required judicial control mechanisms at national level. A new recital recalling the established principles under the E-commerce Directive | <u>Article 14a</u> <u>Measures against public provocation content online</u> 1. Member States shall take the necessary measures to ensure the prompt removal of online content constituting a public provocation to commit a terrorist offence, as referred to in Article 5, that is hosted in their territory. They shall also endeavour to obtain the removal of such content hosted outside of their territory. 2. Member States may take |

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| | | <p><i>adequate safeguards, in particular to ensure that the restriction is limited to what is necessary and proportionate and that users are informed of the reason for the restriction. Measures on removal and blocking shall be subject to judicial review.</i></p> | <p>about obligations and liability of service providers is also proposed, as additional safeguard for the application of this provision.</p> | <p>measures to block the access to content referred to in paragraph 1 towards the Internet users within their territory. These measures must be set by transparent procedures and provide adequate safeguards, in particular to ensure that the restriction is limited to what is necessary and proportionate and that users are informed of the reason for the restriction. Those safeguards shall also include the possibility of judicial redress.</p> <p><u>Recital 7b (new) - based on recitals 46 and 47 of Directive 2011/92/EU</u> (7b) An effective means of combatting terrorism on the Internet is to remove terrorist content at source. Member States should use their best endeavours to cooperate with third countries in seeking to secure the removal of online content constituting a public provocation to commit a terrorist offence from servers within their territory. However, when removal of</p> |

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| | | | | <p>such content at its source is not possible, mechanisms may also be put in place to block access from Union territory to web pages identified as containing or disseminating terrorist content. The measures undertaken by Member States in accordance with this Directive in order to remove terrorist content or, where appropriate, block web pages publicly inciting others to commit terrorist offences could be based on various types of public action, such as legislative, non-legislative, judicial or other. In that context, this Directive is without prejudice to voluntary action taken by the Internet industry to prevent the misuse of its services or to any support for such action by Member States, such as detecting and flagging terrorist content. Whichever basis for action or method is chosen, Member States should ensure that it provides an adequate level of</p> |

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| | | | | <p>legal certainty and predictability to users and service providers. Both with a view to the removal and the blocking of terrorist content, cooperation between public authorities should be established and strengthened. Any such developments must take account of the rights of the end users and comply with existing legal and judicial procedures and the Charter of Fundamental Rights of the European Union.</p> <p><i><u>Recital 7 (c) New on E-commerce Directive</u></i></p> <p><u>(7c) Removal or where appropriate blocking of webpages in accordance with this Directive should be without prejudice to the rules laid down in Directive 2000/31/EC (E-Commerce Directive). In particular, no obligation should be imposed on hosting service providers to monitor the information which they transmit or store, nor should a general</u></p> |

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| | | | | <u>obligation be imposed upon them to actively seek facts or circumstances indicating illegal activity. Furthermore, service providers should not be held liable as long as they do not have actual knowledge of illegal activity or information and are not aware of the facts or circumstances from which the illegal activity or information is apparent.</u> |
| TITLE IV: GENERAL PROVISIONS RELATING TO TERRORIST OFFENCES, OFFENCES RELATED TO A TERRORIST GROUP AND OFFENCES RELATED TO TERRORIST ACTIVITIES | | | | |
| <i>Article 15</i> Relationship to terrorist offences | | | | |
| For an offence referred to in Article 4 and Title III to be punishable, it shall not be necessary that a terrorist offence be actually committed, nor shall it be necessary to establish a link to a specific terrorist offence or, insofar as the offences in Articles 9 to 11 are concerned, to specific offences related to terrorist activities. | For an offence referred to in Article 4 and Title III to be punishable, it shall not be necessary that a terrorist offence be actually committed, nor shall it be necessary, insofar as the offences referred to in Articles 5 to 10 and 12 are concerned , to establish a link to another specific offence laid down in this Directive. | For an offence referred to in Article 4 and Title III to be punishable, it shall not be necessary that a terrorist offence be actually committed, nor shall it be necessary, insofar as the offences referred to in Articles 5 to 10 and 12 to 14 are concerned , to establish a link to another specific act laid down in this Directive. | <i>Technical issue</i> Tentative agreement on the Council text | |

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| Article 16 | | | | |
| Aiding or abetting, inciting and attempting | | | | |
| 1. Each Member State shall take the necessary measures to ensure that aiding or abetting an offence referred to in Articles 3 to 8 and 11 to 14 is made punishable. | 1. Each Member State shall take the necessary measures to ensure that aiding or abetting an offence referred to in Articles 3 to 8 , 11 and 12 is made punishable. | 1. Each Member State shall take the necessary measures to ensure that aiding or abetting an offence referred to in Articles 3 to7 and 11 to 14 is made punishable. | | |
| 2. Each Member State shall take the necessary measures to ensure that inciting an offence referred to in Articles 3 to 14 is made punishable. | 2. Each Member State shall take the necessary measures to ensure that inciting an offence referred to in Articles 3 to 12 is made punishable. | 2. Each Member State shall take the necessary measures to ensure that inciting an offence referred to in Articles 3 and 6 to 14 is made punishable. | | |
| 3. Each Member State shall take the necessary measures to ensure that attempting to commit an offence referred to in Articles 3, 6, 7, 9 and 11 to 14, with the exception of possession as provided for in point (f) of Article 3(2) and the offence referred to in point (i) of Article 3(2), is made punishable. | 3. Each Member State shall take the necessary measures to ensure that attempting to commit an offence referred to in Articles 3, 6, 7, 9, 11 and 12 , with the exception of possession as provided for in point (f) of Article 3(2) and the offence referred to in point (j) of Article 3(2), is made punishable. | 3. Each Member State shall take the necessary measures to ensure that attempting to commit an offence referred to in Articles 3, 6, 7, 9 and 11 to 14, with the exception of possession as provided for in point (f) of Article 3(2) and the offence referred to in point (i) of Article 3(2), is made punishable. | | |
| Article 17 | | | | |
| Penalties for natural persons | | | | |
| 1. Each Member State shall take the necessary measures to ensure that the offences referred to Articles 3 to 14 and | 1. Each Member State shall take the necessary measures to ensure that the offences referred to Articles 3 to 12 and | 1. Each Member State shall take the necessary measures to ensure that the offences referred to Articles 3 to 14 and | <i>Technical issue</i> Tentative agreement on the Council text. | |

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| <p>16 are punishable by effective, proportionate and dissuasive criminal penalties, which may entail extradition.</p> <p>2. Each Member State shall take the necessary measures to ensure that the terrorist offences referred to in Article 3 and offences referred to in Article 16, inasmuch as they relate to terrorist offences, are punishable by custodial sentences heavier than those imposable under national law for such offences in the absence of the special intent required pursuant to Article 3, save where the sentences imposable are already the maximum possible sentences under national law.</p> <p>3. Each Member State shall take the necessary measures to ensure that offences listed in Article 4 are punishable by custodial sentences, with a maximum sentence of not less than fifteen years for the offence referred to in point (a) of Article 4(a), and for the</p> | <p>16 are punishable by effective, proportionate and dissuasive criminal penalties, which may entail surrender or extradition.</p> <p>2. Each Member State shall take the necessary measures to ensure that the terrorist offences referred to in Article 3 and offences referred to in Article 16, inasmuch as they relate to terrorist offences, are punishable by custodial sentences heavier than those imposable under national law for such offences in the absence of the special intent required pursuant to Article 3, save where the sentences imposable are already the maximum possible sentences under national law.</p> <p>3. Each Member State shall take the necessary measures to ensure that offences listed in Article 4 are punishable by custodial sentences, with a maximum sentence of not less than fifteen years for the offence referred to in point (a) of Article 4(a), and for the</p> | <p>16 are punishable by effective, proportionate and dissuasive criminal penalties, which may entail extradition.</p> <p>2. Each Member State shall take the necessary measures to ensure that the terrorist offences referred to in Article 3 and offences referred to in Article 16, inasmuch as they relate to terrorist offences, are punishable by custodial sentences heavier than those imposable under national law for such offences in the absence of the special intent required pursuant to Article 3, save where the sentences imposable are already the maximum possible sentences under national law.</p> <p>3. Each Member State shall take the necessary measures to ensure that offences listed in Article 4 are punishable by custodial sentences, with a maximum sentence of not less than fifteen years for the offence referred to in point (a) of Article 4(a), and for the</p> | | |

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| <p>offences listed in point (b) of Article 4(b) a maximum sentence of not less than eight years. Where the terrorist offence referred to in point (i) of Article 3(2) is committed by a person directing a terrorist group as referred to in point (a) of Article 4, the maximum sentence shall not be less than eight years.</p> | <p>offences listed in point (b) of Article 4(b) a maximum sentence of not less than eight years. Where the terrorist offence referred to in point (j) of Article 3(2) is committed by a person directing a terrorist group as referred to in point (a) of Article 4, the maximum sentence shall not be less than eight years.</p> | <p>offences listed in point (b) of Article 4(b) a maximum sentence of not less than eight years. Where the terrorist offence referred to in point (i) of Article 3(2) is committed by a person directing a terrorist group as referred to in point (a) of Article 4, the maximum sentence shall not be less than eight years.</p> | | |
| <p>Article 18 Mitigating circumstances</p> | | | | |
| <p>Each Member State may take the necessary measures to ensure that the penalties referred to in Article 17 may be reduced if the offender:</p> <p>a) renounces terrorist activity, and</p> <p>b) provides the administrative or judicial authorities with information which they would not otherwise have been able to obtain, helping them to:</p> <ol style="list-style-type: none"> 1. prevent or mitigate the effects of the offence; 2. identify or bring to | <p>Each Member State may take the necessary measures to ensure that the penalties referred to in Article 17 may be reduced if the offender:</p> <p>a) renounces terrorist activity, and</p> <p>b) provides the administrative or judicial authorities with information which they would not otherwise have been able to obtain, helping them to:</p> <ol style="list-style-type: none"> 1. prevent or mitigate the effects of the offence; 2. identify or bring to justice the other offenders; | <p><u>Article 18 Particular</u> circumstances</p> <p>Each Member State may take the necessary measures to ensure that the penalties referred to in Article 17 may be reduced if the offender:</p> <p>(a) renounces terrorist activity, and</p> <p>(b) provides the <i>competent</i> authorities with information which they would not otherwise have been able to obtain, helping them to:</p> <ol style="list-style-type: none"> 1. prevent or mitigate the effects of the offence; 2. identify or bring to | <p><i>Technical issue</i> Tentative agreement on the Council text.</p> | |

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| justice the other offenders; 3. find evidence; or 4. prevent further offences referred to in Articles 3 to 14 and 16. | 3. find evidence; or 4. prevent further offences referred to in Articles 3 to 12 and 16. | justice other offenders; 3. find evidence; or 4. prevent further offences referred to in Articles 3 to 14 and 16. | | |
| Article 19 Liability of legal persons | | | | |
| <p>1. Each Member State shall take the necessary measures to ensure that legal persons can be held liable for any of the offences referred to in Articles 3 to 14 and 16 committed for their benefit by any person, acting either individually or as part of an organ of the legal person, and having a leading position within the legal person, based on one of the following:</p> <p>a) a power of representation of the legal person;</p> <p>b) an authority to take decisions on behalf of the legal person;</p> <p>c) an authority to exercise control within the legal person.</p> <p>2. Member States shall also take the necessary measures to ensure that legal persons can</p> | <p>1. Each Member State shall take the necessary measures to ensure that legal persons can be held liable for any of the offences referred to in Articles 3 to 12 and 16 committed for their benefit by any person, acting either individually or as part of an organ of the legal person, and having a leading position within the legal person, based on one of the following:</p> <p>a) a power of representation of the legal person;</p> <p>b) an authority to take decisions on behalf of the legal person;</p> <p>c) an authority to exercise control within the legal person.</p> <p>2. Member States shall also take the necessary measures to ensure that legal persons can</p> | <p>1. Each Member State shall take the necessary measures to ensure that legal persons can be held liable for any of the offences referred to in Articles 3 to 14 and 16 committed for their benefit by any person, acting either individually or as part of an organ of the legal person, and having a leading position within the legal person, based on one of the following:</p> <p>a) a power of representation of the legal person;</p> <p>b) an authority to take decisions on behalf of the legal person;</p> <p>c) an authority to exercise control within the legal person.</p> <p>2. Member States shall also take the necessary measures to ensure that legal persons can be held liable where the lack</p> | <p><i>Technical issue</i></p> <p>Tentative agreement on the Council text</p> | |

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| <p>be held liable where the lack of supervision or control by a person referred to in paragraph 1 has made possible the commission of any of the offences referred to in Articles 3 to 14 and 16 for the benefit of that legal person by a person under its authority.</p> <p>3. Liability of legal persons under paragraphs 1 and 2 shall not exclude criminal proceedings against natural persons who are perpetrators, inciters or accessories in any of the offences referred to in Articles 3 to 14 and 16.</p> | <p>be held liable where the lack of supervision or control by a person referred to in paragraph 1 has made possible the commission of any of the offences referred to in Articles 3 to 12 and 16 for the benefit of that legal person by a person under its authority.</p> <p>3. Liability of legal persons under paragraphs 1 and 2 shall not exclude criminal proceedings against natural persons who are perpetrators, inciters or accessories in any of the offences referred to in Articles 3 to 12 and 16.</p> | <p>of supervision or control by a person referred to in paragraph 1 has made possible the commission of any of the offences referred to in Articles 3 to 14 and 16 for the benefit of that legal person by a person under its authority.</p> <p>3. Liability of legal persons under paragraphs 1 and 2 shall not exclude criminal proceedings against natural persons who are perpetrators, inciters or accessories in any of the offences referred to in Articles 3 to 14 and 16.</p> | | |
| <p>Article 20 Penalties for legal persons</p> | | | | |
| <p>Each Member State shall take the necessary measures to ensure that a legal person held liable pursuant to Article 19 is punishable by effective, proportionate and dissuasive penalties, which shall include criminal or non-criminal fines and may include other penalties, such as:</p> <p>(a) exclusion from</p> | <p>Each Member State shall take the necessary measures to ensure that a legal person held liable pursuant to Article 19 is punishable by effective, proportionate and dissuasive penalties, which shall include criminal or non-criminal fines and may include other penalties, such as:</p> <p>(a) exclusion from</p> | <p>Each Member State shall take the necessary measures to ensure that a legal person held liable pursuant to Article 19 is punishable by effective, proportionate and dissuasive penalties, which shall include criminal or non-criminal fines and may include other penalties, such as:</p> <p>(a) exclusion from</p> | <p><i>Technical issue</i> The reference to freezing and confiscation in this provision will be dealt with in relation to the overall issue of a reference to freezing and confiscation in the operative part of the directive.</p> | |

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| entitlement to public benefits or aid; (b) temporary or permanent disqualification from the practice of commercial activities; (c) placing under judicial supervision; (d) a judicial winding-up order; (e) temporary or permanent closure of establishments which have been used for committing the offence. | entitlement to public benefits or aid; (b) temporary or permanent disqualification from the practice of commercial activities; (c) placing under judicial supervision; (d) a judicial winding-up order; (e) temporary or permanent closure of establishments which have been used for committing the offence. | entitlement to public benefits or aid; (b) temporary or permanent disqualification from the practice of commercial activities; (c) placing under judicial supervision; (d) a judicial winding-up order; (e) temporary or permanent closure of establishments which have been used for committing the offence. <i>(ea) freezing and confiscation of assets used for or resulting from the commission of one of the criminal offences laid down in this Directive, as provided for in Directive 2014/42/EU^{1a}.</i> ^{1a} <i>Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union (OJ L 127, 29.4.2014, str. 39).</i> | | |

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| <i>Article 21</i> Jurisdiction and prosecution | | | | |
| <p>1. Each Member State shall take the necessary measures to establish its jurisdiction over the offences referred to in Articles 3 to 14 and 16 where:</p> <p>(a) the offence is committed in whole or in part in its territory;</p> <p>(b) the offence is committed on board of a vessel flying its flag or an aircraft registered there;</p> <p>(c) the offender is one of its nationals or residents;</p> <p>(d) the offender provides training for terrorism, as referred to in Article 7, to nationals or residents;</p> <p>(e) the offence is committed for the benefit of a legal person established in its territory;</p> <p>(f) the offence is committed against the institutions or people of the Member State in question or against an institution, body, office or agency of the European Union and based in that Member State.</p> <p>Each Member State may</p> | <p>1. Each Member State shall take the necessary measures to establish its jurisdiction over the offences referred to in Articles 3 to 12 and 16 where:</p> <p>(a) the offence is committed in whole or in part in its territory;</p> <p>(b) the offence is committed on board of a vessel flying its flag or an aircraft registered there;</p> <p>(c) the offender is one of its nationals or residents;</p> <p>(d) (deleted)</p> <p>(e) the offence is committed for the benefit of a legal person established in its territory;</p> <p>(f) the offence is committed against the institutions or people of the Member State in question or against an institution, body, office or agency of the European Union and based in that Member State.</p> <p>Each Member State may extend its jurisdiction if the offence is committed in the territory of a Member State.</p> | <p>1. Each Member State shall take the necessary measures to establish its jurisdiction over the offences referred to in Articles 3 to 14 and 16 where:</p> <p>(a) the offence is committed in whole or in part in its territory;</p> <p>(b) the offence is committed on board of a vessel flying its flag or an aircraft registered there;</p> <p>(c) the offender is one of its nationals or residents;</p> <p>(d) the offender provides training for terrorism, as referred to in Article 7, to nationals or residents;</p> <p>(da) the offender is a citizen of the Union and provides training abroad to third-country nationals;</p> <p>(e) the offence is committed for the benefit of a legal person established in its territory;</p> <p>(f) the offence is committed against the institutions or people of the Member State in question, or against an institution, body,</p> | <p>The Presidency maintained the Council position and will pursue a compromise with the EP on that basis.</p> | |

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| <p>extend its jurisdiction if the offence is committed in the territory of a Member State.</p> <p>2. When an offence falls within the jurisdiction of more than one Member State and when any of the States concerned can validly prosecute on the basis of the same facts, the Member States concerned shall cooperate in order to decide which of them will prosecute the offenders with the aim, if possible, of centralising proceedings in a single Member State. To this end, the Member States may have recourse to Eurojust in</p> | <p>1a. Each Member State may extend its jurisdiction over training for terrorism, as referred to in Article 7, where the offender provides training to its nationals or residents, in cases where paragraph 1 is not applicable. The Member State shall inform the Commission thereof.</p> <p>2. When an offence falls within the jurisdiction of more than one Member State and when any of the States concerned can validly prosecute on the basis of the same facts, the Member States concerned shall cooperate in order to decide which of them will prosecute the offenders with the aim, if possible, of centralising proceedings in a single Member State. To this end, the Member States may</p> | <p>office, or agency of the Union <i>which is</i> based in that Member State, <i>including through seizure of an aircraft, ship or other means of transporting persons or goods, or where a third-country national receives training abroad with the intention of carrying out an attack within that Member State;</i></p> <p><i>1a. Each Member State shall take the measures required to establish its jurisdiction in respect of the offences referred to in Article 4 in cases where the perpetrator is present on its territory.</i></p> <p>2. When an offence falls within the jurisdiction of more than one Member State and when any of the States concerned can validly prosecute on the basis of the same facts, the Member States concerned shall cooperate in order to decide which of them will prosecute the offenders with the aim, if possible, of centralising proceedings in a</p> | | |

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| <p>order to facilitate cooperation between their judicial authorities and the coordination of their action. Sequential account shall be taken of the following factors:</p> <p>(a) the Member State shall be that in the territory of which the acts were committed,</p> <p>(b) the Member State shall be that of which the perpetrator is a national or resident,</p> <p>(c) the Member State shall be the Member State of origin of the victims,</p> <p>(d) the Member State shall be that in the territory of which the perpetrator was found.</p> <p>3. Each Member State shall take the necessary measures also to establish its jurisdiction over the offences referred to in Articles 3 to 14 and 16 in cases where it refuses to hand over or extradite a person suspected or convicted of such an offence to another Member State or to a third country.</p> | <p>have recourse to Eurojust in order to facilitate cooperation between their judicial authorities and the coordination of their action. (...) Account shall be taken of the following factors:</p> <p>(a) the Member State shall be that in the territory of which the acts were committed,</p> <p>(b) the Member State shall be that of which the perpetrator is a national or resident,</p> <p>(c) the Member State shall be the Member State of origin of the victims,</p> <p>(d) the Member State shall be that in the territory of which the perpetrator was found.</p> <p>3. Each Member State shall take the necessary measures also to establish its jurisdiction over the offences referred to in Articles 3 to 12 and 16 in cases where it refuses to hand over or extradite a person suspected or convicted of such an offence to another Member State or to a third country.</p> | <p>single Member State. To this end, the Member States <i>shall</i> have recourse to Eurojust in order to facilitate cooperation between their judicial authorities and the coordination of their action. Sequential account shall be taken of the following factors:</p> <p>(a) the Member State shall be that in the territory of which the acts were committed,</p> <p>(b) the Member State shall be that of which the perpetrator is a national or resident,</p> <p>(c) the Member State shall be the Member State of origin of the victims,</p> <p>(d) the Member State shall be that in the territory of which the perpetrator was found.</p> <p>3. Each Member State shall take the necessary measures also to establish its jurisdiction over the offences referred to in Articles 3 to 14 and 16 in cases where it refuses to hand over or extradite a person suspected or convicted of such</p> | | |

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| <p>4. Each Member State shall ensure that its jurisdiction covers cases in which any of the offences referred to in Articles 4 and 16 has been committed in whole or in part within its territory, wherever the terrorist group is based or pursues its criminal activities.</p> <p>5. This Article shall not exclude the exercise of jurisdiction in criminal matters as laid down by a Member State in accordance with its national legislation.</p> | <p>4. Each Member State shall ensure that its jurisdiction covers cases in which any of the offences referred to in Articles 4 and 16 has been committed in whole or in part within its territory, wherever the terrorist group is based or pursues its criminal activities.</p> <p>5. This Article shall not exclude the exercise of jurisdiction in criminal matters as laid down by a Member State in accordance with its national legislation.</p> | <p>an offence to another Member State or to a third country.</p> <p>4. Each Member State shall ensure that its jurisdiction covers cases in which any of the offences referred to in Articles 4 and 16 has been committed in whole or in part within its territory, wherever the terrorist group is based or pursues its criminal activities.</p> <p>5. This Article shall not exclude the exercise of jurisdiction in criminal matters as laid down by a Member State in accordance with its national legislation.</p> <p><i>5a. Member States shall ensure cooperation and information sharing with the Member State that established its jurisdiction over the offences referred to in Articles 3 to 14 and 16 through established channels, including Union agencies.</i></p> | | |
| <p><u>Article 21a</u> <u>Investigative tools</u></p> | | | | |
| | <p>Member States shall take the necessary measures to</p> | <p><u>Cf article 21e EP</u> <i>In accordance with national law and subject to appropriate</i></p> | | |

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| | ensure that effective investigative tools, such as those which are used in organised crime or other serious crime cases, are available to persons, units or services responsible for investigating or prosecuting the offences referred to in Articles 3 to 12. | <i>legal safeguards, Member States shall take the necessary measures to ensure that effective investigative tools, such as those which are used in cases involving organised crime or other serious crime, are available to persons, units or services responsible for investigating or prosecuting the offences referred to in Articles 3 to 14.</i> | | |
| <u>Article 21a</u> <u>Duty to investigate</u> | | | | |
| | | <i>1. Upon receiving information that a person who has committed or who is alleged to have committed an offence set out in this Directive may be present on its territory, the Member State concerned shall take such measures as may be necessary under its domestic law to investigate the facts contained in that information.</i> | | |

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| | | <p><i>2. Upon being satisfied that the circumstances warrant it, the Member State in whose territory the offender or alleged offender is present shall take the appropriate measures under its domestic law so as to ensure that person's presence for the purpose of prosecution or extradition.</i></p> | | |
| <p><i><u>Article 21bis</u></i> <i><u>Fundamental principles relating to freedom of press and other media</u></i></p> | | | | |
| | <p><i><u>Article 21bis</u></i> <i><u>Fundamental principles relating to freedom of press and other media</u></i></p> <p>Member States may establish conditions required by and in line with fundamental principles relating to freedom of the press and other media, governing the rights and responsibilities of, and the procedural guarantees for the press or other media where these rules relate to the determination or limitation of liability.</p> | <p><u>Cf Article 23c EP</u></p> <p>Fundamental principles relating to <u>freedom of expression</u></p> <p><i>This Directive shall not have the effect of requiring Member States to take measures inconsistent with fundamental principles relating to freedom of expression, in particular freedom of the press and the freedom of expression in other media and shall be without prejudice to national rules governing the rights and</i></p> | | |

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| | | <p><i>responsibilities of, and the procedural guarantees for, the press or other media where these rules relate to the determination or limitation of liability.</i></p> | | |
| <p><u>Article 21b</u> <u>Prevention</u></p> | | | | |
| | | <p><i>1.Member States shall take appropriate measures to prevent the radicalisation and recruitment of citizens of the Union by terrorist organisations.</i></p> | <p>Both the EP and the Presidency maintained their respective positions. As a possible compromise the Presidency will insist on including a recital on this issue in the Directive. A drafting proposal will be presented to the MSs at the next meeting.</p> | |
| | | <p><i>2.Member States shall take appropriate action, including online, such as providing information and education, undertaking awareness-raising campaigns and developing alternative narratives to counter terrorist propaganda. Where appropriate, such action shall be taken in cooperation with</i></p> | | |

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| | | <i>private companies, relevant civil society organisations, local communities and other stakeholders. It shall aim to raise awareness and reduce the risk of radicalisation and recruitment by terrorist organisations.</i> | | |
| | | <i>3.Member States shall promote regular training for staff likely to come into contact with persons vulnerable to radicalisation, including front-line police officers and prison guards, aimed at enabling them to identify signs of and to deal with radicalisation and recruitment by terrorist organisations.</i> | | |
| <u>Article 21c</u> <u>Obligation to exchange information concerning terrorist offences</u> | | | | |
| | | <i>1.Each Member State shall take the necessary measures to ensure that its competent authorities transmit to the competent authorities of the Member State concerned any relevant information in cases where there are reasons to believe that the information could assist in the detection, prevention, investigation or</i> | See the cover note | |

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| | | <i>prosecution of offences referred to in this Directive. Such information shall be transmitted in an effective and timely manner without any prior request being necessary.</i> | | |
| | | <i>2.Each Member State shall take the necessary measures to ensure that its contact point designated under Article 2 of Decision 2005/671/JHA transmits to Europol and Eurojust the information referred to in that Decision in an effective and timely manner.</i> | | |
| | | <i>3.Member States shall systematically issue an alert in the Schengen Information System for any person who is suspected of having committed or who has been convicted of at least one of the offences referred to in Articles 3 to 14 of this Directive.</i> | | |
| | | <i>4.Members States shall ensure that, with regard to persons identified in accordance with Article 6(2) of Directive (EU) 2016/681 in connection to the offences set</i> | | |

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| | | <i>out in this Directive, their passenger information unit systematically transmits the result of processing those data to the passenger information units of other Member States.</i> | | |
| | | <i>5. Member States shall systematically forward to Europol details of any person who is suspected of having committed or who has been convicted of at least one of the offences referred to in Articles 3 to 14 of this Directive.</i> | | |
| | | <p><i>6. This Article is without prejudice to existing Union legislation on the exchange of information.</i></p> <hr/> <p><i>^{1a} Council Decision 2005/671/JHA of 20 September 2005 on the exchange of information and cooperation concerning terrorist offences (OJ L 235, 29.9.2005, p. 22).</i></p> | | |

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| <u>Article 21d</u> <u>Situation at the external borders of the Schengen area</u> | | | | |
| | | <i>Member States shall guarantee their border and coast guard services access to the relevant databases, in particular the Europol Information System.</i> | | |
| <u>Article 21e</u> <u>Investigative tools</u> | | | | |
| | Cf Article 21a of the GA Member States shall take the necessary measures to ensure that effective investigative tools, such as those which are used in organised crime or other serious crime cases, are available to persons, units or services responsible for investigating or prosecuting the offences referred to in Articles 3 to 12. | <i>In accordance with national law and subject to appropriate legal safeguards, Member States shall take the necessary measures to ensure that effective investigative tools, such as those which are used in cases involving organised crime or other serious crime, are available to persons, units or services responsible for investigating or prosecuting the offences referred to in Articles 3 to 14.</i> | | |
| <u>Article 21f</u> <u>Measures to combat online radicalisation and incitement to terrorism</u> | | | | |
| | | <i>Member States shall work together with the Commission and internet service providers</i> | | |

| COM proposal (doc. 14926/15) | Council GA (doc. 6655/16) | LIBE Orientation vote | Observations | Drafting suggestion |
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| | | <i>to develop a joint European strategy to combat online radicalisation and incitement to terrorism. That strategy shall be regularly updated.</i> | | |
| TITLE V: PROVISIONS ON PROTECTION SUPPORT AND RIGHTS OF VICTIMS OF TERRORISM | | | | |
| <i>Article 22</i> | | | | |
| Protection of and assistance to victims of terrorism | | | | |
| 1. Member States shall ensure that investigations into, or prosecution of, offences covered by this Directive are not dependent on a report or accusation made by a victim of terrorism or other person subjected to the offence, at least if the acts were committed on the territory of the Member State. | <u>Article 22: (...) Assistance and support to victims of terrorism</u> 1. Member States shall ensure that investigations into, or prosecution of, offences covered by this Directive are not dependent on a report or accusation made by a victim of terrorism or other person subjected to the offence, at least if the acts were committed on the territory of the Member State. | 1. Member States shall ensure that investigations into, or prosecution of, offences covered by this Directive are not dependent on a report or accusation made by a victim of terrorism or other person subjected to the offence, at least if the acts were committed on the territory of the Member State. | | |
| | <u>Cf article 22a of the GA</u> Member States shall ensure that measures are available to protect victims of terrorism and their family members, in accordance with Directive 2012/29/EU. When determining whether and to what extent they | <i>1a. In accordance with Directive 2012/29/EU, Member States shall ensure that measures are available to protect victims of terrorism and their family members. In the course of criminal proceedings, particular attention shall be paid to the</i> | | |

| COM proposal (doc. 14926/15) | Council GA (doc. 6655/16) | LIBE Orientation vote | Observations | Drafting suggestion |
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| | <p>should benefit from (...) protection measures in the course of criminal proceedings, particular attention shall be paid to the risk of intimidation and retaliation and to the need to protect the dignity and physical integrity of victims of terrorism, including during questioning and when testifying.</p> | <p><i>risk of intimidation and retaliation and to the need to protect the physical and psychological integrity of victims of terrorism, including during questioning and testifying.</i></p> <p><i>In addition, Members States shall ensure that free legal aid is provided to victims of terrorism who are parties to criminal proceedings and, where appropriate, to other legal proceedings to obtain a decision on compensation.</i></p> | <p>At the trilogue, the EP argued strongly on the importance of providing adequate victim support and assistance services that meet the specific needs of victims of terrorism. One of the main elements for the EP is the provision on legal aid. In order to bridge the positions of the co-legislators, the COM presented at the trilogue a drafting proposal that envisages a national law clause for the legal aid and a clarification in recitals on compensation schemes building on the proposal presented at the last DROIPEN meeting. In view of the Presidency the proposed compromise ensures broad possibilities to cater for</p> | <p><i>New provision on legal aid</i> Member States shall ensure that victims of terrorism have access to legal aid in accordance with Article 13 of Directive 2012/29/EU, where they have the status of parties to criminal proceedings. Member States shall ensure that the severity and the circumstances of the crime are duly reflected in the conditions and procedural rules under which victims of terrorism have access to legal aid, <u>where compatible with the relevant national legal orders.</u></p> |

| COM proposal (doc. 14926/15) | Council GA (doc. 6655/16) | LIBE Orientation vote | Observations | Drafting suggestion |
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| | | | <p>the variety of national systems on legal aid, as well as to respect national competences on legal representation on claims for compensation and national rules on compensation schemes. The Presidency would like to request the support of MSs on this text.</p> | <p><i>To accommodate compensation and partially legal aid, add new (c) in GA Art 22(3) and clarification in recitals:</i></p> <p>(c) assistance with victims' compensation claims.</p> <p><i>Clarification in recitals</i> <u>The assistance with victims' compensation claims is without prejudice to the national rules on legal representation for claiming compensation and without prejudice the national rules on compensation.</u></p> |
| <p>2. Member States shall ensure that specific services to assist and support victims of terrorism are in place. Such services shall have the capacity and organisational structure necessary to provide assistance and support to these victims immediately after an attack and as long as necessary thereafter, in accordance with the specific needs of each victim. The services shall be</p> | <p>2. Member States shall ensure that (...) support services addressing the specific needs of victims of terrorism are in place in accordance with Directive 2012/29/EU and that they are available for victims of terrorism immediately after a terrorist attack and as long as necessary thereafter. Such services shall be provided in addition to, or as an integrated part of</p> | <p>2. Member States shall ensure that specific services to assist and support victims of terrorism are in place, including through the availability of victim support organisations or experts. Such services shall have the capacity and organisational structure necessary to provide assistance and support to these victims immediately after an attack and as long as necessary</p> | <p><u>Coordination</u> The Rapporteur expressed positive views on the proposed compromise on coordination</p> | <p><i>New provision on coordination</i> Member States shall ensure that mechanisms or protocols are in place allowing for activation of support services for victims of terrorism within the framework of their national emergency-response infrastructures. Such protocols or mechanism shall envisage the</p> |

| COM proposal (doc. 14926/15) | Council GA (doc. 6655/16) | LIBE Orientation vote | Observations | Drafting suggestion |
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| <p>confidential, free of charge and easily accessible to all victims of terrorism. They shall include in particular:</p> <p>(a) emotional and psychological support, such as trauma support and counselling;</p> <p>(b) provision of advice and information on any relevant legal, practical or financial matter.</p> | <p>general victim support services, which may call on existing entities providing specialist support.</p> <p><u>Cf article 22 (3) of the GA</u></p> <p>3. The support services shall have the ability to provide assistance and support to victims of terrorism in accordance with their specific needs (...). The services shall be confidential, free of charge and easily accessible to all victims of terrorism. They shall include in particular:</p> <p>a) emotional and psychological support, such as trauma support and counselling;</p> <p>b) provision of advice and information on any relevant legal, practical or financial matter</p> | <p>thereafter, in accordance with the specific needs of each victim. <i>Member States shall establish a coordination centre to bring together those organisations and experts competent to provide information, support and practical services to the victims and to their families and relatives.</i> The services shall be confidential, free of charge and easily accessible to all victims of terrorism. They shall include in particular:</p> <p><i>(-a) medical and physical treatment, including counter-measures for nuclear, biological or chemical attacks;</i></p> <p>(a) emotional and psychological support, such as trauma support and counselling;</p> <p>(b) provision of advice and information on any relevant legal, practical or financial matter;</p> <p><i>(ba) support to victims in their return to their Member State of residence in cases</i></p> | <p><u>Medical and physical treatment</u></p> <p>The Rapporteur agreed to spell out clearly in the text that MSs' competence to organise and finance their health services should be respected. In this respect the Presidency will present the compromise text on this issue, discussed at the last DROIPEN meeting</p> | <p>coordination of relevant authorities, agencies and bodies to be able to provide a comprehensive response to the needs of victims and their family members immediately after a terrorist attack <u>and as long as necessary thereafter.</u></p> <p><i>New provision on medical treatment</i></p> <p>Member States shall ensure that adequate medical treatment is provided to victims of terrorism immediately after a terrorist attack and for as long as <u>medically necessary</u> thereafter. Member States shall retain the right to organise the provision of medical treatment to victims of terrorism in accordance with their national legal frameworks.</p> |

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| | | <i>where the attack took place in another Member State.</i> | | |
| | | <i>2a. Member States shall take the necessary measures in the framework of their emergency-response infrastructure to include victim support specialists in emergency planning and to facilitate and improve the process of identifying victims immediately in the aftermath of a terrorist attack, while taking into account the victims' needs. In particular, Member States shall develop and coordinate a common assistance mechanism to be deployed upon request. Member States should ensure on-site investigative support and establish a single website through which public information related to a terrorist attack in the Member State concerned can be accessed. They should also establish a private access website to inform victims and family members of their rights and any other information relevant to the attack.</i> | Certain elements from the EP text could be dealt with in a recital by way of example. | |

| COM proposal (doc. 14926/15) | Council GA (doc. 6655/16) | LIBE Orientation vote | Observations | Drafting suggestion |
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| | <p>3.The support services shall have the ability to provide assistance and support to victims of terrorism in accordance with their specific needs (...). The services shall be confidential, free of charge and easily accessible to all victims of terrorism. They shall include in particular:</p> <ul style="list-style-type: none"> a) emotional and psychological support, such as trauma support and counselling; b) provision of advice and information on any relevant legal, practical or financial matter | See paragraph 2 | | |
| | | <p><i>3a. The Commission shall consider the need for all legislative provisions on the protection, support and rights of victims of terrorism to be set out and developed in a single legislative act on victims of terrorism.</i></p> | | |

| COM proposal (doc. 14926/15) | Council GA (doc. 6655/16) | LIBE Orientation vote | Observations | Drafting suggestion |
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| 3. This Directive shall apply in addition to and without prejudice to measures laid down in Directive 2012/29/EU. | 4. This Directive shall apply in addition to and without prejudice to measures laid down in Directive 2012/29/EU. | 3. This Directive shall apply in addition to and without prejudice to measures laid down in Directive 2012/29/EU. | | |
| <i>Article 22a</i> <i>Protection of victims of terrorism</i> | | | | |
| | <p>Member States shall ensure that measures are available to protect victims of terrorism and their family members, in accordance with Directive 2012/29/EU. When determining whether and to what extent they should benefit from (...) protection measures in the course of criminal proceedings, particular attention shall be paid to the risk of intimidation and retaliation and to the need to protect the dignity and physical integrity of victims of terrorism, including during questioning and when testifying.</p> | <p><u>Cf article 22 paragraph 1a</u> <i>1a. In accordance with Directive 2012/29/EU, Member States shall ensure that measures are available to protect victims of terrorism and their family members. In the course of criminal proceedings, particular attention shall be paid to the risk of intimidation and retaliation and to the need to protect the physical and psychological integrity of victims of terrorism, including during questioning and testifying.</i></p> <p><i>In addition, Members States shall ensure that free legal aid is provided to victims of terrorism who are parties to criminal proceedings and, where appropriate, to other</i></p> | | |

| COM proposal (doc. 14926/15) | Council GA (doc. 6655/16) | LIBE Orientation vote | Observations | Drafting suggestion |
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| | | <i>legal proceedings to obtain a decision on compensation.</i> | | |
| <i>Article 23</i> Rights of victims of terrorism resident in another Member State | | | | |
| 1. Member States shall ensure that their competent authorities cooperate among each other to ensure access to information for victims of terrorism who are residents of a Member State other than that one where the terrorist offence was committed. The access to information shall include in particular information about the victims' rights, available support services and accessible compensation schemes. | 1. Member States shall ensure that(...) victims of terrorism who are residents of a Member State other than that (...) where the terrorist offence was committed have access to information regarding their(...) rights, the available support services and (...) compensation schemes in the Member State where the terrorist offence was committed. In this respect, Member States concerned shall take appropriate action to facilitate cooperation between their competent authorities or entities providing specialist support to ensure the effective access of victims to such | 1. Member States shall ensure that their competent authorities cooperate among each other to ensure access to information for victims of terrorism who are residents of a Member State other than that one where the terrorist offence was committed. The access to information shall include in particular information about the victims' rights, available support services and accessible compensation schemes. | | |

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| | information. | | | |
| 2. Member States shall ensure that all victims of terrorism have access to the assistance and support services as laid down in Article 22 on the territory of the Member State of their residence, even if the terrorist offence was committed in another Member State. | 2. Member States shall ensure that all victims of terrorism have access to the assistance and support services as laid down in Article 22 on the territory of the Member State of their residence, even if the terrorist offence was committed in another Member State. | 2. Member States shall ensure that all victims of terrorism have access to the assistance and support services as laid down in Article 22 on the territory of the Member State of their residence, even if the terrorist offence was committed in another Member State. | Identical | |
| <i>Article 23a</i> Fundamental rights and freedoms | | | | |
| | | <i>1. In transposing and implementing this Directive, Member States shall ensure that criminalisation is proportionate to the legitimate aims pursued and necessary in a democratic society, and shall exclude any form of arbitrariness or discrimination.</i> | | |
| | | <i>2. This Directive shall not have the effect of altering the obligation of Member States to respect fundamental rights enshrined in Articles 2 and 6 of TEU and in the Charter as well as in the ECHR and</i> | | |

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| | | <i>international humanitarian law, and shall be implemented and interpreted in accordance with those rights and principles.</i> | | |
| <i>Article 23b Emergency situations and fundamental rights</i> | | | | |
| | | <i>In a time of war or other public emergency threatening the life of the nation, Member States may take measures to derogate from certain rights in line with Union and international law. Such circumstances shall not relieve the authorities from demonstrating that the measures undertaken are applied solely for the purpose of combating terrorism and are directly related to the specific objective of combating terrorism.</i> | | |
| <i>Article 23c Fundamental principles relating to freedom of expression</i> | | | | |
| | <u>Cf Article 21a of the GA Fundamental principles relating to freedom of press and other media</u> Member States may establish conditions required | <i>This Directive shall not have the effect of requiring Member States to take measures inconsistent with fundamental principles relating to freedom of</i> | | |

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| | by and in line with fundamental principles relating to freedom of the press and other media, governing the rights and responsibilities of, and the procedural guarantees for, the press or other media where these rules relate to the determination or limitation of liability. | <i>expression, in particular freedom of the press and the freedom of expression in other media and shall be without prejudice to national rules governing the rights and responsibilities of, and the procedural guarantees for, the press or other media where these rules relate to the determination or limitation of liability.</i> | | |
| <i>Article 23d</i> | | | | |
| | | <i>1.This Directive shall not have the effect of requiring Member States to take measures inconsistent with their obligations under Union law with regards to the procedural rights of suspects or accused persons in criminal proceedings.</i> | | |
| | | <i>2.Anyone whose rights and freedoms have been unduly violated through the implementation of this Directive shall have the right to an effective remedy as enshrined in Article 47 of the Charter.</i> | | |

| COM proposal (doc. 14926/15) | Council GA (doc. 6655/16) | LIBE Orientation vote | Observations | Drafting suggestion |
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| TITLE VI: FINAL PROVISIONS | | | | |
| <i>Article 24</i> Replacement of Framework Decision 2002/475/JHA on combating terrorism | | | | |
| <p>Framework Decision 2002/475/JHA is replaced with regard to the Member States bound by this Directive, without prejudice to the obligations of those Member States with regard to the to the date for transposition of that Framework Decision into national law.</p> <p>With regards to the Member States bound by this Directive, references to Framework Decision 2002/475/JHA shall be construed as references to this Directive.</p> | <p>Framework Decision 2002/475/JHA is replaced with regard to the Member States bound by this Directive, without prejudice to the obligations of those Member States with regard to the to the date for transposition of that Framework Decision into national law.</p> <p>With regards to the Member States bound by this Directive, references to Framework Decision 2002/475/JHA shall be construed as references to this Directive.</p> | <p>Framework Decision 2002/475/JHA is replaced with regard to the Member States bound by this Directive, without prejudice to the obligations of those Member States with regard to the to the date for transposition of that Framework Decision into national law.</p> <p>With regards to the Member States bound by this Directive, references to Framework Decision 2002/475/JHA shall be construed as references to this Directive.</p> | Identical | |
| <i>Article 25</i> Transposition | | | | |
| <p>1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [12 months after adoption]. They shall forthwith communicate to the Commission the text of those provisions.</p> | <p>1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [1224months after adoption]. They shall forthwith communicate to the Commission the text of those provisions.</p> | <p>1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [12 months after adoption]. They shall forthwith communicate to the Commission the text of those provisions.</p> | | |

| COM proposal (doc. 14926/15) | Council GA (doc. 6655/16) | LIBE Orientation vote | Observations | Drafting suggestion |
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| <p>When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.</p> <p>2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.</p> | <p>When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.</p> <p>2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.</p> | <p>When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.</p> <p>2. Member States shall communicate to the Commission the text of the (...) provisions of national law which they adopt in the field covered by this Directive.</p> | | |
| Article 26 Reporting | | | | |
| <p>1. The Commission shall, by [24 months after the deadline for implementation of this Directive], submit a report to the European Parliament and to the Council, assessing the extent to which the Member States have taken the necessary measures to comply with this Directive.</p> <p>2. The Commission shall, by [48 months after the deadline for implementation of this Directive], submit a report to</p> | <p>1. The Commission shall, by [24 months after the deadline for implementation of this Directive], submit a report to the European Parliament and to the Council, assessing the extent to which the Member States have taken the necessary measures to comply with this Directive.</p> <p>2. The Commission shall, by [48 months after the deadline for implementation of this Directive], submit a report to</p> | <p>1. The Commission shall, by [12 months after the deadline for implementation of this Directive], submit a report to the European Parliament and to the Council, assessing the extent to which the Member States have taken the necessary measures to comply with this Directive. <i>The report shall also cover the effectiveness of the actions that Member States have taken in terms of achieving</i></p> | | |

| COM proposal (doc. 14926/15) | Council GA (doc. 6655/16) | LIBE Orientation vote | Observations | Drafting suggestion |
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| <p>the European Parliament and to the Council, assessing the impact and added value of this Directive on combating terrorism. The Commission shall take into account the information provided by Member States under Decision 2005/671/JHA.</p> | <p>the European Parliament and to the Council, assessing the impact and added value of this Directive on combating terrorism. The Commission shall take into account the information provided by Member States under Decision 2005/671/JHA.</p> | <p><i>the objective of this Directive. On the basis of this evaluation, the Commission shall decide on appropriate follow-up actions. Regular evaluation of the implementation of this Directive should include an assessment of a potential disproportionate impact of measures on certain groups of the population, and remedial action as regards discriminatory practices.</i></p> <p>2. The Commission shall, by [12 months after the deadline for implementation of this Directive], submit a report to the European Parliament and to the Council, assessing the added value of this Directive on combating terrorism. <i>The report shall also cover this Directive's impact on fundamental rights and freedoms, on the rule of law and on the level of protection and assistance provided to victims of terrorism.</i> The Commission shall take into account the information provided by Member States under Decision 2005/671/JHA</p> | | |

| COM proposal (doc. 14926/15) | Council GA (doc. 6655/16) | LIBE Orientation vote | Observations | Drafting suggestion |
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| | | <i>and any other relevant information regarding the exercise of powers under counter-terrorism laws related to the transposition and implementation of this Directive.</i> | | |
| Article 27 Entry into force | | | | |
| This Directive shall enter into force on the twentieth day following that of its publication in <i>the Official Journal of the European Union</i> . | This Directive shall enter into force on the twentieth day following that of its publication in <i>the Official Journal of the European Union</i> . | This Directive shall enter into force on the twentieth day following that of its publication in <i>the Official Journal of the European Union</i> . | Identical | |
| Article 28 Addressees | | | | |
| This Directive is addressed to the Member States in accordance with the Treaties. | This Directive is addressed to the Member States in accordance with the Treaties. | This Directive is addressed to the Member States in accordance with the Treaties. | Identical | |