



Brussels, 25 January 2016
(OR. en)

5467/16

**Interinstitutional File:
2015/0281 (COD)**

LIMITE

**DROIPEN 13
COPEN 20
JAI 47
CODEC 58**

NOTE

From:	Presidency
To:	Delegations
No. prev. doc.:	5214/16; 5201/1/16 REV 1
No. Cion doc.:	14926/15
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 - Examination of the revised text

I. Introduction

1. On 19 and 20 January 2016, the Working Party on Substantive Criminal Law (DROIPEN) in a Friends of Presidency formation completed a second examination of the text of the proposal for a Directive on Combating Terrorism, including of the comments and written suggestions made by delegations.
2. A certain number of delegations were still scrutinising the COM proposal. SI, RO, EE, PT have a general scrutiny reservations. PL, SI and CZ have a parliamentary scrutiny reservation.
3. To provide basis for further discussion, the present document summarises the outcome of discussions on the Commission proposal held thus far and sets out a certain number of drafting proposals both in the cover note and in the Annex.

II. Specific issues

Issues related to the Commission proposal

1. Travelling for terrorism (Article 9)

4. With a view to responding to the evolving nature of the terrorism threat and enhancing the possibilities for effective prosecution, majority of delegations expressed support for keeping the scope of Article 9, as proposed by the Commission, thus covering any travelling to another country for terrorism, including intra-EU travelling and irrespective whether it is or not the country of origin or residence of the perpetrator, thus also covering returnees. Some MSs expressed reservations on the scope of the provision, in particular regarding its extension to returnees. .
5. A clarification about the meaning of "for the purpose of ... the contribution to a terrorist offence" was requested. Commission clarified that the aiding, abetting and incitement, as referred to in Article 16 of the proposal are meant.
6. The reference to the "participation in the activities of a terrorist group" was also subject to discussion. Some considered "participation" to be too remote from the actual commission of a terrorist act and not necessarily bearing the same inherent danger as participation in terrorist training, thus proposing rather to rely on "joining a terrorist group". Others considered "joining" to be problematic, thus revealing that the concept of joining a terrorist group is understood differently in different Member States. The current wording is in line with the existing *acquis*, as translated in Article 4(b) of the proposal and agreement on a new concept of "joining a terrorist group", as suggested by some delegations, might be difficult to achieve. Furthermore, some delegations stressed the importance of an inclusion of "participation in the activities of a terrorist group" this being one of the main practical cases of the travel.
7. It should be noted that Article 4(b) provides that the following behaviour should be criminalised:
 - b) *"participating in the activities of a terrorist group, [...] with knowledge of the fact that such participation will contribute to the criminal activities of the terrorist group"*.
8. It could be, therefore, concluded that the participation in the activities of the terrorist group is qualified by a specific knowledge requirement and Article 4(b) should apply, insofar as the criminal activities of the group are concerned.

2. Terrorist financing (Article 11)

9. Some delegations reiterated their request for limiting the scope of this provision taking into account the nature and possible practical implications of the respective offences the financing of which will be punishable as financing of terrorism. Some other delegations expressed support for the scope, as proposed by the Commission, stressing in particular the need to include preparatory offences. The need to ensure in any event a compliance with the FATF standards has been evoked, as well, in particular as regards the inclusion of Article 16.
10. In view of the above and in order to ensure a balance of the positions of the MSs in the revised text, the Presidency suggests certain modifications to the scope of the provision, as presented in the Annex, being understood that the financing of the criminal behaviour referred to in those provisions could be covered by the provisions criminalising financing of other types of terrorism related activities, irrespective of whether those criminal acts have been committed, and whether they have been completed or not, in line with the FATF standards.
11. A number of delegations shared the underlying concern addressed by the FR proposal on criminalising trafficking and trade transactions with cultural objects and were willing to address this issue. Nevertheless, there was a certain number of questions related to this proposal, in particular regarding the link with financing of terrorism provision and the nature of this behaviour, being one among others examples of recent *modus operandi* employed to finance terrorism activities; the need to address this issue in self-standing provision, which would raise issues of definition of cultural objects and the relations with international instruments related to the protection of cultural heritage, including by criminalising offences relating to cultural property; the need to distinguish with legal activities with cultural objects, which might originate from the same area under the control of terrorist group in relation to the presumption type of provision proposed by FR.
12. In view of the above, the Presidency suggests addressing this proposal in relation to the financing of terrorism or aiding and abetting terrorist offences, by including a specific reference in recital 11.

The following wording is proposed:

Recital 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 unlawful sale, acquisition or exchange of a cultural object of archaeological, artistic, historical or scientific interest, with the knowledge that it comes from an area controlled by a terrorist group**, 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 to be used, in full or in part, for terrorist purposes or will benefit terrorist groups.*

3. Relationship to terrorist offences (Article 15)

13. Some delegations reiterated their concerns regarding the weak connection of the preparatory acts to terrorism referred to in the draft Directive and a specific terrorist offence (concerning the second part of the sentence of Article 15 in particular). Some delegations could support the COM proposal, while some others expressed openness to include more clarifications in a recital.
14. It is recalled that in any event the Directive should ensure compliance of the EU legislation with the FATF Recommendation 5 concerning the financing of terrorism, according to which the criminalisation will not depend on proving a link to a specific offence. It is understood that this means that the terrorist offence would not yet have to be identified or specified, i.e. that act itself nor its legal qualification have to be clear at that stage. Financing is criminalised where the person collecting or providing the funds knows that the funds could be used for one/any of the terrorist offences as defined in the Directive. This could already be the case where the funds provided are susceptible of contributing to the terrorist activities (see Explanatory Memorandum to COM proposal, p. 19). It could be explored to what extent reference to these elements could be the basis for clarification in a recital.
15. Some delegations suggested an explicit reference to "without a link..." only as regards the terrorist financing offence.

4. Victims' rights (Article 22 and 23)

16. In principle delegations support the general objectives of the proposed victims' rights provisions. The aligning of Article 22 (1) with the terminology of the Victims' Directive, thus replacing "specialised service" by specialist services was well received.
17. The proposed amendments under Title V of the Directive seek to address the comments and proposals made by delegations, while still maintaining the thrust of the Commission proposal.

Proposals from MSs on additional aspects to be included in the Directive

5. Glorification of terrorism

18. In view of the outcome of discussions held at the latest FoP meeting concerning the FR proposal to criminalise glorification of terrorist offence(s) in the context of the provision on public provocation to commit a terrorist offence, the Presidency proposes that discussions on this issue continue on the basis of the UK proposal, which was supported by several delegations as a good basis for further discussion:

*Member States shall take the necessary measures to ensure 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 directly or indirectly, **including by glorifying of acts of terrorism, advocating the commission of terrorist offences, causes a danger that one or more such offences may be committed, is punishable as a criminal offence when committed intentionally.***

6. Investigative tools

19. **Regarding the FR suggestion** on investigative tools, a number of delegations expressed positive views on the proposal, while the proposed accompanying recital containing a reference to specific measures was perceived as more problematic. In this respect, many would be in a position to support it provided it is aligned with similar rules in existing EU legislation, e.g. Article 9 of Directive 2014/62/EU (the Counterfeiting of the Euro Directive).

20. In view of the above, the following text for a **new Article 21a** is proposed:

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 14.

Corresponding recital

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 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, include, for example, the search of any personal property or computer system, the interception of communications, covert surveillance including electronic surveillance, the taking and the fixing of audio recordings and visual images of persons in private or public vehicles and places, the monitoring of bank accounts and other financial investigations. Taking into account, inter alia, the principle of proportionality, the use of such tools in accordance with national law should be commensurate with the nature and gravity of the offences under investigation. The right to the protection of personal data should be respected.

21. **The IT proposal** for introducing two new provisions, respectively a new para 2 to the FR proposal for a new Article 21a on transmitting information about radicalised prisoners and new Article 21b concerning the exchange of information and cooperation between competent authorities¹ was also discussed in this context.

22. Delegations recognised the significance of effective exchange of information to fight terrorism and the relevance of the concern expressed by the IT delegation in this respect.

¹ See doc. 5201/1/16 REV 1

23. Issues regarding the legal basis and the relationship with existing EU legislation in the area of exchange of information for the purposes of criminal proceedings were raised by some delegations. Some delegations suggested to take a comprehensive approach and to discuss the issue in other Council working formats. Some delegations requested additional clarifications regarding the scope and intended practical implications of this proposal.
24. The Presidency wishes to stress the importance of strengthening information sharing. In that light it is willing to further the topic in other Council working formats should the IT delegation desire to explore that avenue, as well.

7. Measures against websites Measures against websites publicly inciting to commit a terrorist offence

25. FR delegation clarified that the proposal made for a new Article X in relation to Article 5 on public provocation to terrorism, which is in line with Article 25 of Directive 2011/92/EU (Child abuse Directive) envisages measures in the respective MSs based on the territoriality principle.
26. The following text is proposed as a basis for further discussion:

Measures against websites publicly inciting to commit a terrorist offence

1. *Member States shall take the necessary measures to ensure the prompt removal of web pages publicly inciting to commit a terrorist offence, as referred to in Article 5, hosted in their territory and to endeavour to obtain the removal of such pages hosted outside of their territory.*
2. *Member States may take measures to block access to web pages publicly inciting to commit a terrorist offence 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.*

8. Fundamental rights, conditions and safeguards

27. The discussion on fundamental rights, conditions and safeguards and the related drafting proposals will be discussed further following an advice of the Legal Service on the necessity to include such provisions in the operative part of the text.
28. The Presidency is willing to pursue a discussion in relation to the specific concern, expressed by Sweden on the freedom of media and press on the basis of a more precise provision, tailored to respond to this concern.

III. Conclusion

29. Delegations are invited to examine the modified text of the proposed Directive, as set out in this document. Discussions at the next meeting on 29 January 2016 will focus on these drafting suggestions , including recitals.

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

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 83(1) and Article 82(2) (c) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (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.
- (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 which are common to the Member States and on which the European Union is based.
- (3) Council Framework Decision 2002/475/JHA² 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,³ Council Decision 2008/615/JHA⁴ and

² Council Framework Decision of 13 June 2002 on combating terrorism (OJ L 164, 22.6.2002, p. 3).

³ 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).

Council Decision 2005/671/JHA,⁵ Regulation (EU) No 603/2013 of the European Parliament and of the Council,⁶ Council Framework Decision 2002/584/JHA⁷ and Council Framework Decision 2002/465/JHA.⁸

- (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 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.
- (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 behaviour should be punishable also if committed through the Internet, including social media.
- (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.
- (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 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.

⁴ 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).

⁵ Council decision 2005/671/JHA on the exchange of information and cooperation concerning terrorist offences (OJ L 253, 29.9.2005, p. 22).

⁶ 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).

⁷ 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).

⁸ Council Framework Decision 2002/465/JHA of 13 June 2002 on joint investigation teams (OJ L 162, 20.6.2002, p. 1).

- (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.
- (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.
- (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 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.
- (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 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.
- (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 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.
- (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.
- (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 Council⁹. Victims of terrorism are those defined in Article 2 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 legal, practical or financial information and advice.

⁹ 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).

- (17) Member States should co-operate 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 residence, even if the terrorist offence took place in another EU country.
- (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.
- (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 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.
- (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.
- (21) The Directive should replace Framework Decision 2002/475/JHA¹⁰ for the Member States bound by this Directive.
- (22) In accordance with 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.

AND/OR

- (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

¹⁰ 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).

taking part in the adoption and application of this Directive and are not bound by it or subject to its application.]

- (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.

HAVE ADOPTED THIS DIRECTIVE:

TITLE I: SUBJECT MATTER AND DEFINITIONS

Article 1

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~~¹¹ measures of protection of and assistance to victims of terrorism.

¹¹ Deletion in relation to the outcome of discussion on Article 22(1)

Article 2
Definitions

For the purposes of this Directive, the following definitions shall apply:

- (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,
- (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,
- (c) "terrorist group" shall mean: a structured¹² group of more than two persons¹³, 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.

¹² PL suggested replacing "structured" by "organised"

¹³ The proposed provision is in line with FD 2002. With regard to the CY concern (according to national legislation two persons could already form a terrorist group) it was clarified that since the Directive sets up minimum standards the national definition is compatible and therefore adjustment of the text would not be necessary. The latter would be problematic for some delegations.

TITLE II:

TERRORIST OFFENCES AND OFFENCES RELATED TO A TERRORIST GROUP

Article 3

Terrorist offences

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

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 research into, and development of, biological and chemical weapons;
 - (g) release of dangerous substances, or causing fires, floods or explosions the effect of which is to endanger human life;
 - (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;

- (i) threatening to commit any of the acts listed in points (a) to (h)¹⁴.

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.

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 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.

¹⁴ ES proposed introducing a new letter "j" which should read, as follows:

"Intentional acts referred to in paragraph 1 are:

[...]

(j) attacks against information systems as defined in Articles 3 to 7 of Directive 2013/40/EU of the European Parliament and of the Council of 12 August 2013 on attacks against information systems and replacing Council Framework Decision 2005/222/JHA."

Some delegations argued that account should be taken of the gravity of the respective offences, and therefore the provision should be limited only to some of the types of attacks against information systems, e.g. to illegal system interference (Article 4) and illegal data interference (Article 5). The Presidency would like to obtain the views of delegations in this respect.

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.

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 **aiding, abetting or inciting**¹⁵ 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.

Article 8
Receiving training for terrorism

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 **aiding, abetting or inciting**¹⁵ 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.

Article 9
Travelling [abroad¹⁶] for terrorism¹⁷¹⁸

Member States shall take the necessary measures to ensure that travelling to another country for the purpose of the commission of or **aiding, abetting or inciting** a terrorist offence referred to in

¹⁵ Wording brought in line with the suggested clarification of "contributing" in Article 9

¹⁶ The title of this provision might need adjustment concerning the word "abroad" depending on the scope of the provision

¹⁷ See Section II.1 in the Cover note

¹⁸ IT, FR, UK, PL, CY, PT, BE, EE, EL, SK, IE, FI, RO expressed support for the COM proposal. ES has a scrutiny reservation. DE, SI, SE expressed concerns on this provision.

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 as a criminal offence when committed intentionally.

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 committed intentionally.

Article 11

Terrorist financing¹⁹

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 9 ~~10~~ and ~~12 to 14~~ or 16 (1) **and (2)**²⁰ is punishable as a criminal offence when committed intentionally.²¹

Article 12

Aggravated theft to commit a terrorist offence²²

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.

¹⁹ See Section II.2 in the Cover Note

²⁰ DE, PL, SI, CZ, EE, SE support the limitation of the scope of Article 11. BE, ES, FR, UK, CY, RO could support the original COM text.

²¹ The rationale behind the FR proposal concerning cultural objects originating from territories under the control of terrorist groups was regarded positively by BE, IT, FI, CY, DE. DE and SI could support it as example in article 11. PL, EE, PT, SE, AT, LV expressed difficulties on the current drafting. IE, IT, CY, LV could support a self-standing provision, subject to redrafting.

²² PL, DE, SI, LT, EE, LV questioned the need for Article 12-14. SE, CZ support keeping those provisions, but without further changes in light of the FR proposal on extending the scope.

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.

Article 14

Drawing up false administrative documents to committing a terrorist offence²³

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 (b) of Article 4, **9 and 10²⁴** is punishable as a criminal offence when committed intentionally.

**TITLE IV: GENERAL PROVISIONS RELATING TO TERRORIST OFFENCES, OFFENCES
RELATED TO A TERRORIST GROUP AND OFFENCES RELATED TO TERRORIST
ACTIVITIES**

Article 15

Relationship to terrorist offences²⁵

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 activities²⁶.

²³ Adjustment of the title would be necessary depending on the scope of the provision

²⁴ FR has suggested extending this provision to possessing and using false documents with a view to also directing a terrorist group (Article 4 (a)), or committing the travelling or facilitating travelling for terrorism (Article 7 and 8). The Presidency is of the opinion that existing acquis should be preserved as much as possible. On the other hand, in view of the recent developments, e.g. the phenomenon of foreign terrorist fighters it is suggested to extend the scope of Article 14 to the travelling offences, where false documents have a particular relevance.

²⁵ See Section II.3 in the Cover Note

²⁶ DE, FI, SE, EE, SI, IE expressed concerns regarding the second part of the provision. FR, UK, ES could support the COM text. FR proposed splitting the provision in two parts, thus including a separate provision on financing of terrorism. EE and FI could envisage further

Article 16

Aiding or abetting, inciting and attempting²⁷

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.
2. Each Member State shall take the necessary measures to ensure that inciting²⁸ an offence referred to in Articles 3 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 14²⁹, 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 16 are punishable by effective, proportionate and dissuasive criminal penalties, which may entail extradition.
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 imposed under national law for such offences in the absence of the special intent required pursuant to Article 3, save where the sentences imposed are already the maximum possible sentences under national law.
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

explanations in recitals. BE is scrutinising the text, in particular with respect to the FATF standards.

²⁷ Most delegations still continue scrutinising this provision.

²⁸ FR requested a clarification, possibly in recitals of the general notion of "incitement" in relation to the notion of "incite" the commission of a terrorist offence in the definition of public provocation in Article 5.

²⁹ DE suggests limiting the scope of this provision to what was foreseen under FD 2008, i.e. not including attempt for recruitment and training (see doc. 5201/1/16 REV 1). FR, ES and BE have difficulties regarding the DE proposal.

fifteen years for the offence referred to in point (a) of Article 4, and for the offences listed in point (b) of Article 4a 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.

Article 18

Mitigating circumstances

Each Member State may take the necessary measures to ensure that the penalties referred to in Article 17 may be reduced if the offender:

- (a) renounces terrorist activity, and
- (b) provides the administrative or judicial authorities with information which they would not otherwise have been able to obtain, helping them to:
 - (1) prevent or mitigate the effects of the offence;
 - (2) identify or bring to justice the 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

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:
 - (a) a power of representation of the legal person;
 - (b) an authority to take decisions on behalf of the legal person;
 - (c) an authority to exercise control within the legal person.

2. Member States shall also take the necessary measures to ensure that legal persons can 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.
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.

Article 20

Penalties for legal persons

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:

- (a) exclusion from 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.

Article 21

Jurisdiction and prosecution

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:
 - (a) the offence is committed in whole or in part in its territory;
 - (b) the offence is committed on board of a vessel flying its flag or an aircraft registered there;
 - (c) the offender is one of its nationals or residents;

- (d) the offender provides training for terrorism, as referred to in Article 7, to nationals or residents³⁰;
- (e) the offence is committed for the benefit of a legal person established in its territory;
- (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.

Each Member State may extend its jurisdiction if the offence is committed in the territory of a Member State.

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 order to facilitate cooperation between their judicial authorities and the coordination of their action. Sequential³¹ account shall be taken of the following factors:
 - (a) the Member State shall be that in the territory of which the acts were committed,
 - (b) the Member State shall be that of which the perpetrator is a national or resident,
 - (c) the Member State shall be the Member State of origin of the victims,
 - (d) the Member State shall be that in the territory of which the perpetrator was found.
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.

³⁰ DE, SE, IE, PL, BE, FR, SI, ES, LT expressed difficulties with the provision, as proposed by the COM. In this respect it is proposed to add the following text to Article 21 (1) aiming to provide for more flexibility for those MSs who would need a stronger territoriality nexus in order to establish national jurisdiction:

A Member State may decide to exercise jurisdiction in accordance with letter(d) only where the offender who has provided training to its nationals or residents is present on its territory. It shall inform the Commission of the decision to apply this provision.

³¹ FR proposed deleting the reference to "sequential" taking into account the evolution in EU legislation on conflicts of jurisdiction and the role of Eurojust in this respect.

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.
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.

**TITLE V: PROVISIONS ON PROTECTION SUPPORT AND RIGHTS OF VICTIMS OF
TERRORISM³²**

Article 22³³

*~~Protection of and~~ Assistance **and support** 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.

2. Member States shall ensure that **specialist support services, in addition to, or as an integrated part of general victim support services, or to enable victim support organisations to call on existing specialised entities providing such specialist support, for to assist and support** victims of terrorism are in place.³⁴ 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

³² New structure based on LV proposal

³³ The following modifications to recitals 16 are proposed to address the suggestions made by delegations:

- (16) Member States should adopt specific 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^[1] and as further qualified and deepened by this Directive.** Victims of terrorism are those defined in Article 4 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 that person's death.** 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 legal, practical or financial information and advice. **Family members of 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.^[2]**

[1] Reference to Directive 2012/29/EU maintained

[2] This proposal responds to the need to clarify the definition of victims of terrorism and their family members, as expressed by ES.

³⁴ Proposed change to align language and obligation with Directive 2012/29/EU, and in particular Art. 8 and 9 of the Directive.

the specific needs of each victim. The services shall be confidential, free of charge and easily accessible to all victims of terrorism. They shall include in particular:

- (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.
3. This Directive shall apply in addition to and without prejudice to measures laid down in Directive 2012/29/EU.

Article 22a

*Protection of victims of terrorism*³⁵

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 special 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 testifying³⁶.

³⁵ Proposed new article on protection of victims of terrorism, as suggested by LV and FR.

³⁶ Relates to the proposal of FR

Article 23

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~~³⁷³⁸ 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.
2. Member States shall ensure that all victims of terrorism have access to the assistance and **specialist** 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.

TITLE VI: FINAL PROVISIONS

Article 24

Replacement of Framework Decision 2002/475/JHA on combating terrorism

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.

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.

³⁷ Revision made to focus on the objective to provide non-resident victims with information and support rather than the means to achieve such objective.

³⁸ Recital 17 reflects the requirement to cooperate, as also already covered in Directive 2012/29/EU, Article 26, para 1. The following amendments to recital 17 are proposed to address some issues raised by delegations:

(17) Member States' **competent authorities and services** should co-operate among each other **and with authorities and services of other Member States** to ensure that **all victims of terrorism have** access to information, **in particular** about the victims' rights, about available support services and about **available 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 residence, even if the terrorist offence took place in another EU country.

Article 25
Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [12 months after adoption³⁹]. They shall forthwith communicate to the Commission the text of those provisions.

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.

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.

Article 26
Reporting

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.
2. The Commission shall, by [48 months after the deadline for implementation of this Directive], submit a report to 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.

Article 27
Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in *the Official Journal of the European Union*.

³⁹ SE, DE, LV, LT, FI, CZ, AT, SI, IE maintain their position on the need for a longer transposition period. The preference of the majority is for 24 months, while some could possibly also accept 18 months.

Article 28

Addressees

This Directive is addressed to the Member States in accordance with the Treaties.

Done at Brussels,

For the European Parliament

The President

For the Council

The President
