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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 - Examination of the revised text

I. Introduction

1. On 29 January 2016, the Working Party on Substantive Criminal Law (DROIPEN) in a Friends of Presidency formation examined the revised text of the draft Directive.
2. SI, RO, EE, PT have a general scrutiny reservations. PL, SI and CZ have a parliamentary scrutiny reservation.
3. In view of the DROIPEN meeting of 8 February 2016, the Presidency has prepared a revised text for further consideration of the group¹. Articles 9, 11, 15 and 16 will be withheld from this discussion to allow for more time for preparing the compromise text with a view to advancing the work on a global compromise package by the end of February.

¹ Changes compared to the previous version of the text are marked in **bold underlined**

II. Specific issues

Fundamental rights, conditions and safeguards

4. At the latest meeting of 29 January 2016, FI and SI circulated a joint proposal for including a human rights and fundamental principles clause in the Directive². This proposal contained 3 main aspects.
5. *Inserting a general fundamental rights and proportionality clause in the operative part of the Directive.* In light of the explanations provided by the Legal Service of the Council and the explanations of the Commission for the approach chosen in the proposal, the Presidency suggests keeping the references to the fundamental rights guarantees in the recitals of the Directive.
6. *Freedom of media and press, as expressed by SE.* Further to the guidance provided by the Council Legal Service and with a view to addressing the specific concern, expressed by SE, the Presidency proposes the following draft for discussion, building on Article 2 of FD 2008:

Article X

Member States may establish conditions required by and in line with fundamental principles relating to freedom of the press and freedom of expression in 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.

7. *Links with International Humanitarian Law.* Recital 11 of FD 2002/475/JHA confirms the principle that actions by armed forces during armed conflicts are not governed by the FD. The issue is also addressed in Article 26 (4) and (5) of the CoE Convention on the Prevention of Terrorism. In this respect, the Presidency proposes a new recital in line with recital 11 of FD 2002:

Recital X

Actions by 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, actions by the armed forces of a State in the exercise of their official duties are not governed by this Directive.

² See WK 33/2016

III. Conclusion

8. Delegations are invited to examine the modified text of the proposed Directive, as set out in this document. Discussions at the next meeting on 8 February 2016 will focus on these drafting suggestions, including recitals.
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2015/0281 (COD)

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/JHA³ 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

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

Council Framework Decision 2006/960/JHA,⁴ Council Decision 2008/615/JHA⁵ and Council Decision 2005/671/JHA,⁶ Regulation (EU) No 603/2013 of the European Parliament and of the Council,⁷ Council Framework Decision 2002/584/JHA⁸ and Council Framework Decision 2002/465/JHA.⁹

- (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.

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 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).

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

- (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.
- (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 Council¹⁰. 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.
- (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.

¹⁰ 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).

- (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/JHA¹¹ 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 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:

¹¹ 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).

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 (...) measures of protection of and assistance to victims of terrorism.

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.**

**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

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.

- 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.

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."

Further to the FoP DROIPEN meeting in 29 January 2016, the Presidency proposes the following draft for consideration of delegations:

(j) attacks against information systems as referred to in Articles 4 and 5 of Directive 2013/40/EU on attacks against information systems likely to endanger human life or result in major economic loss.

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 directly or **indirectly, including by glorifying 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 intentionally¹⁵.

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 **contributing to**¹⁷ 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.

¹⁵ Modifications inserted in Article 5 in light of the support that the proposed draft concerning the inclusion of glorification of terrorism received at the FoP DROIPEN meeting on 29 January 2016.

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 **contributing to**¹⁷ 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 abroad for terrorism*¹⁶

Member States shall take the necessary measures to ensure that travelling to another country for the purpose of the commission of or **contributing to**¹⁷ 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 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.

¹⁶ This provision will be discussed at the next meeting

¹⁷ In light of positions expressed by delegations, the wording of the COM proposal has been reinstated. The Presidency suggest considering a recital clarifying the term "contributing"

[Article 11
Terrorist financing¹⁸

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 (...) or 16 (1) and (2) is punishable as a criminal offence when committed intentionally.]¹⁹

¹⁸ This provision will be discussed at the next meeting

¹⁹ A number of delegations could support addressing the issue tabled by the FR delegation on criminalising trafficking and trade transactions with cultural objects, as long as it is tackled as a form of indirect financing of terrorism and addressed in recital 11, subject to further refinement of the text. The following draft (consistent with the UNESCO International Code of Ethics for Dealers in Cultural Property of 1999) is presented to delegations for further consideration:

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, where there is a reasonable cause to believe that it has been stolen, illegally alienated, clandestinely excavated or illegally exported 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.*

Some delegations expressed openness to consider introducing a self-standing provision on the basis of a drafting proposal to be submitted by the FR and IT delegation at the next meeting.

Article 12

Aggravated theft to commit a terrorist offence²⁰

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.

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 offence²¹

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 10²²** is punishable as a criminal offence when committed intentionally.

²⁰ 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.

²¹ Adjustment of the title would be necessary depending on the scope of the provision

²² 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.

**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 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]²³.

[Article 16

Aiding or abetting, inciting and attempting²⁴

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 inciting 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 14²⁵, 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.]²⁶

²³ This provision will be discussed at the next meeting

²⁴ Most delegations still continue scrutinising this provision.

²⁵ 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 expressed difficulties regarding the DE proposal.

²⁶ This provision will be discussed at the next meeting.

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~~ **surrender**²⁷.
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.
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, 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

²⁷ Wording brought in line with recent acquis. See Article 4 (4) of Directive 2011/36/EU (Trafficking in Human Beings).

- (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 residents²⁸;
- (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.

Sequential²⁹ 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.

²⁸ Following the latest discussion of 29 January 2016, the following draft for new paragraph 1a is proposed for further consideration of delegations

(1a) A Member State may establish rules according to which it may exercise jurisdiction in accordance with letter(d) only insofar as 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.

²⁹ FR, supported by AT and CZ proposed deleting the reference to "sequential" taking into account the evolution in EU legislation on conflicts of jurisdiction and the evolving practice of Eurojust in this respect.

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.
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.

Article 21a

Investigative tools

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 14³⁰³¹.

³⁰ Delegations could support insertion of the provision on Investigative tools, which is aligned with similar rules in existing EU legislation, e.g. Article 9 of Directive 2014/62/EU (the Counterfeiting of the Euro Directive).
As for the accompanying recital, a number of delegations could accept it, provided "should" is replaced by "could" in the second sentence.
The FR delegation proposed the following drafting:
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 inter alia, 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.

Article 21b

Measures against websites publicly inciting to commit a terrorist offence³²

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.**

³¹ IT presented further explanations concerning the proposal on exchange of information (see doc. 5467/16 ADD 2). Delegations reiterated that they recognise the relevance of the concern raised by the IT delegation. While some delegations were positively inclined to consider it, a number of them expressed a preference for bringing this issue to discussion in another competent Council working format, where a comprehensive approach to these problematics could be ensured.

³² Introducing a provision on measures against websites publicly inciting to commit a terrorist offence in line with Article 25 of Directive 2011/92/EU (Child Abuse Directive) could be supported by some delegations. IT and CY were positive, but indicated some aspects that may raise certain issues. DE, SI and SE cannot support this provision. In order to clarify further this provision, in particular as regards the voluntary cooperation with service providers it is proposed that the following accompanying recital is inserted (based on recital 46 and 47 of Directive 2011/92/EU):

With a view to supporting the Union's efforts to combat terrorism, Member States should use their best endeavours to cooperate with third countries in seeking to secure the removal of content publicly inciting to commit a terrorist offence from servers within their territory. However, despite such efforts, the removal of such content at its source is often not possible or could be difficult. Mechanisms may also be put in place to block access from the Union's territory to Internet pages identified as containing or disseminating materials publicly inciting to commit a terrorist offence. The measures undertaken by Member States in accordance with this Directive in order to remove or, where appropriate, block websites 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. Whichever basis for action or method is chosen, Member States should ensure that it provides an adequate level of legal certainty and predictability to users and service providers. Any such developments must take account of the rights of the end users and comply with existing legal and judicial procedures and the European Convention for the Protection of Human Rights and Fundamental Freedoms and the Charter of Fundamental Rights of the European Union.

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.*

TITLE V: PROVISIONS ON PROTECTION SUPPORT AND RIGHTS OF VICTIMS OF TERRORISM

Article 22

*(...) 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**³³ **support** services for victims of terrorism are in place. **Such services may be in addition to, or as an integrated part of general victim support services, which may call on existing specialised entities providing such specialist support.**³⁴ **Specialist support** services **for victims of terrorism** shall have the capacity and organisational structure necessary to provide assistance and support to these victims immediately³⁵ after an attack and as long as necessary thereafter, in accordance with 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:
- (e) emotional and psychological support, such as trauma support and counselling;
 - (f) provision of advice and information on any relevant legal, practical or financial matter³⁶.
3. This Directive shall apply in addition to and without prejudice to measures laid down in Directive 2012/29/EU.

³³ DE supports the deletion of "specialist". IE, SI, UK could go along.

³⁴ Further refinement of the provision to align language with Directive 2012/29/EU, and in particular Art. 8 and 9 of the Directive.

³⁵ PL, LV, EE expressed concerns regarding the reference to "immediately". It was proposed to replace "immediately", by "without undue delay" to allow for certain flexibility taking into account the nature of the support services provided and the need to ensure immediate access rather to the services which would safeguard the physical integrity of the victims.

³⁶ The following additional modifications to recitals 16 are proposed to clarify the definition of victims of terrorism and their family members:

- (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 and as further qualified and deepened 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 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 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***

Article 22a
*Protection of victims of terrorism*³⁷

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 testifying³⁸.

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 access to information for that~~ victims of terrorism who are residents of a Member State other than that ~~one~~ where the terrorist offence was committed **receive access to information shall include in particular information regarding their** victims' rights, the available support services and the accessible compensation schemes. **In this respect, competent authorities of the Member States concerned may cooperate with each other to ensure the effective access of victims to such information.**^{39/40}.

³⁷ Some delegations questioned the added value of this provision considering that it is in line with Article 18 of Directive 2012/29/EU. For the sake of coherence of the package of rights of victim's of terrorism, it is proposed to keep this provision.

³⁸ FR pointed out that they would consider presenting a new drafting proposals on the protection measures of witnesses based on Article 24 of the UN Convention on Transnational Organised Crime.

³⁹ Some delegations were of the opinion that this provision is still not clear enough and therefore could support deletion (DE, AT, LV, PL, SI). In this respect further revision was made to focus on the objective to provide non-resident victims with information and support rather than the means to achieve such objective.

⁴⁰ Recital 17 reflects the requirement to cooperate, as also already covered in Directive 2012/29/EU, Article 26, para 1. It is brought in line with the proposed changes for Article 23 (1).

2. Member States shall ensure that all victims of terrorism have access to the assistance and **specialist** support services as laid down in Article 22⁴¹ 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.

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- (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 receive** 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~~. **Competent authorities and services of the Member States concerned may cooperate with each other in order to ensure that victims of terrorism, residents of a Member State other than that where the terrorist offence was committed receive 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.

⁴¹ AT would like to limit this reference to "specialist support services as laid down in **Article 22 (2) (a)**"

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 adoption⁴²]. 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.

⁴² 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 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*.

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