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NOTE

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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 - Compilation of replies

Further to the invitation of the Presidency for written contributions concerning the proposal for a Directive on combating terrorism, which was extended at the meeting of the Working Party on Substantive Criminal Law on 7 and 8 January 2016, delegations will find in the annexes to this note a compilation of the replies provided by the Member States, as follows:

Annex I - Germany
Annex II - Finland
Annex III - France
Annex IV - Italy
Annex V - Ireland
Annex VI - Latvia
Annex VII - Portugal
Annex VIII - Spain
Annex IX - Sweden
Annex X - United Kingdom

GERMANY

Article 9

Travelling abroad for terrorism

Member States shall take the necessary measures to ensure that their nationals who travel from their State of nationality to a State other than their residence or nationality outside the European Union for the purpose of the commission of or contribution to a terrorist offence referred to in Article 3, ~~the participation in the activities of a terrorist group 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 11

Terrorist financing

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, 4 and 9 ~~to 10 and 12 to 14 or 16~~ is punishable as a criminal offence when committed intentionally.

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.~~

Article 16

Aiding or abetting, inciting and attempting

1. Each Member State shall take the necessary measures to ensure that aiding or abetting an offence referred to in Articles 3 to 8 and 11 to 14 is made punishable.
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~~ **12** to 14, with the exception of possession as provided for in point (f) of Article 3(2) and the offence referred to in point (i) of Article 3(2), is made punishable.

Article 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 residents;~~
- (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. (...)

Article 22

Protection of and assistance to victims of terrorism

1. Member States shall ensure that investigations into, or prosecution of, offences covered by this Directive are not dependent on a report or accusation made by a victim of terrorism or other person subjected to the offence, at least if the acts were committed on the territory of the Member State.

2. Member States shall ensure that ~~specific~~ services to assist and support victims of terrorism are in place. Such services shall have the capacity and organizational structure necessary to provide assistance and support to these victims immediately after an attack and as long as necessary thereafter, in accordance with the specific needs of each victim. The services shall be 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. (...)

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 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 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.

Article 25

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [~~12~~ **24** months after adoption]. They shall forthwith communicate to the Commission the text of those provisions. (...)

FINLAND**Taking into account human rights and fundamental legal principles**

It's crucial that the expansion of the terrorism offences is carried out in a way which fully respects human rights and fundamental freedoms and the rule of law. The respect of human rights manifests itself in the explanatory memorandum of the proposal and in some recitals of the proposal, but not in the proposed articles. This would differ from the current situation. Article 1 (2) of the 2002 Framework Decision obliges to respect fundamental rights and fundamental legal principles. Article 2 of the 2008 Framework decision concerns fundamental principles relating to freedom of expression. Especially travelling abroad for the purposes of terrorism is related to armed conflicts and international humanitarian law.

Many provisions of the Directive would be directly or at least partially based on Council of Europe Convention on the Prevention of Terrorism and the Additional Protocol to the Convention. There are proper references to human rights and for example the principle of proportionality in Article 12 of the Convention and Article 8 of the Additional Protocol. International humanitarian law has been taken into account in Article 26, paragraphs 4 and 5 of the Convention.

From our point of view the knowledge of the Charter of Fundamental Rights of the European Union is not enough to answer these concerns. Also human rights and fundamental rights based on other instruments and obligations have to be taken into account. Because of that we need provisions, perhaps only one article situated in some proper part of the Directive covering human rights in a way corresponding to Article 12, paragraph 1 of the Convention and Article 8, paragraph 1 of Additional Protocol, covering perhaps separately freedom of expression (Article 2 of the 2008 Framework Decision), covering the principle of proportionality and questions related to arbitrariness or discriminatory or racist treatment in way corresponding to Article 12, paragraph 2 of the Convention and Article 8, paragraph 2 of the Additional Protocol and covering taking into account international humanitarian law perhaps in some shorter way than in Article 26, paragraphs 4 and 5 of the Convention. Because of the extremely tight time schedule for these comments it has not been possible to formulate a proposal. However there is already a good basis for this formulation in the Framework Decisions and in the Council of Europe legislation.

Article 5

Our delegation understands the idea behind the French proposal. However, it is problematic in relation to the principle of legality. According to this principle criminal legislation shall be precise, exact and foreseeable. It is difficult to see where would be the line between the legal and the illegal conduct. The link to the actual terrorist act is weak. Criminalizing of glorification would be also problematic in relation to freedom of thought and freedom of expression. Germany mentioned in the first meeting that their national provision concerning the glorification has been repealed because of practical applying problems. Because of these aspects it is reasonable to focus on concrete acts promoting terrorist offences already covered by the proposal made by the Commission. The proposal already covers public provocation in Article 5 and inciting in Article 16. Our point of view is, relating to the discussion we already had in the meeting, that we need public provocation and inciting both. The latter usually contributes committing an actual terrorist offence in a more concrete way than public provocation.

Article X concerning measures against websites publicly inciting to commit a terrorist offence

The only explanation the French delegation gave concerning this article proposed by them was that there is a comparable article in the 2011 Directive on Combating the Sexual Abuse and Sexual Exploitation of Children and Child Pornography. However, visual child pornography material and opinions expressed publicly and related to the use of human rights and fundamental rights, especially use of freedom of expression, are not necessarily comparable. In the beginning of the criminal investigation the nature of the material may be questionable. Because of that and the presumption of innocence the prompt removal referred to in paragraph 1 of the proposal has relevant practical obstacles. Because of the very sensitive nature of this proposed article we have to have further consultations in our capital.

Article 9

This article is formulated differently from the Security Council Resolution and the Additional Protocol to the Council of Europe Convention. According to those documents the criminalization shall cover nationals and all persons travelling from the territory to a state which is not their state of nationality or residence. It's also unclear to what extent the purpose of the travelling, meaning the circle of the terrorism offences mentioned in Article 9 of the proposal is in accordance with those two other documents. In addition to offences related to training offences the resolution mentions the perpetration, planning, or preparation of, or participation in terrorist acts.

The Additional Protocol mentions the commission of, contribution to or participation in a terrorist offence. One question is, how are these acts covered by a reference to articles 3 and 4? Is this reference sufficient or is it even too narrow? The problem is that the resolution and the Additional Protocol don't have offences concerning planning, preparation and contribution and no definitions of those offences.

The content of Article 4 of the Additional Protocol was the most discussed topic in the Council of Europe Committee preparing the protocol. The result of those discussions was to follow as much as possible the resolution. We need to find for the travelling offence a content which is on the one hand appropriate and functional, on the other hand measures up to the standards of the human rights and the fundamental freedoms and the international criminalization obligations.

Article 11

The proposal made by the Commission is in line with the opinion our delegation has. It's natural to think financing of terrorism as financing of terrorist offences and other offences related to terrorist offences this Directive would oblige to criminalize. A link to a terrorist activity manifested itself in terrorist acts has to be proved, although it's not necessary to have this link to a specific offence. This would cover also activities of individual terrorists and terrorist groups and would be in line with international standards and obligations, including the FATF Recommendation 5. It's also good to keep in mind that there is no consensus concerning phrases used or proposed by the FATF, including financing an individual terrorist for any purpose.

However it seems that the coverage of the proposed Article 11 is too large. Many delegations already expressed as their opinion in the first meeting that there should be no reference to Article 16, also Article 10 was mentioned. Some doubts concern Articles 12 to 14. In this respect this article should be focused on Articles 3 to 9.

Many questions arise because of the paragraph 2 proposed by the French delegation. First of all it's not easy to understand. For example what does "comes from the theatre of operations of terrorist groups" mean? Without further explanations it also seems that this proposed paragraph covers acts not related to financing of terrorism. And if they are, what added value does this paragraph bring in relation to paragraph already proposed by the Commission?

Article 15

The criteria concerning a link to a specific terrorist offence is developed by the FATF for financing of terrorism. It's uncertain how it is applicable to other offences promoting the terrorist offence and is the word "specific" the best way to describe the situation. Better solution could be to explain this link in recitals. It's however clear that some kind of a link has to be established and proved.

Article 17

According to Article 17(3) directing a terrorist group should be covered by the same severe maximum sentences of 15 and 8 years as in the current Framework Decision. According to Article 15 it would be not allowed to require that a terrorist offence is actually committed. It's essential for the seriousness of the directing offence if a terrorist offence is committed or if it is not committed. The principle of proportionality has to be taken into account in this regard. Because of this Article 17(3) should clearly indicate that maximum sentences apply to the cases where a terrorist offence has been committed. The end of 17(3) already indicates to that direction using words "terrorist offence ... is committed".

Article 21 a

The idea behind this article concerning investigative tools and proposed by the French delegation is acceptable. Special investigative methods are needed when serious offences are in question. There are already comparable paragraphs in the Directive on preventing and combating trafficking in human beings (Article 9(4)) and in the Directive on combating the sexual abuse and sexual exploitation of children (Article 15(3)). However, if this proposed article will be included in this directive some flexibility is needed. The names and the content of the methods and the legislation concerning the use of these methods vary in different countries. Because of that it's not reasonable to list tools like is done now in the first paragraph of the corresponding recital and to use the phrase "should". Better wording are found in recital 15 and recital 27 of the aforementioned directives using phrases like "such tools could include" and ""where appropriate". The points expressed in the second paragraph of the corresponding recital are very important (principle of proportionality, nature and gravity of the offence).

Articles 22 and 23

When we are taking into account the nature of terrorism offences and the possibility of residents of other Member States to become victims of terrorism offences, Article 22, paragraph 2 and Article 23 would obviously bring added value in relation to the more general directive concerning the victims of crime. As said in the first meeting, especially unknown factors related to the amount of the persons needing services speak on the behalf of the solution that it's not necessary to establish special assistance structures for the victims of terrorism but it's possible to take advantage of already existing assistance services and structures. The further explanations expressed by the Commission in the first meeting as a response to these concerns were, however, quite satisfactory.

France¹

Article 5

Incitation publique à commettre une infraction terroriste

« Les Etats membres prennent les mesures nécessaires pour que soit punissable en tant qu'infraction pénale, lorsqu'elle est commise de manière intentionnelle, la diffusion ou tout autre forme de mise à disposition du public d'un message avec l'intention d'inciter à la commission d'une des infractions énumérées à l'article 3 paragraphe 2 points a à h **ou d'en faire l'apologie** lorsqu'un tel comportement qu'il préconise directement ou non la commission d'infractions terroristes créé le risque qu'une ou plusieurs de ces infractions soient commises. »

Nouvel article

Mesures contre les sites internet incitant publiquement à commettre une infraction terroriste

- 1. Les États membres prennent les mesures nécessaires pour faire rapidement supprimer les pages internet incitant publiquement à commettre une infraction terroriste telle que visée à l'article 5 qui sont hébergées sur leur territoire et s'efforcent d'obtenir la suppression des pages hébergées en dehors de celui-ci.**
- 2. Les États membres peuvent prendre des mesures pour bloquer l'accès par les internautes sur leur territoire aux pages internet incitant à une infraction terroriste. Ces mesures doivent être établies par le biais de procédures transparentes et fournir des garanties suffisantes, en particulier pour veiller à ce que les restrictions soient limitées à ce qui est nécessaire et proportionnées, et que les utilisateurs soient informés de la raison de ces restrictions. Ces garanties incluent aussi la possibilité d'un recours judiciaire.**

¹ The drafting proposals of FR, as circulated at the DROIPEN meeting on 7-8 January 2016 in WK 1/2016 are integrated in this compilation

Article 11

Financement du terrorisme

Nouveau paragraphe 2

Les États membres prennent les mesures nécessaires pour que soit punissable en tant qu'une infraction pénale le fait d'importer, d'exporter, de faire transiter, de détenir, de vendre, d'acquérir ou d'échanger un bien culturel présentant un intérêt archéologique, artistique, historique ou scientifique en sachant qu'il provient d'un théâtre d'opérations de groupements terroristes.

Article 12

Vol aggravé en vue de commettre une infraction terroriste

« Les États membres prennent les mesures nécessaires pour que soit punissable en tant qu'infraction pénale, lorsqu'il est commis de manière intentionnelle, le vol aggravé en vue de commettre l'une des infractions énumérées **aux articles 3, 4, 9 et 10.** »

Article 13

Extorsion en vue de commettre une infraction terroriste

« Les États membres prennent les mesures nécessaires pour que soit punissable en tant qu'infraction pénale, lorsqu'elle est commise de manière intentionnelle, l'extorsion en vue de commettre l'une des infractions énumérées **aux articles 3, 4, 9 et 10.** »

Article 14

Établissement, détention et usage de faux documents administratifs en vue de commettre une infraction terroriste

« Les États membres prennent les mesures nécessaires pour que soit punissable en tant qu'infraction pénale, lorsqu'il est commis de manière intentionnelle, le fait d'établir, **de détenir ou de faire usage** de faux documents administratifs en vue de commettre l'une des infractions énumérées à l'article 3, paragraphe 2, points a) à h), **à l'article 4, point b), à l'article 9 et à l'article 10.** »

Nouvel article 21bis

Outils d'enquête

Afin d'assurer la réussite des enquêtes et des poursuites portant sur les infractions terroristes, liées à un groupe terroriste ou liées à des activités terroristes visées aux articles 3 à 14, les États membres veillent à ce que les personnes chargées de ces enquêtes et de ces poursuites soient habilités à mettre en œuvre, ordonner ou demander des mesures d'enquêtes performantes tels que celles utilisés dans la lutte contre la criminalité organisée ou d'autres formes graves de criminalité.

Considérant correspondant

Les outils d'enquête pourront notamment comprendre : la perquisition de tous locaux, terrains, moyens de transport, domicile privé, vêtements et de tous autres biens personnels ou système informatique, et l'adoption de toute mesure conservatoire qui serait nécessaire afin de préserver leur intégrité ou d'éviter la perte ou la contamination de preuves, l'interception de communications, la surveillance discrète, y compris la surveillance électronique, la captation, la fixation et l'enregistrement des paroles prononcées par une ou plusieurs personnes à titre privé ou confidentiel, dans des lieux ou véhicules privés ou publics, ou de l'image d'une ou plusieurs personnes se trouvant dans un lieu public ou privé, la surveillance de comptes bancaires et d'autres enquêtes financières.

Compte tenu, entre autres, du principe de proportionnalité, le recours à ces outils conformément au droit national devrait être proportionné à la nature et à la gravité des infractions faisant l'objet de l'enquête.

Considérant 16 (en lien avec l'article 22)

Nouveau paragraphe (in fine) :

Par ailleurs, chaque État membre prend en compte les risques d'intimidations et de représailles pesant sur les victimes et, d'une manière générale, sur les personnes appelées à fournir un témoignage dans les procédures ouvertes sur des infractions de nature terroriste.

Drafting suggestions of the French delegation

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 or **glorify** 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.

Article X

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.

Article 11

Terrorist financing

1. Member States shall take the necessary measures to ensure that providing or collecting funds, by any means, directly or indirectly, with the intent that they should be used, or knowing that they are to be used, in full or in part, to commit any of the offence(s) referred to in Articles 3 to 10 and 12 to 14 or 16 is punishable as a criminal offence when committed intentionally.
2. **Member States shall take the necessary measures to ensure that importing, exporting, transiting, detaining, selling, acquiring or exchanging a cultural object of archaeological, artistic, historic or scientific interest, with knowing that it comes from a theatre of operations of terrorist groups, is punishable as a criminal offence.**

Article 12

Aggravated theft to commit a terrorist offence

Member States shall take the necessary measures to ensure that aggravated theft with a view to committing one of the offences listed in **Articles 3, 4, 9 and 10** 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 **Articles 3, 4, 9 and 10** is punishable as a criminal offence when committed intentionally.

Article 14

Drawing up, **detaining and using** false administrative documents to committing a terrorist offence

Member States shall take the necessary measures to ensure that drawing up, **detaining and using** 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~~ **Articles 4, 9 and 10** is punishable as a criminal offence when committed intentionally.

Article 21a

Investigative tools

To ensure the success of investigations and the prosecution of terrorist offences, offences relating to a terrorist group, and offences related to terrorist activities, as referred to in Articles 3 to 14, Member States shall ensure that those responsible for investigating and prosecuting such offences have the possibility to make use of effective investigative tools such as those which are used in combating organised crime or other serious crimes.

Corresponding recital

Such investigative tools should inter alia include : the search of any premises, land, means of transport, private home, clothes and any other personal property or computer system, and the taking of any conservatory measures necessary to preserve their integrity or to avoid the loss or contamination of evidence, the interception of communications, covert surveillance including electronic surveillance, the taking and the fixing of audio recordings and visual images of persons in private vehicles and places, the taking and the fixing of visual images of persons in public 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 shall be commensurate with the nature and gravity of the offences under investigation.

Article 22

Protection of and assistance to victims of terrorism

Recital 16 :

Member State should adopt specific measures of protection, support and assistance responding to the specific needs of victims of terrorism, further qualifying and deepening the rights already contained in the Directive 2012/29/EU of the European Parliament and the Council. Victims of terrorism are those defined in Article 1 of the Directive 2012/29/EU, in relation to terrorist offences as referred to in Article 3. The measures to be taken by Member States should ensure that in the event of a terrorist attack, the victims of terrorism will obtain emotional and psychological support, including trauma support and counselling, and any relevant legal, practical or financial information and advice. **Furthermore, each Member State takes into account the risks of intimidation and retaliation to victims and, generally speaking, to persons who may give testimony in criminal proceedings relating to terrorist offences.**

ITALY

Suggestions of the Italian delegation (in bold)

Article 21a proposed by the French delegation

Investigative tools

To ensure the success of investigations and the prosecution of terrorist offences, offences relating to a terrorist group, and offences related to terrorist activities, as referred to in Articles 3 to 14, Member States shall ensure that those responsible for investigating and prosecuting such offences have the possibility to make use of effective investigative tools such as those which are used in combating organised crime or other serious crimes.

Member States shall also take the necessary measures to ensure that information gathered by the national relevant authority concerning prisoners who are radicalized to violent extremism or are at risk of radicalization are transmitted to those responsible for preventing, investigating and prosecuting offences referred to in Articles 3 to 14.

Corresponding recital to the French proposal

Such investigative tools should inter alia include : the search of any premises, land, means of transport, private home, clothes and any other personal property or computer system, and the taking of any conservatory measures necessary to preserve their integrity or to avoid the loss or contamination of evidence, the interception of communications, covert surveillance including electronic surveillance, the taking and the fixing of audio recordings and visual images of persons in private vehicles and places, the taking and the fixing of visual images of persons in public 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 shall be commensurate with the nature and gravity of the offences under investigation.

New Article proposed by the Italian delegation

Article 21 b

Exchange of information and cooperation concerning terrorist offences

Each Member State shall take the necessary measures to ensure that any relevant information concerning any of the offence(s) referred to in Articles 3 to 14 and any relevant information referred to in Article 21a, par. 2, which affects or may affect another Member State, is effectively and timely transmitted to the competent authority(ies) of that Member State established according to Article 2, par. 2, of Council Decision 2005/671/JHA of 20 September 2005.

IRELAND

We are continuing to examine Art.s 9, 21 & 22 and 23.

Art. 5 Public provocation

We would not support the FR proposal to criminalise the glorification and/or justification of terrorism. In any event, making specific reference in this way could have the unintended effect of narrowing the provision.

Where material in any way incites others it is already covered by the proposal – this has been clarified by the COM’s Explanatory Memorandum (which makes it clear that the provision is sufficiently broad to cover acts such as the glorification of suicide bombers or the justification of terrorism) and also by Recital 7.

Art. X Measures against websites (FR proposal)

We would prefer to await the package of measures to be brought forward by the COM rather than introduce a provision along the lines of the FR proposal in this measure.

Art. 11 Terrorist financing

Importation of cultural objects (FR proposal).

We would not, in principle, have any objections to the FR proposal in relation to the importation of cultural objects. However, it is arguably already understood to be within the scope of the existing Art. 11 on terrorist financing (“collecting funds, by any means, directly or indirectly”).

If a specific reference is to be included, we think it should be a stand alone Article rather than included in an Article dealing with terrorist financing and some thought would have to be given to specifying where the cultural goods originate. The FR proposal states that they come from a “theatre of operations of terrorist groups” and this could be understood to be almost anywhere a terrorist group is active – though this may be due to a difficulty of translation of the French term “theatre”.

Articles 12/13/14

We are of the view that it is not necessary to include these provisions.

Article 12 and 13 would appear to be duplication of offences that are already addressed within Articles 3 (2)(f), 4 and 11 as they relate to the acquisition of funding or weapons or other dangerous materials by any means (which would presumably include by aggravated theft or extortion).

However, if there is strong support for separate provisions on these offence we would not oppose the inclusion of these articles.

Art. 14

The term “possession of” might be used rather than “detaining”.

Art. 15

We could support the DE proposal to delete text after “committed” as it helps to clarify the text.

Art. 21

We are still examining Art. 21 but could support the DE proposal to delete para (d) – the intent of the COM provision is not clear.

Art. 21a Investigative tools (FR proposal)

We could not support a list of investigative tools being provided for here in this way.

We are strongly of the view that this is a matter for MSs to decide.

Art. 22/23 Victims of terrorism

The Victims Rights Directive 2012/29/EU already makes provision for victims of terrorism (Recitals 2, 8, 16, 57, Article 22.3).

We would not support a provision which would necessitate the establishment of new structures / services / agencies which would be specific to victims of terrorism.

We would, therefore, support the deletion of the reference to “specific” in Recital 16 and in Article 1 and Article 22.2.

We would also support the DE proposal to delete the final sentence of Art. 22.2 and para. 1 of Article 23 on the basis that there is already adequate provision for victims of terrorism in the Victims Directive.

FR proposal – Recital 16

A similar provision to that proposed by FR is included in Recital 57 of the Victims Rights Directive which refers to the fact that victims of terrorism tend to experience a high rate of secondary and repeat victimisation, intimidation and retaliation.

If a similar reference is to be included here, similar language to recital 16 should be used for consistency.

Art. 25 Transposition

We are of the view that a 12 month deadline for transposition of the Directive would not be feasible, given the Parliamentary procedures involved in drafting and enacting legislation.

We would support a 24 month deadline given the technical complexities involved.

LATVIA

Article 22

Assistance and Support for victims of Terrorist offence

1. Member States shall take the necessary measures to ensure that assistance and support is provided to victims before, during and for an appropriate period of time after the conclusion of criminal proceedings in order to enable them to exercise the rights set out in Directive 2012/29/EU, and in this Directive.
2. Member States shall take the necessary measures to ensure that assistance and support for victims of terrorist offence is not made conditional on the victim's willingness to cooperate in the criminal investigation, prosecution or trial.
3. Member states shall take necessary measures that assistance and support for victims of terrorist offence is provided immediately after the terrorist offence has been committed and such assistance and support is provided as long as it is necessary.
4. Member states shall ensure that assistance and support for victims of terrorist offence is provided taking in to account victims specific needs. Such assistance and support shall be confidential, free of charge and easily accessible to all victims of terrorist offence and shall include at least emotional and psychological support and provision of advice and information on any relevant legal, practical or financial matter.
5. Member States shall ensure, where appropriate and possible, to provide assistance and support to the family of victim of terrorist offence when the family is in the territory of the Member States.
6. Member States shall ensure that all victims of terrorist offence have access to the assistance and support services as laid down in paragraph 1 and 2 on the territory of the Member State of their residence, even if the terrorist offence was committed in another Member State.

Article 22a

Protection of victims of terrorist offence in criminal investigation and proceedings

1. The protection measures referred to in this article shall apply in addition to the rights set out in directive 2012/29/EU.
2. Member States shall ensure that victims of terrorist offence receive appropriate protection on the basis of an individual risk assessment, inter alia, by having access to witness protection programmes or other similar measures.

Justification:

Our delegation was closely and with great attention following the discussion regarding the Article 22 “Protection of and assistance to victims of terrorism” that took place in DROIPEN WP meeting on Friday (January 8).

First of all, we would like to stress that we fully agree with the Commission that the Directive on combating terrorism can have the added value when it comes to assistance and protection of victims. However this value has to be added in the right place. In our opinion differences regarding the wording of Article 22 expressed by several MS and those of the Commission during the Friday’s meeting were due to the fact that both sides were referring to slightly different aspects of victims of terrorism.

This brings us to the main question – what are the specific aspects of victims of terrorism that should be regulated in addition to general provisions that relates to all victims and are stipulated by the Victims’ Directive (2012/29/EU). We thought about this matter and, again we have to say that we fully agree to what was said by the Commission on Friday regarding the importance to have an additional capacity to effectively respond to the acts of terrorism. In our opinion that is where the main difference lays between the victims in general and the victims of terrorism.

When it comes to victims in general the capacity and resources needed to assist them can be planned in advance with rather great precision because the number of victims is spread through time with rather small fluctuations. However in case of the terrorist offence the authorities might face sudden and rather sharp increases of needs that can be effectively addressed only in case there is an additional capacity (or we can call it a “safety stock”) foreseen and planned in advance. But it only relates to the “first response” assistance but is not justified for the later protection which is officially granted to victims during the criminal proceedings.

Therefore we propose to change the structure of Article 22 and to separate in the text of the Directive the “first response” assistance and support (Article 22) from the protection of victims that is officially granted within the criminal proceedings (Article 22a). That would allow us to target the additional provisions and add the value where it is actually needed and justified. Meaning, that the additional provisions would relate to “first response” assistance as explained above while the general provisions would be maintained for the protection of victims within the criminal proceedings according to the Victim’s Directive (with the small addition of access to witness protection programmes).

The following approach would also be consistent with the approach taken by the Directives 2011/36/EU and 2011/93/EU.

PORTUGAL

I. GENERAL REMARKS

1. Portugal expresses its support to the replacement of the Framework Decision 2002/475/JHA by a Directive on combating terrorism, and is available to do provide a positive contribution to the establishment of an EU instrument that can respond to the present needs, the new threats and challenges and allows to a greater legislative harmonization in this field.
2. Notwithstanding this general support, Portugal want to present a general scrutiny reservation to the entire draft proposal, given the fact that still runs internally the interdepartmental and the public consultation, including several academies of criminal law. The results of these consultations will shape the Portuguese position as a whole at a later point.
3. Portugal want also submit a protest to the working plan presented by the Presidency, which provide for seven (7) meetings on the negotiation of this draft proposal for the months of January and February of 2016, two of which in the Working Group DROIPEN and the remaining five (5) in the Friends of the Presidency format (Fop).

Although we understand the urgent need to have a new and more binding instrument against terrorism, in our view, the situation should be exactly the opposite, which means that the Presidency should have endeavored in order to prepare the greatest number of debates in all EU official languages, since the FoP format implies that most of the draft Directive will be analyzed in a single working language - the English - , which is not our mother tongue and meaning that the exception becomes the rule.

4. Finally we understand that appears to be an excellent opportunity to the Presidency and the Commission, to review all United Nations Conventions and Protocols (almost 16 in total), in order to verify if all these acts that could be considered as terrorist acts are covered by paragraphs 1 and 2 of Article 3 of the draft Directive.
5. In the other hand, it is also important that should be taken into account in this review, not only the recent Additional Protocol to the European Convention for the Prevention of

Terrorism (Council of Europe) and the FATF Recommendations (in particular the Recommendation n. 5 and its interpretative note), or the Resolution 2178 (2014) of the United Nations, but also other legal instruments of the United Nations, among which we highlight the International Convention for the Suppression of the Financing of Terrorism (New York, 9 December 1999), as well as the Resolution 2253 (2015) of 17 December 2015.

II. CONTRIBUTES FOR CONCRETE PROVISIONS

Article 2 - Definitions

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

(a) (...)

(b) (...)

(c) "Terrorist group" shall mean: a structured group of two persons, established over a period of time and acting in concert to commit terrorist offences. "Structured group" shall mean a group that is not randomly formed for the immediate commission of an offence and that does not need to have formally defined roles for its members, continuity of its membership or a developed structure.

Rationale: Paragraph (c) and (d) should be unified in one single paragraph, since we are dealing with the definition of a single concept, which is "terrorist group". Portugal do not agree with the separate definition of "structured association" since it is a part of the definition of "terrorist group". By turning off two definitions it seems if we are dealing with two different types of groups, which can lead to misinterpretations

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”.

Portugal would prefer that the expression *recruiting soliciting another person* is replaced by *recruiting another person to commit (...)*.

Rationale: Since this article deals with the recruitment to commit terrorism acts, it must be used the same expression in the text, rather than soliciting, as these words have different meanings either in legal language or in current language.

We consider that a discussion should be made in order to decide whether a clear definition of «*recruitment for terrorism*» is needed, as recruitment for terrorism should be understood as the act of bringing someone to includes, to be part or to be a member of a terrorist group and not to commit a terrorism act.

Article 11 - Terrorist financing

As a results from the Interpretative Note of FATF Recommendation 5, we suggest the addition of a paragraph 2 as follows:

1. (...)
2. “*For an act to constitute the offence set forth in the preceding paragraph, it shall not be necessary that funds originate from a third party, or have been transferred to whom they were destined, or have actually been used to commit the facts therein mentioned.*”

Rationale: The wording of this article, as it stands, may raise some legal uncertainty at the time of transposition and/or application, since, in our view, it is not clear that financing is punishable in the event that the funds are not collected from third parties or when it does not come to be effectively used to commit the offenses provided for therein.

III. PORTUGUESE POSITION ON FRENCH PROPOSAL

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, **by any means, including the Internet**, with the intent to incite **or glorify** 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.

Portugal fully agrees with the proposed amendment to article 5 and suggests the addition of the expression “by any means, including the Internet” referred to the distribution in order to include Internet and all the means (paper, sms, e-mail and so on)

Article X - 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.

Taking into account our suggestions to include “by any means, including the Internet” in the wording of the Article 5, we suggest that the paragraph number 1 of the new Article is moved to number 2 of Article 5.

On the other hand, the paragraph no 2, being purely programmatic, should be moved to a recital.

Article 11 - Terrorist financing

1. Member States shall take the necessary measures to ensure that providing or collecting funds, by any means, directly or indirectly, with the intent that they should be used, or knowing that they are to be used, in full or in part, to commit any of the offence(s) referred to in Articles 3 to 10 and 12 to 14 or 16 is punishable as a criminal offence when committed intentionally.

2. Member States shall take the necessary measures to ensure that importing, exporting, transiting, detaining, selling, acquiring or exchanging a cultural object of archaeological, artistic, historic or scientific interest, with knowing that it comes from a theatre of operations of terrorist groups, is punishable as a criminal offence.

Portugal agrees with the underlying idea that these behaviors have to be punished, but we have several doubts about if the actions described should be considered truly acts of terrorist financing, at least directly, or, instead, as autonomous crimes that could be related to terrorism financing. Additionally, the definition of financing of terrorism already refers to collecting funds, direct or indirectly, so this should be considered covered.

Thus, Portugal need to further analyse this matter and don't have, for the time being, a final position.

Article 12 - Aggravated theft to commit a terrorist offence

Member States shall take the necessary measures to ensure that aggravated theft with a view to committing one of the offences listed in **Articles 3, 4, 9 and 10** is punishable as a criminal offence when committed intentionally.

Portugal agrees with the extension of the scope of this article to articles 4, and 9, but have doubts about article 10. Must to be further discussed.

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 **Articles 3, 4, 9 and 10** is punishable as a criminal offence when committed intentionally.

Portugal agrees with the extension of the scope of this article to articles 4, and 9, but have doubts about article 10. Must be further discussed.

Article 21a - Investigative tools

To ensure the success of investigations and the prosecution of terrorist offences, offences relating to a terrorist group, and offences related to terrorist activities, as referred to in Articles 3 to 14, Member States shall ensure that those responsible for investigating and prosecuting such offences have the possibility to make use of effective investigative tools such as those which are used in combating organised crime or other serious crimes.

Portugal totally agrees with this the addition this provision and corresponding recital, since this is already a standard provision in criminal law instruments of the EU.

For this very reason we would prefer that is to be used the same wording that is used in the other instruments such as the Directive of the European Parliament and of the Council on the protection of the Euro or the Directive of the European Parliament and of the Council on preventing and combating trafficking in human beings, as well as the corresponding's recitals.

(Examples)

Directive on the protection of the euro

Article 9

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 offences referred to in Articles 3 to 4.

Directive on preventing and combating trafficking in human beings

Article 9

Investigation and prosecution

1. (...)

2. (...)

3. (...)

4. 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 2 and 3.

SPAIN

Please find below some preliminary drafting suggestions by the Spanish delegation with regards to the 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:

1.- Article 2. Definitions

Article 2
Definitions

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

[...] (e) **“Victim” means:**

(i) a natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence;

(ii) family members of a person whose death was directly caused by a criminal offence and who have suffered harm as a result of that person's death;

(f) “Family members” means the spouse, the person who is living with the victim in a committed intimate relationship, in a joint household and on a stable and continuous basis, the relatives in direct line, the siblings and the dependants of the victim;

2.- Article 3. Terrorist offences

Article 3
Terrorist offences

2. 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.

3. Article 5. Public provocation to commit a terrorist offence

Article 5

Public provocation to commit a terrorist offence

1. 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 or **glorify** 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.
2. **Member States shall take the necessary measures to ensure that carrying out activities which entail discrediting, disparaging, or the humiliation of victims of terrorist offences, is punishable as a criminal offence when committed intentionally.**

4. New Article.

New Article

Measures against websites publicly glorifying terrorist offences

In case of glorification or public justification of the offences listed in points (a) to (h) of Article 3(2), the competent judicial authority shall order the withdrawal of the content.

5. New Article.

New Article

Aggravating circumstance

Member States shall take the necessary measures to ensure that it shall be regarded as an aggravating circumstance when a criminal offence referred to in Articles 6 or 7 is committed directed to vulnerable natural persons, including children.

6. Finally, we would like to support the French proposal with regards to the inclusion of a new Article 21a on investigative tools.

SWEDEN

Sweden's comments on the proposed Directive on Combating Terrorism

We warmly welcome the opportunity to provide written comments already at this stage. Due to time constraints, we have not, however, been able to finish our analysis of the draft Directive or the French proposal. At this point, we are ready to leave the following comments and suggestions. We much look forward to active participation in the upcoming discussions!

Article 3

- Text along the lines of this statement by the Council in connection with the adoption of Framework Decision 2002/475/RIF should be worked into the Directive, e.g. in the form of a recital:

The Council states that the Framework Decision on the fight against terrorism covers acts which are considered by all Member States of the European Union as serious infringements of their criminal laws committed by individuals whose objectives constitute a threat to their democratic societies respecting the rule of law and the civilisation upon which these societies are founded. It has to be understood in this sense and cannot be construed so as to argue that the conduct of those who have acted in the interest of preserving or restoring these democratic values, as was notably the case in some Member States during the Second World War, could now be considered as "terrorist" acts. Nor can it be construed so as to incriminate on terrorist grounds persons exercising their fundamental right to manifest their opinions, even if in the course of the exercise of such right they commit offences.

Article 5

- Article 2 of the 2008 Framework Decision should be worked into the operative part of the Directive:

Fundamental principles relating to freedom of expression

This Framework Decision shall not have the effect of requiring Member States to take measures in contradiction of fundamental principles relating to freedom of expression, in particular freedom of the press and the freedom of expression in other media as they result from constitutional traditions or rules governing the rights and responsibilities of, and the procedural guarantees for, the press or other media where these rules relate to the determination or limitation of liability.

- The text is part of the acquis and as such it should be preserved. It is also important to us since we will otherwise have constitutional problems with Article 5 as well as Article 16 in so far as it refers to Article 5.
- We will not be able to accept the French proposal to add glorification as an alternative to incitement. Glorification may, as explained in recital 7, constitute public provocation when the other criteria in the Article are met. Given that the glorification amounts to incitement to commit a terrorist offence and causes a danger that such an offence may be committed, it is thus already criminalised. However, a criminalisation of glorification as an alternative form of the public provocation, regardless of whether the glorification may be construed as incitement to commit a terrorist offence, would be too far-reaching. As the relationship between glorification and incitement (which, as pointed out earlier, could sometimes take the form of glorification) would be unclear, the provision would furthermore be difficult to transpose. It would therefore be best to leave the acquis untouched, in particular since the added value of the amendment has not been clearly demonstrated.

Article 9

- This Article affects the fundamental rights of citizens. In the meeting, the Commission advocated an interpretation of Article 3(2) of Protocol 4 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (the right not to be deprived of the right to enter the territory of the State of which one is a national) which would seem to

undermine the protection of that provision. In our view, it should be construed in a way that ensures that the right is practical and effective.

- An obligation to impose criminal sanctions on those who travel to the country of their own nationality, in our case Swedish citizens returning to Sweden, would be more far reaching than both the UN Security Council Resolution 2178(2014) and the Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism that was adopted in May 2015.
- An obligation to impose criminal sanctions on Swedish citizens returning to Sweden could also risk being incompatible with our Constitution.

Article 11

- It seems to us that the cross-references between Article 11 and Article 16 would take the criminalisation a step too far. The suggestion by other delegations to delete the reference to Article 16 in this Article would seem to be a constructive solution to the problem:

Member States shall take the necessary measures to ensure that providing or collecting funds, by any means, directly or indirectly, with the intent that they should be used, or knowing that they are to be used, in full or in part, to commit any of the offence(s) referred to in Articles 3 to 10 and 12 to 14 ~~or 16~~ is punishable as a criminal offence when committed intentionally.

Article 15

- We have concerns about the wording of the last part of the Article, which we fear could be misinterpreted. As Germany outlined an possible solution, whereby the general rule is worked into each of the substantive provisions, we will not submit a proposal now but will look with interest at what they suggest.

Article 21

- We would like to have subparagraph 1(d) – ”the offender provides training for terrorism, as referred to in Article 7, to nationals or residents” – deleted.

Article 22

- We have voiced some concerns about this Article and in particular the deviation from Directive 2012/29/EU. As we need to analyse the answers provided by the Commission, we do not have any specific comments at this point. In general, however, we would like to see the text aligned with the corresponding provisions in Directive 2012/29/EU to the greatest extent possible.

Article 23

- We noted with interest the Austrian suggestion to limit the reference in paragraph 2 so that it will not include Article 22(2)(b) and will carefully look at what they may propose.

Article 25

- Due to the Swedish legislative process, we will be unable to transpose the Directive within 12 months. We would therefore prefer a transposition period of 24 months.

The French proposal – Article 21 Investigative tools and the corresponding recital

- We have several concerns regarding this proposal, especially the recital. One of our concerns is that the recital contains a binding list of measures unlike recital 21 in the Directive 2000/383/JHA. Another concern is that it covers all the offences in the Directive. We would therefore prefer that it not be included in the Directive.

UNITED KINGDOM

Article 5: Public provocation offence

- We **support the French intention** to include glorification into the text but suggest the following amendments:

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.

- In UK law, section 1 of the Terrorism Act 2006 provides that indirect ‘encouragement of terrorism’ includes ‘glorification’, where the public can be reasonably expected to infer that the conduct being glorified is conduct that they should seek to emulate- so our law is already compliant in this respect. However, it is not necessary that terrorist acts should actually result from the glorification (someone need only advocate for them to be done. We consider that the revised wording clarifies that the glorification must have the effect of advocating the commission of terrorist offences.

Article 9: Travelling abroad for terrorism

- We think the **German proposal here is overly restrictive**. It appears to restrict the offence to member state nationals who travel outside of the EU. This therefore does not combat the threat from intra-EU travel- specifically the type we saw in the Paris attacks (Belgian nationals attacking France). We have proposed amendments to clarify that intra member state travel is covered. We have also proposed amendment to the title to clarify that it is not a requirement to create an offence for intra-national travel (such as between the ‘countries’ of Scotland and England). We also reject the proposed deletion of text by Germany in respect of terrorist groups- particularly when the current context demonstrates that individuals may travel to participate in/ fight alongside recognised terrorist groups.

International travel for the purpose of terrorism

Member States shall take the necessary measures to ensure international travel from their state to another member state or to a third party state for the purpose of the commission of or contribution to a terrorist offence referred to in Article 3, the participation in the activities of a terrorist group referred to in Article 4 or the providing or receiving of training for terrorism referred to in Articles 7 and 8 is punishable as a criminal offence when committed intentionally.

Article 11: Terrorist financing

- On the French proposals, the specificity of “theatre of operations of terrorist groups” is not clear. There is a risk that this could refer to any area where terrorist activity is operating. The concern would be that this does not necessarily exclude areas of Paris or Brussels, considering recent events. We would be far more comfortable if this text referred to a specific area(s)/situation – such as referring specifically to Daesh, or areas under their control. This would also ensure that this proposal is kept in line with the existing UN/EU sanctions relating to Iraq and Syria.
- The current phrasing refers to the "importing, exporting, transiting, detaining, selling, acquiring or exchanging" of a cultural object without any caveats around whether this has been legally or illegally imported/exported/transited (etc). Our concern is that this could mean that this may also capture items exported/imported/acquired/transited (etc) by those whose intention is to safeguard these cultural objects. Again, the text should be more granular in its detail.
- On the German proposals, we think that we should reject these for being overly restrictive. The TF offences should be as expansive as possible and certainly cover our preparatory offences (contained in Part 1 of the Terrorism Act 2006- which include encouragement, receiving and giving instructions/ training for terrorism, preparation of terrorist acts). It seems odd to single out proscribed organisations and travelling abroad. Therefore, we would reject Germany’s deletion of Articles 5,6,7,8 and 10 and article 16.
- We would agree with proposals elsewhere, that Articles 12-14 do not add much to the Directive and are most likely to be covered in MS’ ordinary criminal law- so would suggest that they are removed. If they are not, they should remain within the TF article.

Articles 12-14 – aggravated theft, extortion, false documentation

- We feel that these articles do not add much to the Directive and think it would be better to remove these from the Directive altogether. It is also unclear why these offences have been picked out from among the other ordinary criminal law offences. We would echo the Irish comments on these sections.

Article 15- relationship to terrorist offences

- We think that the **German proposals have been overly proscriptive** here. To delete the text they have suggested, would leave MSs open to require the activity of proscribed groups to be linked to specific terrorism offences. This is narrow. For example, section 6 of the UK Terrorism Act 2006 prohibits the receipt or giving of instruction/ training for terrorism. That training does not need to be linked to a specific terrorism offence such as the offence of hijacking an aircraft or terrorist hostage-taking. It is sufficient that the person has been trained, more generally. While this is a minimum standards measure, and we appreciate that we should be careful about making the directive too widely applicable, it seems sensible that Member States agree that terrorist training on its own, is sufficient to constitute an offence, at a minimum.

Article 16- Aiding or abetting, inciting and attempting

- The Germans have proposed excluding certain offences for attempts. We think that **Articles 6 (recruitment), 7 (training) and 11 (terrorist finance) should be included**. It would be useful to get a sense of why these have been deleted.

Article 21- Jurisdiction

- UK legislation already covers (d) which has been deleted by Germany. **We can live with or without this.**

Article 21a- Investigative tools

We don't have any specific issue with the French proposal for this new article though we are not sure what would add for Member States or how this would be achieved in practice. We may need to consider further.

Articles 22 and 23- Victims of terrorism

Recital 16 of Article 22: The French amendment extends the scope beyond that of the EU Victims Directive (recently implemented by the UK), contrary to the originally stated intent of the proposal. We would **have concerns about extending it beyond the EU Victims Directive.**

Substantive Article 22: We would support the German deletion of ‘specific’ (services to assist victims of terrorism)- as this would be less onerous on Member States.

Article 23: German amendment -Removal paragraph 1 of Article 23: It is already a requirement of the Victims’ Code that victims receive the information outlined in Article 23(1). **We would therefore support leaving it in the text.**

On **Latvia’s proposals** on these articles, we suggest that it would be helpful to know whether the ‘*assistance and support*’ referred to is limited to the kind of practical victim support services set out in Articles 8 and 9 of the Victims Directive.

Para 1 and Para 3 differ on the length of time support should be provided. Para 1 is ‘*appropriate period after the conclusion of criminal proceedings*’ but para 3 is ‘*as long as it is necessary*’. This is unclear. Is para 1 referring to information about the assistance and support rather than the assistance and support itself?

The definition of family appears wider than that in the Victims’ Directive because it does not appear to be restricted to family members of a deceased victim. **We would oppose this expansion.**

Article 22a explicitly goes further than the equivalent provision in the Victims Directive (A.18 and A.20), in that it requires automatic individual risk assessment and access to witness protection programmes ‘or other similar measures’. **We would oppose this expansion.**

On the Spanish proposals, we are not opposed to the use of the same definition of ‘victim’ and ‘family members’ as used in the Victims Directive assuming that rights provide for in article 22 and 23 do not change.

Article X: Measures against websites publicly inciting to commit a terrorist offence

- On the French proposals, whilst we do endeavour to obtain removal of this content, we wouldn't want to legislate for it – and we don't think it would be practicably enforceable. The Counter Terrorism Internet Referral Unit works in conjunction with industry to remove content on a voluntary basis. We have provision to takedown content hosted in the UK although this doesn't explicitly ensure prompt removal of a webpage, it does cover this proposal. For content hosted abroad we work with industry terms and conditions and will continue to do so.
 - Blocking is difficult for technical reasons. However, given that this addition suggest “member states may...” it could be possible in its current form. The technical difficulties still arise around website encryption which often results in a whole site being blocked rather than specific pages. The issue of internet use for unlawful purposes is being considered in the negotiations over the E Commerce Directive.
-