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From:	Presidency
To:	Delegations
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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 - Consolidated text

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Further to the sixth trilogue on the proposed Directive that took place on 10 November 2016, the Presidency submits in the Annex<sup>1</sup> the global consolidated compromise text, as resulting from the negotiations with the European Parliament. The present document consolidates all provisions of the Directive, including the compromise proposals on some of the recitals found in WK 644/2016.

A draft political declaration outlining the importance of preventive measures and efficient information exchange for combating terrorism will be circulated shortly.

The Presidency would like to seek the support of delegations on the entire text with a view to concluding the negotiations on the text of the Directive at the trilogue on 17 November 2016 and presenting the compromise for confirmation of the political agreement to COREPER on 30 November 2016.

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<sup>1</sup> Council text, including such deriving from the Council general approach is marked **in bold**; EP amendments and compromise text addressing EP position is marked in ***bold italic***; new text resulting from the latest discussion is **underlined**

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 and amending Council Decision 2005/671/JHA on the exchange of information and cooperation concerning terrorist offences**

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) (...)<sup>2</sup> 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.

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<sup>2</sup> Only the legal basis, main to the objective of this Directive is included. The Council Legal Service will provide explanation about this approach.

(3) Council Framework Decision 2002/475/JHA<sup>3</sup> is the cornerstone of the criminal justice response to counter terrorism. A legal framework common to all Member States, and in particular, a harmonised definition of terrorist offences, serves as a benchmark for information exchange and cooperation between the competent national authorities under Council Framework Decision 2006/960/JHA,<sup>4</sup> Council Decision 2008/615/JHA<sup>5</sup> and Council Decision 2005/671/JHA,<sup>6</sup> Regulation (EU) No 603/2013 of the European Parliament and of the Council,<sup>7</sup> Council Framework Decision 2002/584/JHA<sup>8</sup> and Council Framework Decision 2002/465/JHA.<sup>9</sup>

(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 and plots in several Member States**<sup>10</sup>. 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.

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

<sup>4</sup> 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).

<sup>5</sup> 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).

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

<sup>7</sup> 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).

<sup>8</sup> 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).

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

<sup>10</sup> Element from the COM proposal.

(4a) In UNSCR 2178 (2014), the United Nations Security Council has expressed its concern over the growing threat posed by<sup>11</sup> foreign terrorist fighters and required all MSs of the UN to ensure that offences related to this phenomenon are made punishable under national legislation. The Council of Europe has, in this respect, adopted in 2015 the Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism (CETS No 217).

(5) Taking account of the evolution of terrorist threats and legal obligations to the Union and Member States under international law, the definition of terrorist offences, (...)offences related to a terrorist group and offences related to terrorist activities, should be further approximated in all Member States, so that it covers more comprehensively conduct related to in particular foreign terrorist fighters and terrorist financing. These forms of behaviour should be punishable also if committed through the Internet, including social media.

(5a) Furthermore, the inherent cross-border nature of terrorism requires a strong coordinated response and cooperation within and between the Member States, as well as with and among the competent EU agencies and bodies to counter terrorism, including Eurojust and Europol. To that end, efficient use of the available tools and resources for cooperation should be made, such as Joint Investigation Teams and coordination meetings facilitated by Eurojust. The global character of terrorism necessitates an international answer, requiring the Union and its Member States to strengthen cooperation with relevant third countries<sup>12</sup>.

*(5b) This Directive exhaustively lists a number of serious crimes, such as attacks against a person's life, as intentional acts that can qualify as terrorist offences when and insofar as committed with one of the specific terrorist aims, i.e. to seriously intimidate a population, or, unduly compel a Government or international organisation to perform or abstain from performing any act, or to seriously destabilise or destroy the fundamental political, constitutional, economic or social structures of a country or an international organisation. The threat to commit such intentional acts should also be considered a terrorist offence, when it is established on the basis of objective circumstances that this was committed with any such terrorist aim. By contrast, acts aimed at for instance compelling a government, without however being included in the exhaustive list of serious crimes, are not considered terrorist offences in accordance with this Directive.*

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<sup>11</sup> Brought in line with the wording of the UNSC Resolution.

<sup>12</sup> New recital covering recitals 4b, 4c, 6a, 15d, 17b, 18a of the EP.

(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 *on- and offline* including those related to the victims of terrorism as a way to **gather support** for the terrorists cause or seriously intimidating the population. Such behaviour *should be punishable when it* causes a danger that terrorist acts may be committed. **In each concrete case, when considering whether such danger is caused the specific circumstances of the case should be taken into account, such as the author and the addressee of the message, as well as the context in which the act is committed. The significance and the credible nature of the danger should be also considered when applying this provision in accordance with national legislation.**

**(8)** Criminalisation of the receiving training for terrorism complements the existing offence of providing training and specifically addresses the threats resulting from those actively preparing for the commission of terrorist offences, including those ultimately acting alone. **Receiving of training for terrorism includes the obtaining of knowledge, documentation or practical skills. Self-study, including through the Internet or consulting other teaching material, should also be considered training for terrorism, when committed with the intent to commit or contribute to the commission of a terrorist attack. In the context of the specific circumstances of the case, this intention can for instance be inferred from the type of materials and the frequency of reference. Thus, downloading a manual to make explosives for the purpose of committing a terrorist offence could be considered as receiving training for terrorism. By contrast, the mere fact of visiting websites or collecting materials for legitimate purposes, such as academic or research purposes is not considered training for terrorism in accordance with this Directive.**

**(9)** Considering the seriousness of the threat and the need to in particular stem the flow of foreign terrorist fighters, it is necessary to criminalise on the one hand the **outbound** 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. **It is not indispensable to criminalise the act of travelling as such. Furthermore, travel to the territory of the Union with terrorist purposes presents a growing security threat. Member States may also decide to address terrorist threats arising from travel to the Member State concerned** by criminalising preparatory acts, **which may include planning or conspiracy**, with a view to commit or contribute to a terrorist offence. Any act of facilitation of such travel should also be criminalised.

***(9a) Illicit trade in firearms, oil, drugs, cigarettes, counterfeit goods and cultural objects, as well as trade in human beings, racketeering and extortion have become lucrative ways for terrorist groups to obtain funding. In this context, the increasing links between organised crime and terrorist groups constitute a growing security threat to the Union and should therefore be taken into account by the authorities of the Member States involved in criminal proceedings.***

**(10) Directive (EU) 2015/ 849 establishes common rules on the prevention of the use of the Union's financial system for the purposes of money laundering or terrorist financing. In addition to this preventive approach**, terrorist financing should be punishable in the Member States. **Criminalisation should cover not only the financing of terrorist acts, but also** 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. (...).

**(11)** Furthermore, the provision of material support for terrorism through persons engaging in or acting as intermediaries in the supply or movement of services, assets and goods, including trade transactions involving the entry into or exit from the Union, **such as sale, acquisition or exchange of a cultural object of archaeological, artistic, historical or scientific interest illegally removed from an area controlled by a terrorist group at the time of the removal**, should be punishable in the Member States, as aiding and abetting terrorism or as terrorist financing if performed with the knowledge that these operations or the proceeds thereof are intended to be used, in full or in part, for terrorist purposes or will benefit terrorist groups. **Further measures may be necessary with a view to effectively combat the illicit trade in cultural goods as a source of income for terrorist groups. While avoiding an undue administrative burden for economic actors, it is also necessary to ensure that terrorist groups may not benefit from any trading in goods.**

(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.

***(14a) When recruitment and training for terrorism are directed towards a child, Member States should ensure that (...) this circumstance is available for judges to consider when sentencing offenders, although there is no obligation on judges to increase the sentence. It remains within the discretion of the judge to assess that circumstance together with the other facts of the particular case.***

(15) Jurisdictional rules should be established to ensure that the **offences laid down in this Directive** may be effectively prosecuted. In particular, it appears **appropriate** to establish jurisdiction for the offences committed by the providers of training for terrorism, whatever their nationality, in view of the possible effects of such behaviours on the territory of the Union and of the close material connexion between the offences of providing and receiving training for terrorism.

**(15a) To ensure the success of investigations and the prosecution of terrorist offences, offences related to a terrorist group or offences related to terrorist activities, those responsible for investigating and prosecuting such offences should have the possibility to make use of effective investigative tools such as those which are used in combating organised crime or other serious crimes. Such tools should, where appropriate, ~~while taking into account the principle of proportionality and the nature and seriousness of the offences under investigation in accordance with national law,~~ include, for example, the search of any personal property, the interception of communications, covert surveillance including electronic surveillance, the taking and the fixing of audio recordings in private or public vehicles and places, and of visual images of persons in public vehicles and places, and financial investigations. The use of such tools, in accordance with national law, should take into account the principle of proportionality and the nature and seriousness of the offences under investigation and respect the right to the protection of personal data ~~should be respected.~~<sup>13</sup>**

***(15b) An effective means of combating terrorism on the Internet is to remove online content constituting a public provocation to commit a terrorist offence at its source. Member States should use their best endeavours to cooperate with third countries in seeking to secure the removal of online content constituting a public provocation to commit a terrorist offence from servers within their territory. However, when removal of such content at its source is not feasible, mechanisms may also be put in place to block access from Union territory to such content. The measures undertaken by Member States in accordance with this Directive in order to remove online content constituting a public provocation to commit a terrorist offence or, where this is not feasible, block access to such content could be based on (...) public action, such as legislative, non-legislative or judicial (...). In that context, this Directive is without prejudice to voluntary action taken by the Internet industry to prevent the misuse of its services or to any support for such action by Member States, such as detecting and flagging terrorist content. Whichever basis for action or method is chosen, Member States should ensure that it provides an adequate level of legal certainty and predictability to users and service providers and the possibility of judicial redress in accordance with national legislation. Any such measures must take account of the rights of the end users and comply with existing legal and judicial procedures and the Charter of Fundamental Rights of the European Union.***

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<sup>13</sup> The structure of the provision was adjusted to underline the importance of safeguards and make it more visible.

**(15c) Removal or where it is not feasible blocking of online content constituting a public provocation to commit a terrorist offence in accordance with this Directive should be without prejudice to the rules laid down in Directive 2000/31/EC (e-Commerce Directive).<sup>14</sup> In particular, no general obligation should be imposed on service providers to monitor the information which they transmit or store, nor should a general obligation be imposed upon them to actively seek facts or circumstances indicating illegal activity. Furthermore, hosting service providers should not be held liable as long as they do not have actual knowledge of illegal activity or information and are not aware of the facts or circumstances from which the illegal activity or information is apparent.**

**(15d)** The following accompanying recital is suggested, including some further adjustments:

*To combat terrorism effectively, efficient exchange of information considered as relevant by the competent authorities for the prevention, detection, investigation or prosecution of terrorist offences between competent authorities and Union agencies is crucial. Member States should ensure that information is exchanged in an effective and timely manner in accordance with national law and the existing EU legal framework, such as Council Decision 2005/671/JHA, Council Decision 2007/533/JHA and Directive 2016/681/EU. When considering whether to exchange relevant information, national competent authorities should take into account the gravity of terrorist offences.*

**(15e)** *To strengthen the existing framework on information exchange in combating terrorism, as set out in Council Decision 2005/671/JHA, Member States should ensure that relevant information gathered by their competent authorities in the framework of criminal proceedings, e.g. law enforcement authorities, prosecutors, or investigative judges is made accessible to the respective competent authorities of another Member State to whom it considers this information could be relevant. As a minimum, such relevant information should include as appropriate the information that is transmitted to Europol or Eurojust in accordance with Council Decision 2005/671/JHA. This is subject to EU rules on data protection, as laid down under Directive (EU) 2016/680 and without prejudice to EU rules on cooperation between competent national authorities in the framework of criminal proceedings, such as Directive 2014/41/JHA or Framework Decision 2006/960/JHA.*

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<sup>14</sup> Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce') (OJ L 178, 17.7.2000, p. 1).

**(15f) Relevant information gathered by competent authorities of the Member States in the framework of criminal proceedings in connection with terrorist offences should be exchanged. Criminal proceedings is understood to cover all stages of the proceedings, from the moment when a person is suspected or accused of having committed a criminal offence, or an alleged criminal offence, until the decision on the final determination of whether that person has committed the criminal offence concerned has become definitive.**<sup>15</sup>

(16) Member States should adopt (...) measures of protection, support and assistance responding to the specific needs of victims of terrorism, **in accordance with** Directive 2012/29/EU of the European Parliament and the Council<sup>16</sup> and as further qualified **by this Directive**. Victims of terrorism are those defined in Article 2 of Directive 2012/29/EU **being a natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a terrorist offence, and family members of a person whose death was directly caused by a terrorist offence and who have suffered harm as a result of that person's death.** (...) Family members of surviving victims of terrorism, as defined in Article 2 of Directive 2012/29/EU, **have access to victim support services and protection measures in accordance with Directive 2012/29/EU.**

***(16a) The assistance with victims' compensation claims is without prejudice and in addition to the assistance which victims of terrorism receive from assisting authorities in accordance with Directive 2004/80/EC relating to compensation to crime victims. This is without prejudice to the national rules on legal representation for claiming compensation, including through legal aid arrangements, nor any other relevant national rules on compensation.***

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<sup>15</sup> A recital along the lines of the Presumption of Innocence Directive on the notion of criminal proceedings is introduced for reasons of coherence of Union legislation.

<sup>16</sup> Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA of 15 March 2001(OJ L 315, 14.11.2012 p. 57).

**(16b)** Member States should ensure that *a comprehensive response to the specific needs of victims of terrorism immediately after a terrorist attack and for as long as necessary thereafter is provided within the national emergency-response infrastructure. To that end, Member States may set up a single and updated website with all relevant information and an emergency support centre for victims and their family members providing for psychological first aid and emotional support. Initiatives of Member States in this respect should be supported by making full use of available common assistance mechanisms and resources at EU level.* Support services should take into account that specific needs of victims of terrorism may evolve in time. In that regard, the Member States should ensure that support services will address in the first place at least the emotional and psychological needs of the most vulnerable victims of terrorism, and will inform all victims of terrorism about the availability of further emotional and psychological support including trauma support and counselling.

(17) Member States' should (...) ensure that **all victims of terrorism have access to** information about the victims' rights, about available support services and (...) compensation schemes **in the Member State where the terrorist offence was committed. Member States concerned should take appropriate action to facilitate cooperation with each other in order to ensure that victims of terrorism, who are residents of a Member State other than that where the terrorist offence was committed have effective access to such information.** Moreover the Member States should ensure that victims of terrorism have access to a long-term support services in the country of their residence, even if the terrorist offence took place in another EU country.

**(17a)** As reflected in the revised EU Strategy on Radicalisation and recruitment of 2014 and the Council Conclusions on enhancing the criminal justice response to radicalisation leading to terrorism and violent extremism of 2015, *prevention of radicalisation and recruitment to terrorism, including radicalisation online, requires a long-term, proactive and comprehensive approach. Such approach should combine measures in the area of criminal justice with policies in the field of education, social inclusion and integration, as well as the provision of effective deradicalisation or disengagement and exit or rehabilitation programmes, including in the prison and probation context. Member States should share good practices, on effective measures and projects in this field, in particular as regards foreign terrorist fighters as well as returnees, where appropriate in cooperation with the relevant EU agencies and the Commission.*

***(17b) Member States should pursue their efforts to prevent and counter radicalisation leading to terrorism by coordinating, sharing information and experience on national prevention policies and by implementing or, as the case may be, updating national prevention policies taking into account their own needs, objectives and capabilities building on their own experiences The Commission should, where appropriate, provide support to national, regional and local authorities in developing prevention policies.***

***(17c) Member States should, depending on the relevant needs and particular circumstances in each country, provide support to professionals, including civil society partners likely to come in contact with persons vulnerable to radicalisation. Such support measures may include in particular training and awareness raising measures aimed at enabling them to identify and address signs of radicalisation. Such measures should, where appropriate, be taken in cooperation with private companies, relevant civil society organisations, local communities and other stakeholders.***

(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 **Titles II, III, V and VI** thereof which encompass inter alia the right to liberty and security, freedom of expression and information, freedom of association and freedom of thought conscience and religion, the general prohibition of discrimination in particular on grounds of race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, the right to respect for private and family life and the right to protection of personal data, the principle of legality and proportionality of criminal offences and penalties, covering also the requirement of precision, clarity and foreseeability in criminal law, the presumption of innocence as well as freedom of movement as set forth in Article 21(1) of the Treaty on the Functioning of the European Union and Directive 2004/38/EC. This Directive has to be implemented in accordance with these rights and principles. **This Directive has to be implemented in accordance with these rights and principles taking also into account the European Convention for the Protection of Human Rights and Fundamental Freedoms, the International Covenant on Civil and Political Rights and other human rights obligations under international law.**

**(19a) This Directive is without prejudice to the Member States' obligations under Union law with regards to the procedural rights of suspects or accused persons in criminal proceedings.**

**(19b) This Directive should not have the effect of altering the rights, obligations and responsibilities of the Member States under international law, including under international humanitarian law. The activities of armed forces during periods of armed conflict, which are governed by international humanitarian law within the meaning of these terms under that law, and, inasmuch as they are governed by other rules of international law, activities of the military forces of a State in the exercise of their official duties are not governed by this Directive.**

***(19c) The provision of humanitarian activities by impartial humanitarian organisations recognised by international law, including international humanitarian law, do not fall under the scope of this Directive, while taking into account the case law of the Court of Justice of the European Union.***

(20) The implementation of the criminalisation under this Directive should be proportional to the nature and circumstances of the offence, with respect to the legitimate aims pursued and to their necessity in a democratic society, and should exclude any form of arbitrariness, **racism** or discrimination.

**(20a) Nothing in this Directive should be interpreted as being intended to reduce or restrict the dissemination of information for scientific, academic or reporting purposes. The expression of radical, polemic or controversial views in the public debate on sensitive political questions, falls outside the scope of this Directive and, in particular, of the definition of public provocation to commit terrorist offences.**

(21) *This Directive replaces* Framework Decision 2002/475/JHA for the Member States bound by this Directive ***and amends Council Decision 2005/671/JHA.***

(22) (...) <sup>17</sup>

(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:

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<sup>17</sup> Protocol (No 21) - opt in clause - deleted in relation to the position of UK and IE

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

**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 *following* intentional acts (...), 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 *one of* the aims *referred to in paragraph 2*:
  - (a) attacks upon a persons' life which may cause death;
  - (b) attacks upon the physical integrity of a person;
  - (c) kidnapping or hostage taking;
  - (d) causing extensive destruction to a Government or public facility, a transport system, an infrastructure facility, including an information system, a fixed platform located on the continental shelf, a public place or private property likely to endanger human life or result in major economic loss;
  - (e) seizure of aircraft, ships or other means of public or goods transport;
  - (f) manufacture, possession, acquisition, transport, supply or use of weapons, explosives or of chemical, biological, *radiological or* nuclear weapons, as well as research into, and development of (...) *such* 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) **illegal system interference, as referred to in Article 4 of Directive 2013/40/EU on attacks against information systems in cases where Article 9, paragraph (3) or (4)(b) or (c) of the said Directive apply, and illegal data interference, as referred to in Article 5 of Directive 2013/40/EU on attacks against information systems in cases where Article 9, paragraph (4)(c) of the said Directive applies;**
- (j) threatening to commit any of the acts listed in points (a) to (i).

2. *Aims referred to in paragraph 1 are:*

- 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.

*Article 4*

*Offences relating to a terrorist group*

Each Member State shall take the necessary measures to ensure that the following acts, when committed intentionally, are punishable as a criminal offence:

- (a) directing a terrorist group;
- (b) participating in the activities of a terrorist group, including by supplying information or material resources, or by funding its activities in any way, with knowledge of the fact that such participation will contribute to the criminal activities of the terrorist group.

**TITLE III: OFFENCES RELATED TO TERRORIST ACTIVITIES**

*Article 5*

*Public provocation to commit a terrorist offence*

Member States shall take the necessary measures to ensure that the distribution, or otherwise making available *by any means, whether on- or offline*, of a message to the public, with the intent to incite the commission of one of the offences listed in points (a) to (i) of **Article 3(1)**, where such conduct, directly **or indirectly, such as by the glorification of terrorist acts**, advocates the **commission of** terrorist offences, **thereby** causing a danger that one or more such offences may be committed, is punishable as a criminal offence when committed intentionally.

*Article 6*

*Recruitment for terrorism*

Member States shall take the necessary measures to ensure that soliciting another person to commit *or contribute to the commission of* one of the offences listed in points (a) to (i) of *Article 3(1)*, 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 one of the offences listed in points (a) to (i) of *Article 3(1)*, knowing that the skills provided are intended to be used for this purpose, is punishable as a criminal offence when committed intentionally.

*Article 8*

*Receiving training for terrorism*

Member States shall take the necessary measures to ensure that to receive instruction, (...) in the making or use of explosives, firearms or other weapons or noxious or hazardous substances, or in other specific methods or techniques, for the purpose of committing of or contributing to the commission of one of the offences listed in points (a) to (i) of *Article 3(1)* is punishable as a criminal offence when committed intentionally.

## Article 9

### *Travelling (...) for the purpose of terrorism*

1. **Each Member States** shall take the necessary measures to ensure that **travelling to a country other than that Member State (...)** for the purpose of the commission of or contribution to a terrorist offence referred to in Article 3, **for the purpose of** the participation in the activities of a terrorist group **with knowledge of the fact that such participation will contribute to the criminal activities of such a group** as referred to in Article 4, **or for the purpose of** the providing or receiving of training for terrorism referred to in Articles 7 and 8 is punishable as a criminal offence when committed intentionally.
2. *Each Member State shall take the necessary measures to ensure that one of the following conducts is punishable as a criminal offence when committed intentionally:*
  - a) *travelling to that Member State for the purpose of the commission or contribution to a terrorist offence, as referred to Article 3, for the purpose of the participation in the activities of a terrorist group with knowledge of the fact that such participation will contribute to the criminal activities of such a group as referred to in Article 4, or for the purpose of the providing or receiving of training for terrorism referred to in Articles 7 and 8; or*
  - b) *preparatory acts undertaken by a person entering that Member State with the intention to commit or contribute to a terrorist offence, as referred to in Article 3.*

## Article 10

### *Organising or otherwise facilitating travelling (...) for the purpose of 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 **(1) and (2)(a)**, knowing that the assistance thus rendered is for that purpose, is punishable as a criminal offence when committed intentionally.

*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 intention that they be used, or *in the knowledge* that they are to be used, in full or in part, to commit **or to contribute to** any of the offences referred to in Articles 3 to 10 is punishable as a criminal offence when committed intentionally.
  
2. **Where the terrorist financing referred to in paragraph 1 concerns any of the offences laid down in Articles 3, 4 and 9, it shall not be necessary that the funds be in fact used, in full or in part, to commit or to contribute to any of those offences, nor shall it be required that the offender knows for which specific offence(s) the funds are to be used.**

*Article 12*  
*Other offences related to terrorist activities*

**Each Member State shall take the necessary measures to ensure that offences related to terrorist activities include the following intentional acts:**

- a) aggravated theft with a view to committing one of the offences listed in Article 3;
- b) extortion with a view to the perpetration of one of the offences listed in Article 3;
- c) drawing up *or using* false administrative documents with a view to committing one of the offences listed in points (a) to (i) of *Article 3(1)*, point (b) of Article 4 **and Article 9**.

*Article 13*  
**(merged with Article 12)**

*Article 14*  
**(merged with Article 12)**

**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, insofar as the offences referred to in Articles 5 to 10 and 12 are concerned, to establish a link to another specific offence laid down in this Directive.**

*Article 16*

*Aiding **and** 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, 11 and **12** is made punishable.
2. Each Member State shall take the necessary measures to ensure that inciting an offence referred to in Articles 3 to **12** is made punishable.
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(1) and 9(2)(a)**, 11 and **12**, with the exception of possession as provided for in point (f) of *Article 3(1)* and the offence referred to in point (j) of *Article 3(1)*, is made punishable.

*Article 17*

*Penalties for natural persons*

1. Each Member State shall take the necessary measures to ensure that the offences referred to Articles 3 to **12** and 16 are punishable by effective, proportionate and dissuasive criminal penalties, which may entail **surrender or** extradition.
2. Each Member State shall take the necessary measures to ensure that the terrorist offences referred to in Article 3 and offences referred to in Article 16, inasmuch as they relate to terrorist offences, are punishable by custodial sentences heavier than those 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 4 a maximum sentence of not less than eight years. Where the terrorist offence referred to in point (j) of *Article 3(1)* 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.
- 4. Member States shall take the necessary measures to ensure that when a criminal offence referred to in Articles 6 and 7 is directed towards a child, this may, in accordance with national law, be taken into account in sentencing<sup>18</sup>.**

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<sup>18</sup> Adjustment of the text in line with views of delegations expressed at the FoP meeting on 3 November 2016, as presented at the 6th trilogue

*Article 18*  
*Mitigating circumstances*

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

- (a) renounces terrorist activity, and
- (b) provides the administrative or judicial authorities with information which they would not otherwise have been able to obtain, helping them to:
  - (1) prevent or mitigate the effects of the offence;
  - (2) identify or bring to justice the other offenders;
  - (3) find evidence; or
  - (4) prevent further offences referred to in Articles 3 to **12** 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 **12** and 16 committed for their benefit by any person, acting either individually or as part of an organ of the legal person, and having a leading position within the legal person, based on one of the following:
  - (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 **12** 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 **12** 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 **12** 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) (...)
  - (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.

- 1a. Each Member State may extend its jurisdiction over training for terrorism, as referred to in Article 7, where the offender provides training to its nationals or residents, in cases where paragraph 1 is not applicable. The Member State shall inform the Commission thereof.**
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.

(...) Account shall be taken of the following factors:

- (a) the Member State shall be that in the territory of which the acts were committed,
  - (b) the Member State shall be that of which the perpetrator is a national or resident,
  - (c) the Member State shall be the Member State of origin of the victims,
  - (d) the Member State shall be that in the territory of which the perpetrator was found.
3. Each Member State shall take the necessary measures also to establish its jurisdiction over the offences referred to in Articles 3 to **12** and 16 in cases where it refuses to hand over or extradite a person suspected or convicted of such an offence to another Member State or to a third country.
  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 and confiscation*

1. Member States shall take the necessary measures to ensure that effective investigative tools, such as those which are used in organised crime or other serious crime cases, are available to persons, units or services responsible for investigating or prosecuting the offences referred to in Articles 3 to 12.
2. ***Member States shall take the necessary measures to ensure that their competent authorities freeze and confiscate, as appropriate, in line with Directive 2014/42/EU<sup>19</sup>, the proceeds derived from and instrumentalities used or intended to be used in the commission or contribution of any of the offences referred to in this Directive<sup>20</sup>.***

## *Article 21b*

### **Measures against public provocation content online**

1. ***Member States shall take the necessary measures to ensure the prompt removal of online content constituting a public provocation to commit a terrorist offence, as referred to in Article 5, that is hosted in their territory. They shall also endeavour to obtain the removal of such content hosted outside of their territory.***
2. ***Member States may, when removal of such content at its source is not feasible, take measures to block the access to content referred to in paragraph 1 towards the Internet users within their territory.***
3. ***Measures of removal and blocking 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. Safeguards relating to removal or blocking shall also include the possibility of judicial redress.***

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<sup>19</sup> Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union (OJ L 127 29.4.2014, p. 39).

<sup>20</sup> Adjustments introduced in the text to address the points raised by delegations at the meeting of FoP DROIPEN of 3 November 2016 and agreed by the EP at the last trilogue.

Article 21c

*Amendments to Council decision 2005/671/JHA*

**1. In Article 1, letter (a) is replaced by the following:**

***"(a) "Terrorist offences": the offences referred to in Directive .../.../EU on combating terrorism;"***

**2. Article 2 is amended as follows:**

**a) paragraph 6 is replaced by the following:**

***" 6. Each Member State shall take the necessary measures to ensure that (...) relevant information gathered by its competent authorities in the framework of criminal proceedings in connection with terrorist offences is made accessible as soon as possible to the competent authorities of another Member State, where the information could be used in the prevention, detection, investigation or prosecution of terrorist offences, referred to in Directive .../.../EU on combating terrorism in that Member State, either upon request or spontaneously, and in accordance with national law and relevant international legal instruments."***

**b) the following paragraph 7 is added:**

***"7. Paragraph 6 is not applicable where the sharing of information would jeopardise current investigations or the safety of an individual, nor when it would be contrary to essential interests of the security of the Member State concerned."***

**c) the following paragraph 8 is added:**

***"8. Member States shall take the necessary measures to ensure that their competent authorities take, upon receiving of the information referred to in paragraph 6, timely measures in accordance with national law, as appropriate."***

Article 21d

*Fundamental rights and freedoms*

1. *This Directive shall not have the effect of modifying the obligations to respect fundamental rights and fundamental legal principles, as enshrined in Article 6 of the Treaty of the European Union.*
  
- 2. Member States may establish conditions required by and in line with fundamental principles relating to freedom of the press and other media, governing the rights and responsibilities of and the procedural guarantees for the press or other media where they relate to the determination or limitation of liability.**

*Article 21c (new)*

~~*Fundamental principles relating to freedom of press and other media*~~

(merged with Article 21d)

## 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 (...) **support** services **addressing the specific needs of** victims of terrorism are in place **in accordance with Directive 2012/29/EU and that they are available for victims of terrorism immediately after a terrorist attack and as long as necessary thereafter. Such services shall be provided in addition to, or as an integrated part of general victim support services, which may call on existing entities providing specialist support.**
3. **The support** services shall have the **ability** to provide assistance and support to **victims of terrorism in accordance with their specific needs (...)**. The services shall be confidential, free of charge and easily accessible to all victims of terrorism. They shall include in particular:

- a) emotional and psychological support, such as trauma support and counselling;
  - b) provision of advice and information on any relevant legal, practical or financial matters, *including facilitating the exercise of the right to information of victims of terrorism, as laid down in Article 23;*
  - c) *assistance with (...) claims, **regarding compensation for victims of terrorism available under national law of the Member State concerned***<sup>21</sup>
4. *Member States shall ensure that mechanisms or protocols are in place allowing for activation of support services for victims of terrorism within the framework of their national emergency-response infrastructures. Such protocols or mechanism shall envisage the coordination of relevant authorities, agencies and bodies to be able to provide a comprehensive response to the needs of victims and their family members immediately after a terrorist attack and as long as necessary thereafter, including adequate means facilitating the identification of and communication to victims and their families.*
5. *Member States shall ensure that adequate medical treatment is provided to victims of terrorism immediately after a terrorist attack and for as long as necessary thereafter. Member States shall retain the right to organise the provision of medical treatment to victims of terrorism in accordance with their national health care system.*
6. *Member States shall ensure that victims of terrorism have access to legal aid in accordance with Article 13 of Directive 2012/29/EU, where they have the status of parties to criminal proceedings. Member States shall ensure that the severity and the circumstances of the crime are duly reflected in the conditions and procedural rules under which victims of terrorism have access to legal aid in accordance with national law.*
7. This Directive shall apply in addition to and without prejudice to measures laid down in Directive 2012/29/EU.

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<sup>21</sup> Further clarification introduced on the scope of this provision alongside the COM proposal presented at the FoP DROIPEN meeting of 3 November and taking into account the support from EP for such a modification at the trilogue of 10 November.

*Article 22a*

*Protection of victims of terrorism*

**Member States shall ensure that measures are available to protect victims of terrorism and their family members, in accordance with Directive 2012/29/EU. When determining whether and to what extent they should benefit from protection measures in the course of criminal proceedings, particular attention shall be paid to the risk of intimidation and retaliation and to the need to protect the dignity and physical integrity of victims of terrorism, including during questioning and when testifying.**

*Article 23*

*Rights of victims of terrorism resident in another Member State*

1. Member States shall ensure (...) **that** victims of terrorism who are residents of a Member State other than that (...) where the terrorist offence was committed **have access to** information **regarding** their (...) rights, the available support services and (...) compensation schemes **in the Member State where the terrorist offence was committed. In this respect, Member States concerned shall take appropriate action to facilitate cooperation between their competent authorities or entities providing specialist support to ensure the effective access of victims to such information.**
2. Member States shall ensure that all victims of terrorism have access to the assistance and (...) support services as laid down in Article 22 (3) (a) **and (b)** 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 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.

### *Article 25*

#### *Transposition*

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [**18** months after adoption]<sup>22</sup>. 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.

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<sup>22</sup> As part of the global compromise package and to be consistent with the political objective to strengthen promptly the framework to combat terrorism efficiently, delegations are invited to support a transposition period of 18 months

*Article 26*

*Reporting*

1. The Commission shall, by [**18** 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 [**36** months after the deadline for implementation of this Directive], submit a report to the European Parliament and to the Council, assessing the added value of this Directive on combating terrorism. ***The report shall also cover this Directive's impact on fundamental rights and freedoms, on the rule of law, on minorities,<sup>23</sup> and on the level of protection and assistance provided to victims of terrorism.*** The Commission shall take into account the information provided by Member States under Decision 2005/671/JHA ***and any other relevant information regarding the exercise of powers under counter-terrorism laws related to the transposition and implementation of this Directive. On the basis of this evaluation, the Commission shall, if necessary, decide on appropriate follow-up actions.***

*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*

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<sup>23</sup> It is proposed to include this specific reference if it will secure the approval of the text of one political group in EP.