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On 20 October 2016 the fifth trilogue on the Terrorism Directive took place. At present, all substantive provisions have been discussed and the co-legislators have had opportunity to present their positions.

To make further progress in the negotiations, at the next trilogue on 10 November the Presidency intends to present to the EP a consolidated text of the operative provisions, as resulting from the discussions thus far, including some of the related recitals. The proposed text in the Annex¹ aims to consolidate the positions of the EP and the Council around a balanced compromise package with a view to continuing work on that basis and concluding the negotiations in a timely manner. The full set of recitals will be integrated in the compromise package and presented to delegations at the next meeting on 15 November. A possible text for political declaration to facilitate the agreement with the EP will also be discussed at that meeting, as necessary.

¹ Council text is marked **in bold**; EP text and compromise text to address EP position is marked in ***bold italic***; new text compared to previous version is marked in **bold underlined**

At the FoP DROIPEN meeting on 3 November, the Presidency envisages to proceed in the context of the consolidated compromise text to a specific discussion on the following issues, including related recitals:

- travelling (Article 9)
 - exchange of information (Article 21c)
 - victims' rights (Article 22 to 23)
 - false documents (Article 12(c))
 - aggravating circumstances (Article 17a new)
 - investigative tools (Article 21a)
 - aiding and abetting (Article 16)
 - fundamental rights (Article 23a)
 - prevention (recitals)
 - reporting (Article 26).
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Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on combating terrorism and replacing Council Framework Decision 2002/475/JHA on combating terrorism

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 83(1), Article 82(2) (c) and **Article 87(2)(a)** 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:

[full set of recitals will be integrated in the document for the next meeting]

HAVE ADOPTED THIS DIRECTIVE:

TITLE I: SUBJECT MATTER AND DEFINITIONS

Article 1 *Subject matter*²

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*³

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) (...)

² Technical issue, provisionally agreed

³ Provisional agreement on the GA text

TITLE II:
TERRORIST OFFENCES AND OFFENCES RELATED TO A TERRORIST GROUP

Article 3
Terrorist offences⁴

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;

⁴ Subject to the above minor amendments, the GA text will be maintained by the Presidency

- (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 compelling⁵ 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.

⁵ As discussed at the last meeting, the following accompanying recital will be added in relation to the EP concern on the concept of "unduly compelling" in the operative text:
(6d) 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.

Article 4

Offences relating to a terrorist group⁶

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 offence⁷

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.

⁶ Provisional agreement on maintaining the GA text

⁷ Provisionally agreed, including accompanying recital 7 reading as follows:

"(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.**"

Article 6
*Recruitment for terrorism*⁸

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*⁹

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.

⁸ Technical issue, provisionally agreed

⁹ Identical, subject to minor technical adjustment

Article 8
*Receiving training for terrorism*¹⁰

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.

¹⁰ Provisionally agreed, including accompanying recital 9 reading as follows:
"(9)Criminalisation of the receiving training for terrorism complements the existing offence of providing training and specifically addresses the threats resulting from those actively preparing for the commission of terrorist offences, including those ultimately acting alone. **Receiving of training for terrorism includes the 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.**"

Article 9

Travelling (...) for the purpose of terrorism¹¹

1. Member States shall take the necessary measures to ensure that **travelling to another country within or outside the European Union, either directly or by transiting through one or several Member States**, for the purpose of the commission of or contribution to a terrorist offence referred to in Article 3, **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.

¹¹ Accompanying recitals:

(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. **The United Nations Security Council has expressed its concern in UNSCR 2178 (2014) in relation to the foreign terrorist fighters. The Council of Europe has, in this respect, adopted in 2015 the Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism (CETS No 217).**

Foreign terrorist fighters have been linked to several recent attacks or plots, including the attacks in Paris on 13 November 2015 *and in Brussels on 22 March 2016*. 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.

(4a 8) Considering the seriousness of the threat and the need to in particular stem the flow of foreign terrorist fighters, it is necessary to criminalise the travelling abroad for terrorist purposes, being not only the commission of terrorist offences and providing or receiving training but also to participate in the activities of a terrorist group. Any act of facilitation of such travel should also be criminalised. It is not indispensable to criminalise the act of travelling as such. Member States may also decide to address the threats of terrorist entering their territory by criminalising preparatory acts with a view to commit or contribute to a terrorist offence.

2. Member States 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 their territory, directly or by transiting through one or several Member States, for the purpose of the commission or contribution to a terrorist offence, as referred to Article 3 or
 - b) preparatory acts undertaken by a person entering their territory with the intention to commit or contribute to a terrorist offence, as referred to in Article 3.

Article 10

Organising or otherwise facilitating travelling ~~abroad~~¹² 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, knowing that the assistance thus rendered is for that purpose, is punishable as a criminal offence when committed intentionally.

Article 11

Terrorist financing¹³

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.

¹² Brought in line with Article 9

¹³ Tentative agreement on GA approach, subject to minor linguistic adjustments

- 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*¹⁴

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, **acquiring**¹⁵ 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)

¹⁴ Tentative agreement on GA structure

¹⁵ EP agrees not to cover possession of false documents. It is suggested however to cover the acquisition of false documents for terrorist purposes, which as such implies an active behaviour of the perpetrator with a view to committing a terrorist offence. This concept is used in the Directive on child abuse regarding the child pornography offences. Could delegations support this text?

Article 14a

Measures against public provocation content online¹⁶

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.*

¹⁶ The following recitals are introduced:

(7b) An effective means of combatting 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.

(7c) 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). 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.

**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 offences¹⁷

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**¹⁸ 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.

¹⁷ Tentative agreement on GA text

¹⁸ At the last meeting the issue of a possible overlap between Article 16(2) regarding Article 4 and Article 6 on public provocation was discussed.

Article 6 envisages that "**soliciting another person to commit an offence referred to in article 4 (e.g. joining a terrorist group)**" should be made punishable.

Article 16 (2) envisages that "**inciting an offence referred to in article 4(e.g. joining a terrorist group)**" should be made punishable.

At the trilogue of 20/10 The Presidency upheld the position expressed by the MSs that they are not convinced that there is a full overlap between the two provisions. To be able to reason this position to the EP, the Presidency invites delegations to provide specific examples to this effect.

Article 17
Penalties for natural persons¹⁹

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.

¹⁹ Tentative agreement on GA text

Article 17a

Aggravating circumstances

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 regarded as an aggravating circumstance²⁰.

Article 18

Mitigating circumstances²¹

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.

²⁰ As part of the global compromise package a provision on aggravating circumstances limited to children is suggested:

The following accompanying recital to new article 17a is proposed:

When recruitment and training for terrorism are directed against a child, Member States should provide for an aggravating circumstance in their national law in accordance with the applicable rules established by their legal systems on aggravating circumstances. They should ensure that this aggravating circumstance is available for judges to consider when sentencing offenders, although there is no obligation on judges to apply that aggravating circumstance. It remains within the discretion of the judge to assess those circumstances together with the other facts of the particular case.

²¹ Tentative agreement on GA text.

Article 19
*Liability of legal persons*²²

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.

²² Tentative agreement on GA text.

Article 20
*Penalties for legal persons*²³

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*²⁴

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.

²³ Tentative agreement on GA text

²⁴ In the context of a global compromise package the Presidency will continue upholding the Council position

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

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 make full use of Directive 2014/42/EU to freeze and confiscate assets in the context of criminal proceeding for the offences referred to in this Directive.**²⁵

²⁵ A reference in the operative part of the text to freezing and confiscation is very important for the EP and in particular for one of the big political groups. The Presidency suggests in this respect adding a reference to the existing EU rules. This will not be in contradiction with the same approach taken in relation to existing rules on legal aid for example (Article 13 of the VRs Directive). In view of the Presidency from a systematic point of view such a reference is better suited in the provision on investigative tools than in the provision on financing of terrorism.

The Presidency will pursue adding the recital on investigative tools in line with the GA.

Article 21b (new)

*Fundamental rights and freedoms*²⁶

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.

²⁶

As part of the compromise on fundamental rights and procedural guarantees the Presidency will suggest to the EP the following recitals:

(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. The Charter of Fundamental Rights of the European Union, which is applicable to Member States when transposing this Directive and when applying the national legislation implementing this Directive in accordance with Article 51(1) thereof, must be adhered to also in emergency situations.**

(19a new, as discussed at the last DROIPEN) 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 =19a, GA) 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 = 6c, EP) *The provision of humanitarian activities ~~assistanc~~ 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.*

Article 21c (new)

Fundamental principles relating to freedom of press and other media

Member States may establish conditions required by and in line with fundamental principles relating to freedom of the press and other media, governing the rights and responsibilities of and the procedural guarantees for the press or other media where ~~these rules~~ they relate to the determination or limitation of liability.

Article X
Prevention

[references in recitals]²⁷

²⁷ The EP has proposed a provision in the operative part of the Directive on prevention. The Presidency proposes the following package of recitals to address the EP concern (*basis -EP text*). A possible political declaration in this respect will be presented at the next meeting, as necessary.

(17c) As reflected in the revised EU Strategy on Radicalisation and recruitment of 2014 and 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 requires a long-term, proactive and comprehensive approach, combining measures in the area of criminal justice with policies in the field of education, social inclusion and integration, as well as the provision of effective deradicalisation or disengagement, as well as 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. Furthermore, Member States should share good practices on the use of effective alternative measures within the judicial approach to prevent citizens of the Union and third-country nationals legally residing in the Union from leaving the Union for terrorist purposes or to control their return to the Union from conflict zones. They should share such good practices not only with each other but also, where appropriate, with third countries, as well as with relevant Union agencies.

(17d) Member States should pursue their efforts to prevent and counter radicalisation leading to terrorism by coordinating, their strategies and sharing information and experience on national prevention policies at their disposal, practices at both Union and national level and 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 accordance with the Union strategy for combating radicalisation and recruitment to terrorism. The Commission should, where appropriate, provide support to national, regional and local authorities in developing prevention policies.

(17e=Art. 21b, EP) 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.

Article 21d (new)
Amendments to Council decision 2005/671/JHA

1. In Article 1, letter (a) shall be replaced by the following:

"(a) "Terrorist offences": the offences referred to in Directive .../.../EU on combatting 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 **collected by its competent authorities in the framework of criminal proceedings** in connection with terrorist offences **is made accessible as soon as possible to the ~~respective~~ 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 combatting terrorism in that Member State, either upon request or spontaneously**, and in accordance with national law and relevant international legal instruments."²⁸

²⁸ The following accompanying recital is suggested, including some further adjustments:
*To combat terrorism effectively, ~~systematic~~ **efficient** exchange of information relevant 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.*

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 collected by their competent authorities in the framework of criminal proceedings, e.g. law enforcement and judicial 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 as well as 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.

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. ~~or to specific conditions of use set by the originating party. The providing Member State may set specific conditions on the use of the information, such as the obligation to obtain its prior consent before the information can be shared with the competent authorities of another Member State or a third country~~²⁹."

c) the following paragraph 8 is added³⁰:

"8. Upon receiving the information referred to in paragraph 6, Member States shall take the necessary measures to ensure that their competent authorities take appropriate and timely action in accordance with national law. They shall inform the sending authorities of those actions without undue delay, unless this would be contrary to the essential interests of the security of the Member State concerned, jeopardise current investigation or the safety of an individual."

²⁹ As pointed out by some delegations at the last meeting, these parts refer to modalities of exchange of information that are regulated in detail under the data protection legislation. Taking into account that data protection rules are indeed fully applicable, the Presidency proposes therefore to leave out the respective parts of the text.

³⁰ At the last trilogue, the EP accepted the Council argument that their proposal on duty to investigate may run against fundamental principles of criminal law systems in the MSs. At the same time, the rapporteur insisted on the need to address the underlying concern of the EP covered by this provision, which is crucial for securing the support of LIBE for the compromise text. Namely that a proper exchange of information is followed by appropriate and timely action by the receiving MS, thus addressing loopholes in action identified in the aftermath of the terrorist attacks on EU soil. The proposed provision builds on existing concepts in recent EU legislation and aims to address the concern of the EP the extent possible.

**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 victims' compensation claims, as referred to in Directive 2004/80/EC.*³¹
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*³²

³¹ Accompanying recital to Article 22 (3)(c):
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. It is without prejudice to the national rules on legal representation for claiming compensation nor any other relevant national rules on compensation.

³² Accompanying recital 16a:
(16a) 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 should consider setting up of a single and updated website with all relevant information and an emergency support centre for victims and their family members providing for first aid psychological 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.

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, where compatible with the relevant national legal orders.*
7. This Directive shall apply in addition to and without prejudice to measures laid down in Directive 2012/29/EU.

Article 22a

Protection of victims of terrorism

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*³³

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 on the territory of the Member State of their residence, even if the terrorist offence was committed in another Member State.

³³ The Presidency upholds the GA text.

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 [24 months after adoption]³⁴. 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.

³⁴ The Presidency intends to discuss the transposition period with the EP further to the outcome of the first round of discussion of the global compromise package. At the last trilogue the Presidency upheld that since the Directive introduces new obligations for the MSs, in particular such that would require putting in place practical measures or boosting administrative capacity for victims support, this would require more time (than 12 months) for proper transposition.
Could delegations accept in this respect 18 months of transposition period?
COM has also raised the possibility of differentiated transposition period, i.e. 12 months to transpose the criminal law Articles 2 to 21a and 24 months for the other Articles.

Article 26

Reporting

1. The Commission shall, by [~~12-24~~ **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 [~~12-48~~ **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 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