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From:	Presidency
To:	Delegations
No. prev. doc.:	5982/16
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Subject:	Proposal for a Directive of the European Parliament and of the Council on combating terrorism and replacing Council Framework Decision 2002/475/JHA on combating terrorism - Examination of the revised text

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**I. Introduction**

1. On 18 February 2016, the Working Party on Substantive Criminal Law (DROIPEN) in a Friends of the Presidency formation concluded another round of examination of the revised text of the proposed Directive.
2. SI, RO and PT have a general scrutiny reservations. SE, SI, EE and CZ<sup>1</sup> have a parliamentary scrutiny reservation.

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<sup>1</sup> PL lifted its parliamentary scrutiny reservation

3. With a view to submitting a compromise text for reaching of a General Approach at the Council in March, the Presidency has prepared the present redraft of the proposed Directive. The text seeks to reflect the balance of positions expressed by delegations in a global framework that could serve as a basis for the final compromise<sup>2</sup>.

## II. Main elements of the compromise package

4. The Presidency would like to underline the following main elements of the present compromise package:
- *Traveling for the purpose of terrorism (Article 9)* - the scope of the provision has been limited to the outbound travelling to countries outside the EU;
  - *Financing of terrorism (Article 11)* - the scope of the provision has been limited to the necessary minimum to ensure a comprehensive criminalisation framework of terrorist financing at EU level, including ensuring a compliance with international standards in this area;
  - *Relationship to terrorist offences (Article 15)* - the provision has been further clarified in light of the preparatory nature of the offences concerned;
  - *Other offences related to terrorist activities (Article 12)* - as requested by a number of delegations the provision has been brought in line with the acquis; drawing up false administrative documents has been extended to Article 9;
  - *Jurisdiction (Article 21)* - establishing jurisdiction in cases where a training has been provided to EU nationals or residents and where paragraph 1 (nationality and territoriality principle) does not apply, is envisaged as an option;
  - *Victims' rights (Article 22 -23)* - a number of modifications have been made taking into account the positions of delegations, while aiming to maintain the thrust of the COM proposal;

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<sup>2</sup> Changes compared to the previous version of the text are marked in **bold underlined**

- *Transposition period (Article 25)* – this period has been extended to 24 months.
- *A number of new elements was also introduced, such as:*
  - (i) a reference to cyber attacks on the list of offences in Article 3(2)(i), which has been limited to the most serious cases liable to fulfil directly the specific terrorist purposes referred to in Article 3(1) - namely Article 4 and 5 of the Directive on attacks against information systems, in cases where a significant number of information systems has been affected, or where the attacks have caused serious damage or have been committed against a critical infrastructure information system; on the other hand, the proposal for new Article 21b on measures against websites inciting the commitment of a terrorist offence was not taken on board; however, wording in this respect was added in recital 7;
  - (ii) a specific reference to glorification as a form of indirect provocation to terrorism has been included in Article 5;
  - (iii) a new provision on investigative tools (Article 21), where the accompanying recital has been further redrafted to emphasise the possibility for each MS to apply differentiated approach in the possible use of certain investigative tools in accordance with national law taking into account the principle of proportionality and the nature and seriousness of the offences under investigation;
  - (iv) the reference to the trade transactions with cultural objects has been construed as an example of the indirect financing of terrorism in recital 11;
  - (v) a specific provision on the freedom of press and other media has been included (Article 21bis), as well as a new recital 19a on IHL.

### **III. Conclusion**

5. Delegations are invited to examine the modified text of the proposed Directive, as set out in this document, and to consider these proposals as a compromise package. At the next meeting of 26 February 2016, delegations will be therefore invited to express their reservations on the text, insofar as the underlying concern would not allow them to support the compromise package as a basis for a General Approach of the Council.

Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

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

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The European Union is founded on the universal values of human dignity, freedom, equality and solidarity, respect for human rights and fundamental freedoms. It is based on the principle of democracy and the principle of the rule of law, principles which are common to the Member States.
- (2) Acts of terrorism constitute one of the most serious violations of the universal values of human dignity, freedom, equality and solidarity, enjoyment of human rights and fundamental freedoms on which the European Union is founded. It also represents one of the most serious attacks on democracy and the rule of law, principles which are common to the Member States and on which the European Union is based.

- (3) Council Framework Decision 2002/475/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. **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).** Returning foreign terrorist fighters pose a heightened security threat to all EU Member States. ~~Foreign terrorist fighters have been linked to several recent attacks or plots, including the attacks in Paris on 13 November 2015.~~ In addition, the European Union and its Member States face increased threats from individuals inspired or instructed by terrorist groups abroad but who remain within Europe.

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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).

- (5) Taking account of the evolution of terrorist threats and legal obligations to the Union and Member States under international law, the definition of terrorist offences, **including** offences related to a terrorist group and offences related to terrorist activities, should be further approximated in all Member States, so that it covers more comprehensively conduct related to in particular foreign terrorist fighters and terrorist financing. These forms of behaviour should be punishable also if committed through the Internet, including social media.
- (6) The offences related to terrorist activities are of a very serious nature as they have the potential to lead to the commission of terrorist offences and enable terrorists and terrorist groups to maintain and further develop their criminal activities, justifying the criminalisation of such conduct.
- (7) The offenses related to public provocation to commit a terrorist offence act comprise, inter alia, the glorification and justification of terrorism or the dissemination of messages or images including those related to the victims of terrorism as a way to gain publicity for the terrorists cause or seriously intimidating the population, provided that such behaviour causes a danger that terrorist acts may be committed. **To strengthen actions against public provocation to commit a terrorist offence, and also taking into account the rise of new technologies, it seems appropriate for Member States to envisage measures to remove or to block access to webpages publicly inciting to commit terrorist offences . These measures must be set by transparent procedures and provide adequate safeguards, in particular to ensure that restrictions are limited to what is necessary and proportionate, and that users are informed of the reason for the restrictions.**
- (7a) 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, including terrorism, falls outside the scope of this Directive and, in particular, of the definition of public provocation to commit terrorist offences<sup>10</sup>.**
- (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 **to a country outside the Union** for terrorist purposes, not only in order to commit terrorist offences and provide or receive training but also to participate in the activities of a terrorist group. **The criminalisation under this Directive is limited to the travel to countries outside the Union as the destination where the person concerned intends to engage in terrorist activities and offences. The travel to the State of destination may be direct or by transiting other States en route.** Any act of facilitation of such travel should also be criminalised. **It is not indispensable to criminalise the act of travelling as such<sup>11</sup>.**

<sup>10</sup> New recital 13a has been inserted in line with recital 14 of FD 2008

<sup>11</sup> Accompanying recital to Article 9

- (9) Criminalisation of the receiving training for terrorism complements the existing offence of providing training and specifically addresses the threats resulting from those actively preparing for the commission of terrorist offences, including those ultimately acting alone.
- (10) Terrorist financing should be punishable in the Member States. **Criminalisation should** cover the financing of terrorist acts, the financing of a terrorist group, as well as other offences related to terrorist activities, such as the recruitment and training, or travel for terrorist purposes, with a view to disrupting the support structures facilitating the commission of terrorist offences. ~~Aiding and abetting or attempting terrorist financing should also be punishable.~~
- (11) Furthermore, the provision of material support for terrorism through persons engaging in or acting as intermediaries in the supply or movement of services, assets and goods, including trade transactions involving the entry into or exit from the Union, **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 terrorism financing if performed with the knowledge that these operations or the proceeds thereof are intended to be used, in full or in part, for terrorist purposes or will benefit terrorist groups.<sup>12</sup>
- (12) The attempt to travel abroad for terrorist purposes, should be punishable, as well as the attempt to provide training and recruitment for terrorism.
- (13) With regard to the criminal offences provided for in this Directive, the notion of intention must apply to all the elements constituting those offences. The intentional nature of an act or omission may be inferred from objective, factual circumstances.
- (14) Furthermore, penalties should be provided for natural and legal persons having committed or being liable for such offences, which reflect the seriousness of such offences.
- (15) Jurisdictional rules should be established to ensure that the 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<sup>13</sup>.

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<sup>12</sup> Further modifications to the recitals have been introduced on the basis of the FR/IT proposal presented on 8 February 2016. (WK 42/2016) The text has been therefore simplified and intended as an example of indirect financing of terrorism.

<sup>13</sup> See modifications introduced in Article 21.

- (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 <sup>14</sup> 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, inter alia, 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, ~~the monitoring of bank accounts other financial investigations~~ <sup>15</sup> ~~Taking into account, inter alia, the principle of proportionality, the use of such tools in accordance with national law should be commensurate with the nature and gravity of the offences under investigation.~~ The right to the protection of personal data should be respected. <sup>16</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>17</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) Member States should ensure that relevant mechanisms or protocols are in place allowing for activation of support services that have the capacity to address the specific needs of victims of terrorism immediately after a terrorist attack and for as long as necessary thereafter. Such 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.

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<sup>14</sup> Text aligned with recital 21 of the Counterfeiting of Euro directive.

<sup>15</sup> Further changes have been introduced in line with recital 27 of the Child Abuse Directive to emphasise the possibility for each MS to apply differentiated approach in the possible use of certain investigative tools in accordance with national law taking into account the principle of proportionality and the nature and seriousness of the offences under investigation.

<sup>16</sup> New recital 15a accompanying Article 21a. Modifications were made in light of outcome of discussions on this issue.

<sup>17</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. 37).



- (17) Member States' should (...) ensure that **all victims of terrorism have access to** information about the victims' rights, about available support services and ~~about available~~ compensation schemes. **Competent authorities and services of the Member States concerned should take appropriate action to facilitate cooperation with each other in order to ensure that victims of terrorism, residents of a Member State other than that where the terrorist offence was committed 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<sup>18</sup>.
- (18) Given that the objectives of this Directive cannot be sufficiently achieved by the Member States unilaterally and can therefore, because of the need for European-wide harmonised rules, be better achieved at the level of the Union, the Union may adopt measures, in accordance with the principle of subsidiarity, as set out in Article 5 of the Treaty on the European Union. In accordance with the principle of proportionality, as set out in that Article 5, this Directive does not go beyond what is necessary in order to achieve those objectives.
- (19) This Directive respects the principles recognised by Article 2 of the Treaty on the European Union, respects fundamental rights and freedoms and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union, including those set out in Chapters II, III, V and VI thereof which encompass inter alia the right to liberty and security, freedom of expression and information, freedom of association and freedom of thought conscience and religion, the general prohibition of discrimination in particular on grounds of race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, the right to respect for private and family life and the right to protection of personal data, the principle of legality and proportionality of criminal offences and penalties, covering also the requirement of precision, clarity and foreseeability in criminal law, the presumption of innocence as well as freedom of movement as set forth in Article 21(1) of the Treaty on the Functioning of the European Union and Directive 2004/38/EC. This Directive has to be implemented in accordance with these rights and principles. **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 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.**<sup>19</sup>

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<sup>18</sup> Wording brought in line with Article 23

<sup>19</sup> New recital 19a regarding the link to international humanitarian law. The text is consistent with recital 11 of FD 2002/475/JHA and Article 26 (4) and (5) of the CoE Convention on the Prevention of Terrorism.

- (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.
- (21) The Directive should replace Framework Decision 2002/475/JHA<sup>20</sup> for the Member States bound by this Directive.
- (22) In accordance with Article 3 of the Protocol (No 21) on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on the European Union and to the Treaty on the Functioning of the European Union, the United Kingdom and Ireland have notified their wish to take part in the adoption and application of this Directive.

AND/OR

- (23) In accordance with Articles 1 and 2 of the Protocol (No 21) on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on the European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, the United Kingdom and Ireland are not taking part in the adoption and application of this Directive and are not bound by it or subject to its application.]
- (24) In accordance with Articles 1 and 2 of the Protocol (No 22) on the position of Denmark annexed to the Treaty on the European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application. Framework Decision 2002/475/JHA shall continue to be binding upon and applicable to Denmark.

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<sup>20</sup> As amended by Council Framework Decision 2008/919/JHA of 28 November 2008 amending Framework Decision 2002/475/JHA (OJ L 330, 9.12.2008, p. 21).

HAVE ADOPTED THIS DIRECTIVE:

## TITLE I: SUBJECT MATTER AND DEFINITIONS

### *Article 1*

#### *Subject matter*

This Directive establishes minimum rules concerning the definition of criminal offences and sanctions in the area of terrorist offences, offences related to a terrorist group and offences related to terrorist activities, as well as (...) measures of protection of and assistance to victims of terrorism.

### *Article 2*

#### *Definitions*

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

- (a) "funds" means assets of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including, but not limited to, bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts, letters of credit,
- (b) "legal person" means any entity having legal personality under the applicable law, except for States or public bodies in the exercise of State authority and for public international organisations,
- (c) "terrorist group" shall mean: a 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.**

## **TITLE II:**

### **TERRORIST OFFENCES AND OFFENCES RELATED TO A TERRORIST GROUP**

#### *Article 3*

#### *Terrorist offences*

1. Each Member State shall take the necessary measures to ensure that the intentional acts referred to in paragraph 2, as defined as offences under national law, which, given their nature or context, may seriously damage a country or an international organisation are defined as terrorist offences where committed with the aim of one or more of the following:
  - (a) seriously intimidating a population;
  - (b) unduly compelling a Government or international organisation to perform or abstain from performing any act,
  - (c) seriously destabilising or destroying the fundamental political, constitutional, economic or social structures of a country or an international organisation.
  
2. Intentional acts referred to in paragraph 1 are
  - (a) attacks upon a persons' life which may cause death;
  - (b) attacks upon the physical integrity of a person;
  - (c) kidnapping or hostage taking;
  - (d) causing extensive destruction to a Government or public facility, a transport system, an infrastructure facility, including an information system, a fixed platform located on the continental shelf, a public place or private property likely to endanger human life or result in major economic loss;
  - (e) seizure of aircraft, ships or other means of public or goods transport;
  - (f) manufacture, possession, acquisition, transport, supply or use of weapons, explosives or of nuclear, biological or chemical weapons, as well as research into, and development of, biological and chemical weapons;
  - (g) release of dangerous substances, or causing fires, floods or explosions the effect of which is to endanger human life;

- (h) interfering with or disrupting the supply of water, power or any other fundamental natural resource the effect of which is to endanger human life;
- (i) **illegal system interference or illegal data interference, as referred to in Article 4 and Article 5 of Directive 2013/40/EU on attacks against information systems in cases where Article 9, paragraph (3) or (4)(b) and (c) of the said Directive apply;**<sup>21</sup>
- (j) threatening to commit any of the acts listed in points (a) to **(i)**.

*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.

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<sup>21</sup> The position of the reference to the attacks against information systems has been changed to respect the systematic order of the provision. Reference to Article 5 has been included.

### TITLE III: OFFENCES RELATED TO TERRORIST ACTIVITIES

#### Article 5

##### *Public provocation to commit a terrorist offence*

Member States shall take the necessary measures to ensure that the distribution, or otherwise making available, of a message to the public, with the intent to incite the commission of one of the offences listed in points (a) to **(i)** of Article 3(2), where such conduct ~~whether~~ 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<sup>22</sup>.

#### Article 6

##### *Recruitment for terrorism*

Member States shall take the necessary measures to ensure that soliciting another person to commit one of the offences listed in points (a) to **(i)** of Article 3(2), or in Article 4 is punishable as a criminal offence when committed intentionally.

#### Article 7

##### *Providing training for terrorism*

Member States shall take the necessary measures to ensure that providing instruction in the making or use of explosives, firearms or other weapons or noxious or hazardous substances, or in other specific methods or techniques, for the purpose of committing of or contributing to one of the offences listed in points (a) to **(i)** of Article 3(2), knowing that the skills provided are intended to be used for this purpose, is punishable as a criminal offence when committed intentionally.

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<sup>22</sup> The text of the provision has been further refined in line with the IE proposal in WK 51/2016. A new recital 7a in line with recital 14 of FD 2008 has been inserted in order to further clarify the scope of this provision.

## Article 8

### *Receiving training for terrorism*

Member States shall take the necessary measures to ensure that to receive instruction, from another person<sup>23</sup> 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 or contributing to the commission of one of the offences listed in points (a) to **(i)** of Article 3(2) is punishable as a criminal offence when committed intentionally.

## Article 9

### *Travelling abroad for **the purpose of terrorism***

Member States shall take the necessary measures to ensure that travelling to a country **outside the Union, directly or by transiting through one or several Member States of the Union**, for the purpose of the commission of or contribution to a terrorist offence referred to in Article 3, the participation in the activities of a terrorist group **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 the providing or receiving of training for terrorism referred to in Articles 7 and 8 is punishable as a criminal offence when committed intentionally.

## Article 10

### *Organising or otherwise facilitating travelling abroad for **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.

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<sup>23</sup> The wording of the proposed Article 8 is in line with Article 3 of the CoE Protocol and in this respect, the Presidency is of the opinion that the provision should be maintained as it stands.

*Article 11*  
*Terrorist financing*

Member States shall take the necessary measures to ensure that providing or collecting funds, by any means, directly or indirectly, with the intent that they should be used, or knowing that they are to be used, in full or in part, to commit **or to contribute to** any of the offence(s) referred to in Articles 3 to **10**<sup>24</sup> (...) is punishable as a criminal offence when committed intentionally. **For the offence to be punishable, it shall not be necessary that a specific offence referred to in Articles 3 to 10 can already be identified.**

*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 false administrative documents with a view to committing one of the offences listed in in points (a) to **(i)** of Article 3(2) and point (b) of Article 4 **and 9**.

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<sup>24</sup> The proposed scope of the provision (covering Articles 3 to 9, including contribution to these offences), is in the view of the Presidency the absolute minimum to ensure a comprehensive criminalisation framework of terrorist financing at EU level, including ensuring a compliance with international standards in this area.



*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 offence laid down in this Directive**<sup>25</sup>.

*Article 16*  
*Aiding or abetting, inciting and attempting*

1. Each Member State shall take the necessary measures to ensure that aiding or abetting an offence referred to in Articles 3 to 8, ~~and 11 and to~~ **12** ~~14~~ is made punishable.
2. Each Member State shall take the necessary measures to ensure that inciting an offence referred to in Articles 3 to **12** ~~14~~ is made punishable.
3. Each Member State shall take the necessary measures to ensure that attempting to commit an offence referred to in Articles 3, 6, 7, 9, ~~and 11 and~~ **12** ~~to~~ ~~14~~, with the exception of possession as provided for in point (f) of Article 3(2) and the offence referred to in point **(j)** of Article 3(2), is made punishable.

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<sup>25</sup> The wording inserted following the FR proposal, supported by DE and ES.

*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~~ 14 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 4a maximum sentence of not less than eight years. Where the terrorist offence referred to in point (j) of Article 3(2) is committed by a person directing a terrorist group as referred to in point (a) of Article 4, the maximum sentence shall not be less than eight years.

*Article 18*  
*Mitigating circumstances*

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

- (a) renounces terrorist activity, and
- (b) provides the administrative or judicial authorities with information which they would not otherwise have been able to obtain, helping them to:
  - (1) prevent or mitigate the effects of the offence;
  - (2) identify or bring to justice the other offenders;
  - (3) find evidence; or
  - (4) prevent further offences referred to in Articles 3 to 14 and 16.

*Article 19*  
*Liability of legal persons*

1. Each Member State shall take the necessary measures to ensure that legal persons can be held liable for any of the offences referred to in Articles 3 to **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:
  - (c) a power of representation of the legal person;
  - (d) an authority to take decisions on behalf of the legal person;
  - (e) 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~~ 14 and 16.

*Article 20*

*Penalties for legal persons*

Each Member State shall take the necessary measures to ensure that a legal person held liable pursuant to Article 19 is punishable by effective, proportionate and dissuasive penalties, which shall include criminal or non-criminal fines and may include other penalties, such as:

- (a) exclusion from entitlement to public benefits or aid;
- (b) temporary or permanent disqualification from the practice of commercial activities;
- (c) placing under judicial supervision;
- (d) a judicial winding-up order;
- (e) temporary or permanent closure of establishments which have been used for committing the offence.

*Article 21*

*Jurisdiction and prosecution*

1. Each Member State shall take the necessary measures to establish its jurisdiction over the offences referred to in Articles 3 to ~~12~~ 14 and 16 where:
- (a) the offence is committed in whole or in part in its territory;
  - (b) the offence is committed on board of a vessel flying its flag or an aircraft registered there;
  - (c) the offender is one of its nationals or residents;
  - (d) **(deleted)**

- (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. In cases where jurisdiction cannot be established in accordance with paragraph 1, each Member State may extend its jurisdiction over training for terrorism, as referred to in Article 7, where the offender is ~~not a national or a resident and provides training such training to its~~ nationals or residents. The Member State shall inform the Commission thereof.<sup>26</sup>**

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 14 and 16 in cases where it refuses to hand over or extradite a person suspected or convicted of such an offence to another Member State or to a third country.

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<sup>26</sup> Further modifications have been introduced to clarify the application of this provision.

4. Each Member State shall ensure that its jurisdiction covers cases in which any of the offences referred to in Articles 4 and 16 has been committed in whole or in part within its territory, wherever the terrorist group is based or pursues its criminal activities.
5. This Article shall not exclude the exercise of jurisdiction in criminal matters as laid down by a Member State in accordance with its national legislation.

*Article 21a*

**Investigative tools**

**Member States shall take the necessary measures to ensure that effective investigative tools, such as those which are used in organised crime or other serious crime cases, are available to persons, units or services responsible for investigating or prosecuting the offences referred to in Articles 3 to 12 14<sup>2728</sup>.**

*Article 21b*

**Measures against websites publicly inciting to commit a terrorist offence**

**(...)**<sup>29</sup>

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<sup>27</sup> Text is aligned with Article 9 of Directive 2014/62/EU (the Counterfeiting of the Euro Directive). See new recital 15a.

<sup>28</sup> IT maintains the proposal on exchange of information (see doc. 5467/16 ADD 2). At the meeting of 29 January 2016, delegations reiterated that they recognise the relevance of the concern raised by the IT delegation. While some delegations were positively inclined to consider it, a number of them expressed a preference for bringing this issue to discussion in another competent Council working format, where a comprehensive approach to these problematics could be ensured.

<sup>29</sup> The proposal to introduce a provision on measures against websites publicly inciting to commit a terrorist offence in line with Article 25 of Directive 2011/92/EU (Child Abuse Directive) has not been included. Instead additional wording was included in recital 7.

*Article 21bis*

*Fundamental principles relating to freedom of press and other media<sup>3031</sup>*

**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 relate to the determination or limitation of liability<sup>32</sup>.**

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<sup>30</sup> Heading aligned with the text of the provision

<sup>31</sup> In light of the further explanations provided by the Legal Service of the Council references to the general fundamental rights clause are kept in the recitals of the Directive.

<sup>32</sup> See recital 19a on International Humanitarian Law

## 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 matter
4. 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<sup>33</sup>.

*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 victims' rights, the available support services and ~~the accessible~~ compensation schemes. **In this respect, competent authorities of the Member States concerned shall take appropriate action to facilitate<sup>34</sup> cooperation between their competent authorities ~~with each other~~ 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.

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<sup>33</sup> FR proposal for new Article 21c on protection of witnesses based on Article 24 of the UN Convention on Transnational Organised Crime (WK 41/2016) was not included in the compromise package.

<sup>34</sup> Wording aligned with Article 26 of the Victims' Rights Directive

## TITLE VI: FINAL PROVISIONS

### *Article 24*

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

Framework Decision 2002/475/JHA is replaced with regard to the Member States bound by this Directive, without prejudice to the obligations of those Member States with regard to the to the date for transposition of that Framework Decision into national law.

With regards to the Member States bound by this Directive, references to Framework Decision 2002/475/JHA shall be construed as references to this Directive.

### *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]. They shall forthwith communicate to the Commission the text of those provisions.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

### *Article 26*

#### *Reporting*

1. The Commission shall, by [24 months after the deadline for implementation of this Directive], submit a report to the European Parliament and to the Council, assessing the extent to which the Member States have taken the necessary measures to comply with this Directive.

2. The Commission shall, by [48 months after the deadline for implementation of this Directive], submit a report to the European Parliament and to the Council, assessing the impact and added value of this Directive on combating terrorism. The Commission shall take into account the information provided by Member States under Decision 2005/671/JHA.

*Article 27*

*Entry into force*

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

*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*