

DRAFT COMPROMISES TERRORISME DIRECTIVE

COMP 1: Compromise on convergence terrorism and organised crime (covering AM 123, 126)

Recital 10 a (new)

(10a) The United Nations, Interpol and Europol have been reporting for years on the increasing convergence between organised crime and terrorism. Europol's latest Terrorism Situation and Trend Report concludes that the overall threat by terrorists to the security of citizens of the Union and interests is likely to increase and has been particularly exacerbated by the conflict in Syria and Iraq, while the nexus between terrorism and organised crime and the links between criminal and terrorist groups constitute an increased security threat to the Union. Member States should, therefore, ensure that the financing and the support of terrorist crimes by means of organised crime is made punishable and that the interlinks of organised crime and terrorist activities and terrorist financing are considered more strongly by authorities of the Member States involved in criminal proceedings.

COMP 2: Compromise on prevention (covering AMs 23, 24, 61, 64, 66, 158, 161, 176, 177, 178, 179, 180, 195, 292)

Recital 17a (new)

(17a) The prevention of radicalisation and recruitment of citizens of the Union by terrorist organisations 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 de-radicalisation, and exit programmes and alternative measures. Member States should share good practices on the setting-up of de-radicalisation structures to prevent citizens of the Union and third-country nationals legally residing in the Union from leaving the Union or to control their return to it and their judicial approach in this regard notably through Eurojust. They should share such good practices not only among each other but also with third countries which have already acquired experience and achieved positive results in this area.

Recital 17b (new)

(17b) Member States should pursue their efforts to prevent terrorism by coordinating their strategies and sharing the information and experience at their disposal, by implementing good practices at both Union and national level, by cooperating with a view to taking new steps in combating radicalisation and recruitment to terrorism, by updating national prevention policies and by putting

networks of practitioners in place in the ten priority areas for action as identified **in 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.

Art 21a (cf Directive on Combating the sexual abuse and sexual exploitation of children and child pornography)

Prevention

1. Member States shall take appropriate measures to prevent the radicalisation and recruitment of citizens of the Union by terrorist organisations.
2. Member States shall take appropriate action, including through the Internet, such as information, education and awareness-raising campaigns and the development of alternative narratives to counter terrorist propaganda, where appropriate in cooperation with private companies, relevant civil society organizations local communities and other stakeholders, aimed at raising awareness and reducing the risk of radicalization and recruitment by terrorist organizations.
3. Member States shall promote regular training for officials likely to come into contact with persons vulnerable to radicalization, including front-line police officers and prison guards, aimed at enabling them to identify and deal with early signs of radicalisation and recruitment by terrorist organisations.

COMP 3: Compromise on nuclear/chemical terrorist threat (covering AMs 87 ,170)

Recital 5a (new)

(5a) The threat of nuclear and radiological terrorism remains one of the greatest challenges to international security and this threat is constantly evolving. Countering the threat demands strengthened international cooperation and increased support particularly for the central role of the International Atomic Energy Agency, as well as stringent safety measures;

COMP 4: Compromise on terrorist financing (covering AMs 9, 10, 81, 82, 83, 84, 85, 86, 117, 118, 119, 120, 121, 122, 123, 124, 125, 127, 128, 130, 131, 132, 374)

Recital 5

(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, including virtual currencies. These forms of behaviour should be punishable also if committed through the Internet, including social media, while respecting the principle of proportionality and necessity;

Recital 10

(10) Without prejudice to Directive 2015/849/EU of the European Parliament and of the Council terrorist financing should be punishable in the Member States and cover not only the financing of terrorist acts, but also the financing of a terrorist group, as well as other offences related to terrorist activities, such as the recruitment and training, or travel for terrorist purposes, with a view to disrupting the support structures facilitating the commission of terrorist offences. Aiding and abetting or attempting terrorist financing should also be punishable

Recital 10a (new)

(10a) Illicit trade in firearms, oil, drugs, cigarettes and counterfeit goods, artworks, trade in human beings, racketeering and extortion have become very lucrative ways for terrorist groups to obtain funding. In seeking to combat terrorist financing, therefore, also the process that generates funding for terrorist organisations should be addressed. Due diligence, monitoring and reporting requirements incumbent on private economic actors engaged in the trading in goods whose trading is considered to be vulnerable to terrorist financing take early effect at the transactional stages. They have a preventative effect by materially impairing the trading activities of organised criminal groups and terrorist groups as a source of terrorist financing. Reporting duties to competent bodies of the Member States and a coordinated cooperation between authorities at national and Union level are suitable to generate additional knowledge to help tracking and prosecuting organised crime and other commercial activities of terrorist organisations more effectively.

Recital 10b (new)

(10b) Financial investigations are fundamental in uncovering the facilitation of terrorist offences and the networks and schemes of terrorist organisations. Such investigations may be very productive, particularly when tax and customs authorities, financial intelligence units (FIUs) and judicial authorities are involved at an early stage of the investigation. Member States should aim to make financial investigations a standard component of all counter-terrorist investigations and to share relevant financial intelligence information among all relevant actors. In their efforts to prevent, investigate and combat terrorist financing, Member States should make utmost use of Europol's financial

intelligence and counter terrorist financing capabilities, as well as endeavour to ensure a more efficient and coordinated approach by establishing specialised units at national level to deal with financial investigations linked to terrorisms. Such a centralisation of expertise may have considerable added value and contribute substantially to securing successful prosecutions.

COMP 5: Compromise on responsibility of service providers / internet (covering AMs 6, 92, 105)

Recital 7

(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 clear and concrete danger that terrorist acts may be committed. Where an information society service is provided that consists of the transmission in a communication network of information provided by a recipient of the service, or the provision of access to a communication network, Member States shall ensure that the service provider is not liable for the information transmitted, on condition that the provider does not initiate the transmission, does not select the receiver of the transmission, and does not select or modify the information contained in the transmission. Member States should consider legal action, including criminal prosecutions, against internet and social media companies and service providers which refuse to comply with an administrative or judicial request to delete from their internet platforms illegal content or content extolling terrorism. The refusal or deliberate failure by internet platforms to cooperate, thus allowing such illegal content to circulate, should be regarded as an act of complicity that can be equated to criminal intent or neglect and in such cases those responsible should be brought to justice.

COMP 6: Compromise on blocking of websites (covering AMs 102, 103, 104, 105)

Recital 7a (new) (cf Directive on Combating the sexual abuse and sexual exploitation of children and child pornography)

(7a) The most effective means of combatting terrorism on the Internet is to remove illegal content at source. Member States should use their best endeavours to cooperate with third countries in seeking to secure the removal of such content from servers within their territory. However when removal of illegal content at its source is not possible, Member States may put in place measures to block access from the Union's territory to Internet pages identified as containing or disseminating terrorist content. The measures undertaken by Member States in accordance with this Directive in order to remove or, where

appropriate, block websites could be based on various types of public action, such as legislative, non-legislative, judicial or other. In that context, this Directive is without prejudice to voluntary action taken by the Internet industry to prevent the misuse of its services or to any support for such action by Member States. Member States should ensure that mechanisms to remove or block access to illegal content comply with the principles of proportionality and necessity and take due account of the rights of Internet Services Providers and of the end users and comply with existing legal and judicial procedures.

COMP 7: Compromise amendment on exchange of information (covering AMs 17, 47, 48, 79, 145, 150, 155, 156, 157, 159, 288, 361, 363, 365, 368, 369, 370 and 415)

Recital 15a (new)

(15a) In order to prevent and combat terrorism, a closer cross-border cooperation among the competent national and European authorities is needed with regard to expedient exchange of any relevant information from criminal and court records or other available sources on individuals who are suspects of violent extremism radicalisation or of a criminal offence or who are or have been subject to criminal proceedings or asset freezing, including those that have been denied admission to the territory of a Member State or who have been deported on suspicion of involvement in crimes as referred to in this Directive, with full respect to applicable data protection legislation.

Recital 15b (new)

(15b) Member States should strengthen the timely exchange of any available relevant information concerning persons travelling abroad for the purpose of terrorism and should systematically flag up in the Schengen Information System any person who is suspected of violent extremism radicalisation or of having committed or who has been convicted of any of the offences referred to in this Directive.

Recital 15c (new)

(15c) Member States have various existing information sharing mechanisms and analysis files at their disposal which are provided by Interpol as well as by Europol and other authorities and agencies of the Union. Prompt and effective use of relevant information and data obtained from these sources is an effective tool in anti-terrorism investigations. Member States and their law enforcement authorities should therefore increase their utilisation of these systems and databases, both in quantitative and qualitative terms, to enhance their prevention and counter-terrorism capabilities by sharing and retrieving

information and by conducting systematic strategic and operational analyses, in accordance with the applicable law and related safeguards.

Article 21b (new)

Article 21b

Exchange of information and cooperation concerning terrorist offences

1. Each Member State shall take the necessary measures to ensure that its competent authorities transmit, without any prior request being necessary, in an effective and timely manner to the competent authorities of the Member State concerned any relevant information in cases where there are factual reasons to believe that the information and intelligence could assist in the detection, prevention or investigation of offences referred to in this Directive.

2. Each Member State shall take the necessary measures to ensure that its contact point designated under Article 2 of Decision 2005/671/JHA transmits in an effective and timely manner to Europol and Eurojust the information referred to in that Decision.

3. Member States shall systematically flag up in the Schengen Information System any person who is suspected of having committed or who has been convicted of at least one of the offences referred to in Articles 3 to 14 of this Directive and shall exchange all PNR data concerning those persons;

4. Member States shall systematically forward to Europol details of any person who is suspected of having committed or who has been convicted of at least one of the offences referred to in Articles 3 to 14 of this Directive.

5. This article is without prejudice to existing EU legislation on the exchange of information.

COMP 8: Compromise on victims of terrorism (covering AMs 163, 164, 165, 166, 167, 168, 169, 171, 172, 173, 174 and 181)

Recital 16

(16) Member States should ensure that the status of the victims of terrorism is adequately recognised before, during and after criminal proceedings and should adopt specific measures of protection, support and assistance, with respectful and fair treatment of the victims, responding to the specific needs of victims of terrorism, further qualifying and deepening the rights already contained in the Directive 2012/29/EU of the European Parliament and the Council. Victims of terrorism are those defined in Article 1 of the Directive 2012/29/EU, in relation to terrorist offences as referred to in Article 3. The measures to be taken by Member States should ensure that in the event of a terrorist attack, the victims

of terrorism will obtain emotional and psychological support, including trauma support, counselling in combination with realistic fear management programs if needed, and any relevant legal, practical or financial information and advice and adequate aid. Furthermore, each member States shall take into account the risks of intimidation and retaliation to victims and, generally speaking, to persons who may give testimony in criminal proceedings relating to terrorist offences.

Recital 16a (new)

(16a) Member States should assure that, if the victim does not reside in the Member State where the act of terrorism took place, this Member State should cooperate with the Member State of residence in order to facilitate assistance for the victim;

Recital 16b (new)

(16b) Member States should set up and develop a one-stop shop for information and advice for victims of terrorism, not merely to meet victims' needs on acquiring information and advice, but also to provide victims with psychological first aid and referral possibilities, and where appropriate to play a central role in communicating with press;

Recital 16c (new)

(16c) Member States should in full respect of freedom of expression, engage with media and journalists to agree on self-regulation in order to guarantee the protection of the private life of victims and their family members and in addition recognise the value of cooperating with specialised services for victims assistance and support in helping victims to deal with the media attention they receive;

COMP 9: Compromise on investigative tools (covering AMs 15, 152)

Recital 15a (new)

(15a) To ensure the success of investigations and prosecutions of terrorist offences, including offences related to a terrorist group or offences related to terrorist activities, the competent authorities responsible for investigating and prosecuting such offences should have the possibility to make use of effective investigative tools such as those used in combating organised crimes or other serious crimes. Such tools should, in accordance with Member States' national law, be commensurate with the nature and the gravity of the offences under investigation, take into consideration the principle of proportionality, respect

fundamental rights and procedural safeguards, including the presumption of innocence and effective remedies.

COMP 10: Compromise on electronic evidence (covering AMs 154, 160)

Recital 15b (new)

(15b) Considering that terrorist organisations rely heavily upon various electronic tools, the internet and social media to communicate, promote, and incite terrorist acts, to recruit potential fighters, to collect funds, or to arrange for other support for their activities, the issues related to electronic evidence create challenges in investigations and prosecutions of terrorist offences. Member States should therefore cooperate among each other, notably through Eurojust and Europol, to ensure a coordinated approach for the development of any measure that may prove efficient in dealing with the gathering, sharing, and admissibility of electronic evidence, while respecting national and European law on data protection;

COMP 11: Compromise on International humanitarian law (covering AMs 5, 16, 206, 94, 95, 89, 245, 246, 247, 240)

Recital 6a (new)

(6a) This Directive should not have the effect of altering the rights, obligations, and responsibilities of Member States under international law, including under international humanitarian law. Actions by armed forces during periods of armed conflict, which are governed by international humanitarian law within the meaning of those terms under that law, and, inasmuch as they are governed by other rules of international law, actions by the armed forces of a state in the exercise of their official duties are not governed by this Directive.

Recital 6b (new)

(6b) The provision of humanitarian assistance by impartial and independent humanitarian non-governmental organisations recognised by international law such as the International Committee of the Red Cross (ICRC) should not be considered as contributing to the criminal activities of a terrorist group while taking into account the case law of the Court of Justice of the European Union according to which the applicability of international humanitarian law to a situation of armed conflict and to acts committed in that context does not exclude the application of laws on the prevention of terrorism to such “armed conflicts”.

COMP 12: Compromise on fundamental rights (covering AMs 26, 53, 54, 187, 188, 189, 190, 191, 192, 194, 203, 204, 206, 258, 259, 360, 404, 405, 406, 408, 409, 410, 411, 412, 414, 417, 420 and 421)

Recital 19

(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, freedom of speech, freedom of 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 and the right to a fair trial, the outcome of which is determined by the individual circumstances of the case, and the principles recognised in the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), 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, recognising that exceptions may be made on the grounds of public policy or national security. This Directive has to be implemented in accordance with these rights and principles.

Recital 19a (new)

(19a) This Directive should not have the effect of requiring Member States to take measures which would result in direct or indirect discrimination

Article 23b (new)

Article 23b

Fundamental principles

1. In the transposition and implementation of this Directive Member States shall ensure that criminalisation shall be proportionate to the legitimate aims pursued and necessary in a democratic society, and shall exclude any form of arbitrariness or discrimination.
2. This Directive shall not have the effect of altering the obligation of Member States to respect fundamental rights enshrined in the Charter of Fundamental Rights of the European Union as well as in the European Convention for the Protection of Human Rights and Fundamental Freedoms and international

humanitarian law, and shall be implemented and interpreted in accordance with these rights and principles

3. This Directive shall not have the effect of altering the obligation to respect fundamental rights and fundamental legal principles as enshrined in Articles 2 and 6 of the Treaty on European Union.

Recital 19b (new)

(19b) Nothing in this Directive should be interpreted as being intended to reduce or restrict the dissemination of information for the expression of an opinion or for scientific, academic or reporting purposes, as well as the expression of polemic or controversial views in the public debate on sensitive political questions.

Article 23c (new)

Article 23c

Fundamental principles relating to freedom of expression

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

COMP 13: Compromise on procedural rights and effective remedies (covering AMs 55, 193, 339, 360, 405, 416, 418)

Recital 19a (new)

(19a) Nothing in this Directive should be interpreted as being intended to reduce or restrict the Union acquis on procedural rights including the directive of the European Parliament and of the Council on the strengthening of certain aspects of the presumption of innocence and of the right to be present at trial in criminal proceedings

Article 23c (new)

Article 23c

1. This Directive shall not have the effect of requiring Member States to take measures in contradiction with their obligations with regards to the procedural rights of suspects or accused persons in criminal proceedings.
2. Any person whose fundamental rights and freedoms have unduly been violated in the application of the provisions of this Directive shall have the right to an effective and enforceable judicial remedy.