



Brussels, 3 December 2015
(OR. en)

14926/15

Interinstitutional File:
2015/0281 (COD)

DROIPEN 164
COPEN 343
JAI 968
CODEC 1644

PROPOSAL

From: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 3 December 2015

To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of
the European Union

No. Cion doc.: COM(2015) 625 final

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

Delegations will find attached document COM(2015) 625 final.

Encl.: COM(2015) 625 final



Brussels, 2.12.2015
COM(2015) 625 final

2015/0281 (COD)

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

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

- **Reasons for and objectives of the proposal**

Acts of terrorism constitute one of the most serious violations of the universal values of human dignity, freedom, equality and solidarity, the enjoyment of human rights and fundamental freedoms and one of the most serious attacks on the principles of democracy and the rule of law on which the European Union is founded. It is important to have adequate tools in place to protect EU citizens and all people living in the EU and counter such violations in an effective and proportionate manner, which are adequate to meet up to the threats the EU is confronted with, while preserving a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality prevail.

The terrorist threat has grown and evolved in recent years. In the European Agenda on Security¹ the Commission identified upgrading the EU framework to address terrorism as a priority and announced its intention to update the existing criminal law legislation in this area to meet these new challenges. A legislative proposal to revise the Framework Decision on Terrorism was announced in the Commission Work Programme 2016², since Member States are increasingly faced with the phenomenon of an increasing number of individuals who travel abroad for the purposes of terrorism and the threat they pose upon their return.

These individuals are often referred to as "foreign terrorist fighters". While the phenomenon as such is not new, the scale and scope of people travelling to conflict zones, in particular to Syria and Iraq, to fight or train with terrorist groups is unprecedented. The latest Europol EU Terrorism Situation and Trend Report (TE-SAT)³ analysed that the current scale of the phenomenon is growing: by late 2014, the overall number of people who have departed from the EU to conflict areas was estimated to have exceeded 3000 and is now assessed to have reached 5000, while at the same time the number of returnees was reported to have increased in some Member States. Member States have reported that this represents a significant threat to security.

As emphasised by Europol, "*although only a small contingent of returning fighters might be committed to carrying out attacks in the EU, individuals who have travelled to conflict zones will continue to pose a heightened threat to all EU Member States. In addition to contacts, returning fighters may have gained combat and operational experience – and consequently be capable of more impactful or multiple attacks – and are likely to serve as role models to like-minded young people. Furthermore, those not involved in attack planning may instead be active in radicalising and recruiting others, facilitation activities and fundraising.*"

The attacks carried out on European soil in the course of 2014 and 2015, culminating in the recent attacks in Paris on the night of 13 November 2015, tragically illustrated that this risk can materialise, hence the need to scale up the EU-level response by adapting it to the threats. While investigations are ongoing, the information already available demonstrates that foreign terrorist fighters were involved in at least six terrorist attacks or plots in 2015: the terrorists

¹ COM(2015) 185 final of 28 April 2015.

² COM(2015) 610 final of 27 October 2015.

³ <https://www.europol.europa.eu/content/european-union-terrorism-situation-and-trend-report-2015>

had either directly travelled to conflict zones (e.g. Yemen, Syria) or were inspired or directed to commit acts of terror by other individuals currently in Syria.

Although most of the attacks carried out since 2014 in the EU were "individual" terrorist attacks, the risk of more sophisticated modi operandi and larger scale attacks (carried out by several operatives armed with explosives and firearms) was evidenced by the 13 November terrorist attacks in Paris.

While the foreign terrorist fighters constitutes the primary source of concern, the threat posed by home-grown terrorists, radicalised lone attackers and "frustrated" terrorist travellers (for example following seizure of their passport) should not be underestimated. Several such attacks and foiled plots were recorded in the EU and other Western countries (e.g. the US, Canada and Australia) over the last 12 months.

The cross-border dimension of the terrorist threat is not limited to travel to conflict areas in third countries. Terrorists consider evasive techniques to avoid raising suspicion: they circulate within the EU and may transit through countries other than their country of residence/nationality with a view to circumvent controls and surveillance. In addition, recent attacks perpetrated in the EU demonstrate that terrorists travel to other Member States to carry out attacks or for logistical reasons (e.g. funding, procurement of weapons).

Terrorist groups have demonstrated advanced skills in the use of the Internet and new communication technologies to disseminate propaganda, interact with potential recruits, share knowledge, plan and coordinate operations. The Internet and social media have notably offered new opportunities for radical and terrorist groups to target vulnerable audiences and thereby facilitate recruitment and/or self-radicalisation.

The use of high quality communication material (magazines, videos) and a decentralised approach facilitated by a network of accounts on a variety of social media platforms allows for rapid dissemination of terrorist and radical materials through constantly adapting use of information technologies. The Internet has become the primary channel used by terrorists to disseminate propaganda, issue public threats, glorify horrendous terrorist acts such as beheadings, and claim responsibility for attacks.

The existing rules need to be aligned taking into account the changing terrorist threat Europe is facing. This includes adequate criminal law provisions addressing the foreign terrorist fighter phenomenon and risks related to the travel to third countries to engage in terrorist activities but also the increased threats from perpetrators who remain within Europe.

More coherent, comprehensive and aligned national criminal law provisions are necessary across the EU to be able to effectively prevent and prosecute foreign terrorist fighters-related offences and to respond in an appropriate manner to the increased cross-border practical and legal challenges.

Framework Decision 2002/475/JHA⁴ already criminalises certain terrorist acts, including in particular the commission of terrorist attacks, participation in the activities of a terrorist group, including financial support to these activities, public provocation, recruitment and

⁴ Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism (OJ L 164, 22.6.2002, p. 3). Amended by Council Framework Decision 2008/919/JHA of 28 November 2008 amending Framework Decision 2002/475/JHA on combating terrorism (OJ L 330, 9.12.2008, p. 31).

training to terrorism. as well as rules on aiding and abetting, incitement and attempt of terrorist offences.

However, Framework Decision 2002/475/JHA needs to be reviewed to implement new international standards and obligations taken by the EU and to tackle the evolving terrorist threat in a more effective way, thereby enhancing the security of the EU and the safety of its citizens.

Victims of terrorism require protection, support and assistance that respond to their specific needs. In particular, they should receive immediate access to professional, specialist support services providing for physical and psycho-social treatments. In the aftermath of terrorist attacks, access to reliable information for victims of terrorism and about victims of terrorism is crucial. Since the terrorist attacks aim at large groups of people, victims may often be from other countries than the country of the attack. Cross-border cooperation among the competent national authorities is therefore crucial to ensure that all victims of terrorism are well informed and receive the necessary assistance independently of where in the European Union they live.

Directive 2012/29/EU⁵ lays down a set of binding rights for all victims of crime, including rights to protection, support and assistance that take into account individual needs of every victim of crime. These provisions do not however provide for any specific measures for victims of terrorism. The adoption of more specific measures that respond more precisely to the needs of victims of terrorism would bring a significant added value. Properly tailored rules on protection, support and assistance to the victims of terrorism should add to the healing process of the surviving victims and families of those who have died and thus, indirectly, to the healing process of the whole societies.

- **Need to implement relevant international standards and obligations and address the evolving terrorist threat**

The UN Security Council Resolution (UNSCR) 2178(2014) on threats to international peace and security caused by terrorist acts adopted on 24 September 2014 sets out a broad range of measures to combat the Foreign Terrorist Fighters phenomenon. Under operative paragraph 6, UN Member States are required to ensure that their domestic laws and regulations establish serious criminal offences sufficient to prosecute and to penalize in a manner duly reflecting the seriousness of the offence: a) travel or attempted travel to a third country with the purpose of contributing to the commission of terrorist acts or the providing or receiving of training; b) the funding of such travel and c) the organisation or facilitation of such travel.

In its Resolution 2178(2014), the Security Council reaffirmed the obligation of all States to comply with international human rights law when fighting terrorism, underscoring that, respect for human rights and the rule of law are essential to a successful counter-terrorism effort. It noted that a failure to comply with human rights and other international obligations contributed to increased radicalization and fostered a sense of impunity.

⁵ 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).

UNSCR 2178(2014) equally stresses the need for States to engage relevant local communities and non-governmental actors in developing strategies to counter the violent extremist narrative that can incite terrorist acts, address the conditions conducive to the spread of violent extremism, which can be conducive to terrorism, including by empowering youth, families, women, religious, cultural and education leaders, and all other concerned groups of civil society, and adopt tailored approaches to countering recruitment to this kind of violent extremism and promoting social inclusion and cohesion.

Furthermore, UNSCR 2249(2015) of 20 November 2015 urges Member States to intensify their efforts to stem the flow of foreign terrorist fighters to Iraq and Syria and to prevent and suppress the financing of terrorism. In a similar vein, for instance UNSCR 2199 (2015) reaffirmed that *"all States shall ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice and ensure that such terrorist acts are established as serious criminal offenses in domestic laws and regulations and that the punishment duly reflects the seriousness of such terrorist acts, and emphasizes that such support may be provided through trade in oil and refined oil products, modular refineries and related material with ISIL, ANF and all other individuals, groups, undertakings and entities associated with Al-Qaida."*

Following negotiations in early 2015, an Additional Protocol to the Council of Europe Convention on the prevention of terrorism was adopted in May 2015 implementing certain criminal law provisions of the UNSCR 2178(2014), and in particular its operative paragraph 6. The Additional Protocol supplements the Council of Europe Convention, which already requires the criminalisation of certain terrorist offences. As a result, the Additional Protocol requires the criminalisation of the following acts: participation in an association or group for the purpose of terrorism (Article 2), receiving training for terrorism (Article 3), travelling or attempting to travel for terrorist purposes (Article 4), providing or collecting funds for such travels (Article 5) and organising and facilitating such travels (Article 6). It also requires parties to strengthen the timely exchange of information between them (Article 7).

Similarly to the UNSCR 2178(2014), the Additional Protocol reaffirms the obligation of each Party to ensure that the implementation of the Additional Protocol is carried out while respecting human rights obligations, in particular the right to freedom of movement, freedom of expression, freedom of association and freedom of religion, as set out in the Convention for the Protection of Human Rights and Fundamental Freedoms, the International Covenant on Civil and Political Rights and other obligations under international law, and recalls the need to ensure respect of the principle of proportionality, with respect to the legitimate aims pursued and to their necessity in a democratic society, and to exclude any form of arbitrariness or discriminatory or racist treatment.

The EU signed the Additional Protocol as well as the Convention on 22 October 2015.

The Financial Action Task Force (FATF) Recommendations issued in 2012 concerning terrorist financing and more specifically the recommendation on the criminalisation of terrorist financing (Recommendation No. 5) provide that "countries should criminalise terrorist financing on the basis of the Terrorist Financing Convention, and should criminalise

not only the financing of terrorist acts but also the financing of terrorist organisations and individual terrorists even in the absence of a link to a specific terrorist act or acts"⁶.

In light of the urgent need to address the threat posed by foreign terrorist fighters, the FATF revised the Interpretive Note to Recommendation 5 on the criminal offence of terrorist financing to incorporate the relevant element of UNSCR 2178. This clarifies that Recommendation 5 requires countries to criminalise financing the travel of individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training.

Framework Decision 2002/475/JHA criminalises certain terrorist acts, including the commission of terrorist attacks, participation in the activities of a terrorist group, including financial support to these activities as well as public provocation, recruitment and training for terrorism (the latter three offences implementing the provisions of the Council of Europe Convention on the prevention of terrorism, CETS No 196). However, Framework Decision 2002/475/JHA does not explicitly require the criminalisation of travel to third countries with terrorist intentions, nor does it explicitly require the criminalisation of being trained for terrorist purposes referred to in the UNSCR 2178(2014) and required by the Additional Protocol. Furthermore, the Framework Decision 2002/475/JHA currently only requires criminalisation of terrorist financing to the extent that funding is provided to a terrorist group but not e.g. if provided to all offences related to terrorist activities, including recruitment, training or travelling abroad for terrorism.

In its conclusions of 13 October 2014, the Council called upon the Commission to explore ways to overcome possible shortcomings of the Framework Decision 2002/475/JHA in light of, in particular, the UN Security Council Resolution 2178(2014).⁷ In the Joint Statement after the Riga Justice and Home Affairs Council, EU Ministers agreed on the importance to consider possible legislative measures to establish a common understanding of terrorism offences in light of UNSCR 2178(2014). The European Parliament also stressed, in its Resolution of 11 February 2015, the need to harmonise criminalisation of foreign-fighter-related offences and avoid prosecution gaps by updating the Framework Decision on Terrorism. The JHA Council of 20 November 2015 welcomed the intention of the Commission to present a proposal for a directive updating the Framework Decision on combating terrorism before the end of 2015.

In order to implement the obligations arising from the Additional Protocol as well as the relevant FATF Recommendation on terrorist financing, it is necessary to revise Framework Decision 2002/475/JHA.

In addition to the amendments necessary to ensure compliance with international obligations and standards, there is a need to provide comprehensive measures taking into account the evolving terrorist threat and the need for appropriate tools to facilitate investigation and prosecution of all relevant terrorist modus operandi, avoiding significant loopholes in the criminal justice response.

⁶ For the FATF Recommendations as well as the accompanying interpretative note, please consult: http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf

⁷ Council Document 14160/14.

In this spirit, the draft Directive also proposes to criminalise the following behaviours: attempt of recruitment and training, travel abroad with the purpose of participating in the activities of a terrorist group, and the financing of the various terrorist offences defined in the draft Directive.

Furthermore, given the evolving terrorist threat supplementing the threat emanating from foreign terrorist fighters travelling to third countries to engage in terrorist activities, the proposal also foresees the criminalisation of travel to any country, including to those within the EU and including to the country of nationality or residence of the perpetrator.

In addition, and in line with the necessity to capture different forms of support to terrorist activities including trade transactions and import and export of goods destined to support the commission of terrorist offences, the proposal contains a clarification that any such material support would be covered by the provisions of the Directive.

The proposal also improves existing provisions on aiding and abetting, incitement and attempt, as well as rules on jurisdiction, ensuring consistency and effective application of the relevant provisions and avoiding loopholes.

Finally, the proposal includes additional provisions governing specific support measures to victims of terrorism.

In addition to filling existing enforcement gaps, the consolidation of the *acquis* in the field will ensure simplification and accessibility. Given the scope of the proposed measures and the objective of consolidation, an EU Directive replacing the existing Framework Decision 2002/475/JHA is considered most appropriate.

- **Consistency with existing policy provisions in the policy area**

The European Agenda on Security, making reference to developments at international and European level, committed the Commission to review the Framework Decision on Terrorism establishing a common understanding of terrorist offences and in particular those related to foreign terrorist fighters⁸.

In October 2015, the Commission stressed in its Work Programme for 2016 that terrorism and radicalisation require an EU response and announced it would present a proposal for the revision of the Framework Decision on Terrorism to address the phenomenon of foreign terrorist fighters⁹.

The present proposal for a Directive on combating terrorism, implementing requirements under the Additional Protocol, will pave the way for the conclusion of the Additional Protocol and the Convention, for which specific proposals will also be presented promptly.

The present proposal is part of a broader endeavour which also includes increased efforts in preventing radicalisation. To enhance and support efforts to prevent radicalisation leading to violent extremism and terrorism the Commission has established the RAN Centre of Excellence which supports a large network of local practitioners (the Radicalisation Awareness network). The RAN Centre facilitates the exchange of practices and expertise,

⁸ COM(2015) 185 final of 28.4.2015

⁹ COM(2015) 610 final of 27.10.2015

consolidates know how and identifies and develops best practices, concrete guidance and tailor made support services. It helps delivering on the various actions identified in the Commission Communication "Preventing Radicalisation to Terrorism and Violent Extremism: Strengthening the EU's Response".¹⁰

EU legislation already exists on the information exchange between the competent national authorities in the field of security and the fight against terrorism, namely Council Framework Decision 2006/960/JHA,¹¹ Decision 2008/615/JHA (Prüm-Decision),¹² particularly in combating terrorism and cross-border crime and the Decision 2005/671/JHA.¹³ This legislation foresees, similar to Article 7 of the Additional Protocol, the obligation for Member States to create national contact points and exchange spontaneously information where there are reasons to believe that the information could assist in the detection, prevention or investigation of terrorist offences.

- **Consistency with other Union policies**

The phenomenon of foreign terrorist fighters clearly demonstrates the importance of the common foreign and security policy for the Union's internal security. The HRVP and the Commission presented a joint Communication on 6 February 2015 on the Elements for an EU Regional strategy for Syria and Iraq as well as the Da'esh threat¹⁴ aiming at stemming the flow of foreign fighters to Syria/Iraq and funds to Da'esh and to build capacity to implement UNSCR 2178(2014) and counter terrorist financing.

The present proposal complements the EU regime for freezing the assets of foreign terrorist organisations and individuals. This is laid down on one hand, in Council Regulation 881/2002 implementing the UNSC designations of persons and entities linked to Al-Qaeda (UNSCR 1267 and 1390) and, on the other hand, the so called EU 'autonomous' measures in line with UNSCR 1373 targeting other terrorists and organisations not linked to Al-Qaeda.

This proposal complements the preventive measures related to terrorist financing of Directive 2015/849/EU.

This proposal also complements the EU policy in the area of victims' rights. In particular Directive 2012/29/EU that entered into application in the Member States on 16 November 2015, provides for a set of rights for all victims of rights. Directive 2004/80/EC requires that the Member States ensure compensation to victims of violent intentional acts, including in cross-border situations. This proposal builds on the existing EU rules related to victims' rights, without however enlarging their scope. In particular, it develops and deepens several provisions of the Directive 2012/29/EU to provide specific support to address the needs of victims of terrorist offences.

¹⁰ COM(2013) 941 final, 15.01.2014.

¹¹ 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).

¹² Council Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation (OJ L 210, 06.08.2008, p. 1).

¹³ Council Decision 2005/671/JHA on the exchange of information and cooperation concerning terrorist offences (OJ L 253, 29.9.2005, p. 22).

¹⁴ JOIN(2015) 2 final of 6.2.2015.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

This proposal replaces Framework Decision 2002/475/JHA and seeks to put in place updated EU level legislation establishing minimum rules on the definition of terrorist offences, offenses related to a terrorist group or terrorist activities and penalties in this area. Terrorism is a serious crime with a cross-border dimension by reason of its nature, impact and the need to combat it on a common basis.

Article 83(1) of the Treaty on the Functioning of the European Union (TFEU) is therefore the appropriate legal basis for this proposal. This article enables the European Parliament and the Council to establish the necessary minimum rules on the definition of criminal offences and sanctions by means of directives adopted in accordance with the ordinary legislative procedure.

The inclusion of provisions related to the victims' rights require an addition of the relevant provision as a legal basis. Article 82(2) TFUE enables the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, to establish minimum rules concerning the rights of victims of crime. Point c) of Article 82(2) TFUE should be therefore added as an additional legal basis.

Both Article 83(1) TFUE and Article 82(2) TFUE provide for the same legislative procedure. The proposal should be therefore based on both Article 83(1) TFUE and Article 82(2) TFUE.

- **Variable geometry**

Framework Decision 2002/475/JHA currently in force is applicable to all the Member States with the exception of the United Kingdom, which in accordance with Article 10(4) of Protocol number 36 annexed to the TEU and to the TFEU, exercised its right to opt out of this legal framework with effect from 1 December 2014.

In accordance with Protocol 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice annexed to the Treaties, the United Kingdom and Ireland may decide to take part in the adoption of this proposal. They also have this option after adoption of the proposal.

Under the Protocol 22 on the position of Denmark, Denmark does not take part in the adoption by the Council of the measures pursuant to Title V of the TFEU (with the exception of "measures determining the third countries whose nationals must be in possession of a visa when crossing the external borders of the Member States, or measures relating to a uniform format for visas"). Therefore, under the arrangements currently in force, Denmark does not take part in the adoption of this proposal and will not be bound by it. Framework Decision 2002/475/JHA, as amended by Framework Decision 2008/919/JHA shall continue to be binding upon and applicable to Denmark.

- **Subsidiarity**

Action in the area of freedom, security and justice falls within an area of competence shared between the EU and the Member States in accordance with Article 4(2) TFEU. Therefore, the subsidiarity principle is applicable by reason of Article 5(3) TEU, according to which the Union shall act only if and in so far as the objectives of the proposed action cannot be

sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.

Having been adopted under Chapter VII of the UN Charter, the requirements set out in UNSCR 2178(2014) are binding on UN Member States. EU Member States have already started reviewing their respective legal framework and in some cases have adopted new measures ensuring compliance with the UNSCR in particular as regards requirements of foreign terrorist travel and related behaviour.

The Additional Protocol implements the part of the UNSCR 2178(2014) related to the criminalisation of foreign terrorist travel. By signing the Additional Protocol on 22 October 2015 the EU has expressed the willingness to conclude the Additional Protocol in accordance with Article 218(6) TFEU. Conclusion will require the EU to incorporate the standards set by the Additional Protocol into Union law, which as mentioned above does not currently require the criminalisation of all the conduct foreseen in the Additional Protocol.

Implementing the Additional Protocol and the relevant criminal law aspects of UNSCR 2178(2014) through EU-wide minimum rules, and in particular additional common definitions of criminal offences taking account of the evolution of terrorist threats, would avoid any legal gaps that may result from a fragmented approach and would be of clear added value for enhancing the security of the EU and the safety of EU citizens and people living in the EU. Furthermore, EU-wide definitions would facilitate a common understanding and benchmark for cross-border information exchange and cooperation in police and judicial matters. In a similar vein, and as stressed in the European Agenda on Security, minimum rules on criminal offences in line with the UNSCR 2178(2014) and the Additional Protocol would also facilitate cooperation with third countries providing a common benchmark both within the EU and with international partners.

A similar reasoning applies to the incorporation of the FATF Recommendation on the criminalisation of terrorist financing into EU law. While Member States are already obliged to comply with the FATF Recommendation and have to a large extent adopted the necessary implementing measures, the extension of the offence of terrorist financing as currently included in Article 2 of Framework Decision 2002/475/JHA at EU level ensures that Member States are not subject to different legal obligations and that the differences in the scope of criminal offences do not affect cross border information exchange and operational cooperation.

Similarly, given the cross-border nature of the terrorist threats, the scope of the offences, including those not required by international obligations and standards, needs to be sufficiently aligned to be truly effective.

These objectives cannot be sufficiently achieved by EU Member States acting alone, since legislation only at the national level would not have the effect of establishing minimum rules on the definitions of and penalties for terrorist offences applicable throughout the EU. If the Union legal framework does not comply with the Additional Protocol whereas certain Member States will be party to it, the result would be a possible divergence between the Member States' obligations under Union law and their obligations under international law.

A comprehensive and sufficiently homogeneous legal framework can therefore be better achieved at the level of the Union. The Union may therefore adopt measures, in accordance with the principle of subsidiarity.

- **Proportionality**

In accordance with the principle of proportionality, as set out in Article 5 of the EU Treaty, the proposed new Directive is limited to what is necessary and proportionate to, on the one hand implement international obligations and standards (in particular as regards the criminalisation of travel to another country for terrorist purposes, being trained for terrorist purposes, required under the Additional Protocol, and terrorist financing not limited to the activities of a terrorist group but extended to all terrorist offences and terrorist related offences without there being a link to a specific terrorist acts, (as required under the FATF standards)), and on the other hand, to adapt existing terrorist offences to the new terrorist threats (requiring for instance the criminalisation of travel for terrorist purposes also within the EU).

The proposal defines the scope of the criminal offences with a view to covering all relevant conduct while limiting it to what is necessary and proportionate.

- **Choice of the instrument**

In accordance with 83(1) TFEU the establishment of minimum rules concerning the definition of criminal offences and sanctions in the area of serious crime with a cross-border dimension, including terrorism, can only be achieved by means of a Directive of the European Parliament and the Council adopted in accordance with the ordinary legislative procedure. The same is true as regards the establishment of minimum rules pursuant to Article 82(2) TFEU.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

The transposition of the relevant provisions into national law of Framework Decision 2002/475/JHA has been the subject of several implementation reports¹⁵, including the report of September 2014 on the implementation of the amendments introduced by Framework Decision 2008/919/JHA.¹⁶

The implementation report also found that several Member States had gone beyond the requirements of the Framework Decision 2008/919/JHA in particular by adopting provisions criminalising the receipt of terrorist training indicating an existing enforcement gap, and by criminalising attempt beyond the requirements set out in that Framework Decision.

The 2014 implementation report was supported by an external study looking not only into the transposition by the EU Member States of Framework Decision 2008/919 JHA into national legislation, but also carrying out an assessment of the implementation of the legal framework

¹⁵ Reports from the Commission based on Article 11 of the Council Framework Decision of 13 June 2002 on combating terrorism: COM(2004)409 final of 8 June 2004 and COM(2007) 681 final of 6 November 2007.

¹⁶ COM(2014) 554 final 05.09.2014.

adopted by the EU Member States to combat terrorism in practice. The study included an evaluation of the changes introduced in 2008, concluding that these changes were relevant and efficient to the objectives. A common understanding of terrorist-related crimes like public provocation, recruitment and training to terrorism have ensured that especially cross-border cases are dealt with more efficiently. More specifically, the study concluded that most stakeholders considered that the new offences helped them tackle the preparatory stages of terrorist activities. In general, the amendments introduced in 2008 were seen as useful in helping to combat the changing nature of the terrorist threats faced by EU Member States. From a law enforcement and judicial point of view, the study concluded that cases related to the new offences involving more than one Member State could be handled more efficiently because of a common approach to criminalising offences. Overall, the added value of the Framework Decision 2008/919/JHA was regarded as high for EU Member States that did not already have a legal framework specifically to tackle terrorism; for those that did, added value lay in strengthening the framework for cooperation with other Member States in tackling the preparatory stages of a terrorist action.

Eurojust was asked to look into whether existing criminal offences in Member States are sufficient to tackle new phenomena such as in particular the flow of foreign terrorist fighters to third countries. The appraisal by Eurojust revealed doubts as to the effectiveness of such measures calling for a revision of the existing legal framework.¹⁷

- **Stakeholder consultations**

During the negotiations in the Council of Europe on the Additional Protocol, draft texts were made publicly available for comments. Written comments were received by several fundamental rights organisations (Amnesty International, the International Commission of Jurists and the Open Society). These comments were discussed among the negotiating parties and some of the proposals led to amendments of the Additional Protocol and its explanatory report.

Overall, the comments stressed the need for adequate human rights safeguards, sufficient legal clarity both in terms of criminalised behaviour (*actus reus*) and intentions (*mens rea*) and clarification of obligations under international humanitarian law.

The comments were incorporated into the Additional Protocol as well as the explanatory report in the following manner: the Additional Protocol stresses the need for the respect of human rights in the preamble, Article 1 (on the purpose) and a new Article 8 entirely dedicated to the respect of fundamental rights. These provisions are complemented by further explanations in the explanatory report (with reference to other international instruments including explicitly the protocol relating to the status of refugees and the Convention on the rights of the child).

- **Impact assessment**

Given the urgent need to improve the EU framework to increase security in the light of recent terrorist attacks including by incorporating international obligations and standards, this proposal is exceptionally presented without an impact assessment.

¹⁷ Council Document 15715/2/14.

- **Regulatory fitness and simplification**

The proposal aims at introducing international obligations and standards in the EU legal order and updating the legal framework so as to adequately respond to the evolving terrorist threat. The establishment of the various criminal offences in separate articles (instead of, for instance, merely adding the new offences in sub-paragraphs and indents of the current Article 3 of the Framework Decision 2002/475/JHA) and explanations as to the general conditions applicable to these offences (see in particular the provisions contained under Title IV) facilitate the understanding of the scope of the relevant offences. This will help Member States when transposing and implementing the relevant provisions. Furthermore, the scope of other EU instruments referring to terrorist offences (such as in particular instruments on cross-border information exchange and cooperation) will also be clearer which in turn facilitates the application of these provisions by the relevant authorities.

- **Fundamental rights**

The European Union is founded on the values enshrined in Article 2 TEU and it recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights in accordance with Article 6(1) TEU. Security and respect for fundamental rights are not conflicting aims, but consistent and complementary policy objectives.¹⁸ The Union's approach is based on the common democratic values of our open societies, including the rule of law, and must respect and promote fundamental rights, as set out in the Charter of Fundamental Rights, which reaffirms, with due regard for the powers and tasks of the Community and the Union and the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, including the Treaty on European Union, the Community Treaties, the European Convention for the Protection of Human Rights and Fundamental Freedoms, and the case-law of the Court of Justice of the European Communities and of the European Court of Human Rights. All measures intended to enhance security measures must comply with the principles of necessity, proportionality and legality, with appropriate safeguards to ensure accountability and judicial redress.¹⁹

The proposed measures include legal provisions to adequately respond to evolving terrorist threats. These actions help to reduce the risk of terrorist attacks and to diminish the possibilities for radicalisation and recruitment. While these measures have as final objective the protection of fundamental rights of victims and potential victims, in particular the right to life and the right to physical and mental integrity, any legislation in the field of criminal law, necessarily has an impact on the exercise of fundamental rights in particular by persons suspected, accused or convicted of terrorist offences and offences related to a terrorist group or terrorist activities. The establishment, implementation and application of criminalisation have to be carried out in full respect of fundamental rights obligations. Any limitation on the exercise of fundamental rights and freedoms is subject to the conditions set out in Article 52(1) of the Charter of Fundamental Rights, namely be subject to the principle of proportionality with respect to the legitimate aim of genuinely meeting objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others, be provided for by law and respect the essence of those rights and freedoms.

¹⁸ Article 6 of the Charter of Fundamental Rights and Judgment of the European Court of Justice of 8 April 2014, in joined cases C-293/12 and C-594/12, paragraph 42

¹⁹ Article 52(1) of the Charter of Fundamental Rights; judgment of the European Court of Justice of 8 April 2014, quoted above.

A variety of fundamental rights and freedoms enshrined in the Charter of Fundamental Rights have to be taken into account in this respect. Rights which are particularly relevant in relation to the proposed measures include, but are not limited to, the rights included in title I of the Charter on dignity (Article 1), the right to life and integrity of a person (Articles 2 and 3), the right to liberty and security (Article 6 of the Charter), the right to respect of private and family life (Article 7 of the Charter), the protection of personal data (Article 8 of the Charter), the freedom of thought, conscience and religion (Article 10 of the Charter), the freedom of expression and information (Article 11 of the Charter), the freedom of assembly and association (Article 12 of the Charter), the right to property (Article 17 of the Charter), the right to asylum and the protection in the event of removal, expulsion or extradition (Articles 18 and 19 of the Charter), the general prohibition of discrimination, including on grounds of race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion (Article 21 of the Charter), the rights of the child (Article 24 of the Charter), the freedom of movement and residence (Article 45 of the Charter), the right to an effective remedy and a fair trial (Article 47 of the Charter), the presumption of innocence and the right of defence (Article 48 of the Charter), the principles of legality and proportionality of criminal offences and penalties (Article 49 of the Charter) and the right not to be tried or punished twice in criminal proceedings for the same criminal offence (*ne bis in idem*, Article 50 of the Charter).

All measures adopted by the Union and its Member States in relation to the incrimination of terrorist offences and activities relating to terrorist offences as provided for in this Directive, and the determination of criminal and non-criminal sanctions thereof, must be subject to the principle of legality and proportionality of criminal offences and penalties, to the presumption of innocence and to the rights of defence, and should exclude any forms of arbitrariness. They shall furthermore be in line with the general prohibition of discrimination, including on grounds of race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, and exclude any forms of discriminatory or racist treatment, also in order to avoid the stigmatisation of any group or community.

The respect of fundamental rights in general and the principle of proportionality is respected in limiting the scope of the offences to what is necessary to allow for the effective prosecution of acts that pose a particular threat to security. This is reflected in the recitals (see for instance recitals 19 and 20).

More specifically, the new offence of travelling abroad for terrorist purposes can restrict the right to freely move and reside within the territory of the Member States as guaranteed under Article 21(1) of the Treaty on the functioning of the European Union and Directive 2004/38/EC. Directive 2004/38/EC allows for measures restricting free movement on grounds of policy and public security, including the prevention of crime.

Data of persons suspected of the offences defined by this Directive will have to be handled in accordance with the fundamental right to protection of personal data and existing applicable legislation. The proposed Directive does not entail any modification of such regime nor, therefore, an impact on the right to privacy and data protection.

The present proposal is without prejudice to the responsibilities incumbent on the Member State with regard to the maintenance of law and order and the safeguarding of internal security in accordance with Article 72 TFEU, in relation to which Member States' authorities remain bound by their human rights obligations as they result from their national laws and constitutions and from international agreements they are bound to, in particular those deriving

from the European Convention on Human Rights and Fundamental Freedoms, of which all Member States are parties.

4. BUDGETARY IMPLICATIONS

This proposal has no immediate budgetary implications for the Union.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The implementation of the Directive will be monitored by the Commission on the basis of the information provided by the Member States on the measures taken to bring into force the laws, regulations and administrative provisions necessary to comply with the Directive.

The Commission shall, after two years following 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.

The Commission shall, four years after the deadline for implementation of this Directive, submit a report to the European Parliament and the Council, evaluating the impact and added value of the Directive, accompanied, if necessary, by adequate proposals. To do so, the Commission will undertake consultations with Member States and stakeholders, notably Europol, Eurojust and the Fundamental Rights Agency. The Commission will also take into account the information provided by Member States under Council Decision 2005/671/JHA.

- **Explanatory documents**

No explanatory documents on the transposition are considered necessary.

- **Detailed explanation of the specific provisions of the proposal**

Title I: Subject matter and definitions

Article 1: Subject matter – This provision sets out the purpose and scope of the draft Directive, in particular that it establishes minimum rules concerning terrorist offences, offences related to a terrorist group and offences relating to terrorist activities, as well as specific measures of protection of and assistance to victims of terrorism.

Article 2: Definitions – This provision provides definitions for "funds" (in relation to the offence of terrorist financing cf. Article 11) in line with EU acquis²⁰, "legal persons" (in relation to the obligation to establish liability of legal persons cf. Article 19) and "terrorist group" (in relation to the offence relating to a terrorist group cf. Article 4, identical to the definition previously contained in Article 2(1) of the Framework Decision 2002/475/JHA).

Title II: Terrorist offences and offences related to a terrorist group

²⁰ Identical to Article 1 of Council Regulation EC No 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism (OJ L 344, 28.12.2001, p. 70).

Article 3: Terrorist offences – This provision defines which offences should be considered as terrorist offences in the Member States. This provision was contained already in Article 1 of the Framework Decision 2002/475/JHA and remained unchanged since. The main aim of this key provision is to approximate the definition of terrorist offences in all Member States by introducing a specific and common qualification of certain acts as terrorist offences. Terrorist acts are serious offences which become terrorist offences because of the motivation of the offender. The concept of terrorism offences is thus a combination of two elements: an objective element, as it refers to a list of serious criminal conducts, as defined by reference to national law, and a subjective element, as these acts shall be deemed to be terrorist offences when committed with a specific intent.

Article 4: Offences relating to a terrorist group – This provision requires Member States to criminalise the direction or participation in the activities of a terrorist group, with knowledge of the fact that such participation will contribute to the criminal activities of the terrorist group. This provision aims at ensuring that directing a terrorist group and participating in its activities are by themselves considered as independent criminal facts and dealt with as terrorist offences. It was contained already in Article 2 of the Framework Decision 2002/475/JHA and was not changed by the 2008 amendments. Adapting the current legal framework to international obligations (in particular Article 2 of the Additional Protocol) does not require a revision of this Article. The explanatory report to the Additional Protocol clarifies that it is left to the Parties to define the terrorist group.

Title III - Offences relating to terrorist activities

The offences defined under this title 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. While these offences do not require that a terrorist offence be committed, as explained in Article 15, they also include an objective element, namely clearly defined conduct and circumstances, and a subjective element, i.e. the intent or knowledge of the perpetrator or potential perpetrator as to his or her conduct having the potential to lead to the commission of or contribution to terrorist offences. These elements shall be proven in accordance with the national law of a Member State through evidence submitted to an independent court or tribunal for scrutiny in accordance with the specific, applicable criminal procedures of the Member State, relevant provisions of the EU acquis on the procedural rights of suspects or accused in criminal proceedings and in full respect of the guarantees of the fundamental right to a fair trial, the presumption of innocence and the right of defence, as enshrined in the Charter of Fundamental Rights.

Article 5: Public provocation to commit a terrorist offence - This offence was introduced by the Framework Decision 2008/919/JHA (introducing a new offence in Article 3(1)(a)) to implement Article 5 of the Council of Europe Convention on the prevention of terrorism.

Under this provision are considered as punishable acts, for example, the glorification of suicide bombers, encouragement to join violent jihad, direct invitations to kill non-believers, justification of terrorism or the dissemination of messages or images of brutal assassinations as a way to gain publicity for the terrorists cause or prove their power, where such behaviour actually creates the risk that terrorist acts will be committed and provided that the messages are disseminated with the purpose of furthering terrorist activities (not necessarily those of a specific terrorist organisation). Such messages and images may also include those denigrating victims of terrorism, including their families. The provisions were also meant to ensure that dissemination of messages through the Internet encouraging the commission of terrorist offences or providing for terrorist expertise was made punishable. *Article 6: Recruitment for*

terrorism – This offence was introduced by Framework Decision 2008/919/JHA (introducing a new offence in Article 3(1)(b)) to implement Article 6 of the Council of Europe Convention on the prevention of terrorism. As clarified in the explanatory notes to this Convention, punishment under this provision "requires that the recruiter intends that the person or persons he or she recruits commit or contribute to the commission of a terrorist offence or join an association or group for that purpose, whereas it is immaterial "whether the addressees of the solicitation actually participate in the commission of a terrorist offence or join an association or group for that purpose. This provision is meant to provide adequate criminal justice tools to stem extensive recruitment activities by individuals or recruitment networks.

Article 7: Providing training for terrorism - This offence was introduced by Framework Decision 2008/919/JHA (introducing a new offence in Article 3(1)(c)) to implement Article 7 of the Council of Europe Convention on the prevention of terrorism. Its inclusion was meant to capture the dissemination of instructions and (online) manuals intended for training or planning of attacks and more specifically the dissemination (through the internet) of information on terrorist means and methods, thus functioning as a 'virtual training camp'. While particular emphasis was put on the use of the internet, the scope of training for terrorism is not limited to the provision of internet-based instructions but also encompasses more traditional training.

New offences implementing the Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism - The offences of receiving training for terrorism, travelling abroad for terrorism and the organising or otherwise facilitating travelling abroad for terrorism are introduced to implement the Additional Protocol. Some of the explanations below are based on the explanatory report to the Additional Protocol.

Article 8: Receiving of training - The proposal not only covers the providing of training for the purpose of terrorism (already contained in Framework Decision 2008/919/JHA), but also the receiving of such training, enabling the recipient to carry out or contribute to the commission of terrorist offences.

This provision implements Article 3 of the Additional Protocol. It will provide law enforcement and prosecutors with additional tools to tackle the threats resulting from potential perpetrators, including those ultimately acting alone, by offering the possibility to investigate and prosecute training activities having the potential to lead to the commission of terrorist offences. The receiving of training for terrorism may take place in person, e.g. by attending a training camp run by a terrorist association or group, or through various electronic media, including through the Internet. However, the mere fact of visiting websites containing information or receiving communications, which could be used for training for terrorism, is not enough to commit the crime of receiving training for terrorism. The perpetrator must normally take an active part in the training. Member States may, however, choose to criminalise forms of "self-study" in their domestic law.

Furthermore, the purpose of the receiving of training for terrorism must be to carry out or contribute to the commission of a terrorist offence, as defined in Article 3, and the perpetrator must have the intention to do so. The participation in otherwise lawful activities, such as taking a chemistry course at university, taking flying lessons or receiving military training provided by a State, may also be considered as unlawfully committing the criminal offence of receiving training for terrorism, if it can be demonstrated that the person receiving the training has the required criminal intent to use the training thus acquired to commit a terrorist offence.

Article 9: Travelling abroad for terrorism - This offence targets primarily the phenomenon of foreign terrorist fighters by criminalising travelling to another country for terrorist purposes. Article 9 is intended to implement Article 4 of the Additional Protocol.

The aim of the provision is to oblige a Member State to criminalise the act of travelling to another country, if it can be demonstrated that the intended purpose of that travel is to commit, contribute to or participate in terrorist offences as defined in Article 3, or to provide or receive training for terrorism as defined in Articles 7 and 8. In addition to the requirements set out in the Additional Protocol, that the provision also includes travelling for the purpose of participating in the activities of a terrorist group as defined in Article 4. Criminalising travel for that purpose is equally important to address the threats posed by foreign terrorist fighters and will provide investigators and prosecutors with the necessary tools to effectively pursue the different purposes and activities that foreign terrorist fighters pursue.

The provision covers both the travel to third countries, as well as to EU Member States, including those of the nationality or residence of the perpetrator. The travel to the State of destination may be direct or by transiting other States *en route*.

All individuals travelling to another country will be potentially affected by the provisions on the criminalisation of the act of travelling abroad for the purpose of terrorism under the Directive. The seriousness of the threat posed by foreign terrorist fighters warrants a robust response which, on the other hand, should be fully compatible with fundamental rights and freedoms and the rule of law. Article 9 is only concerned with the criminalisation of the act of travelling under very particular conditions, and with a specific intent as to the purpose of the travelling.

Article 10: Organising or otherwise facilitating travelling abroad for terrorism - This provision implements Article 6 of the Additional Protocol and requires Member States to criminalise conduct enabling travel with terrorist purpose, such as acts of organisation or facilitation of such travel. . The term “organisation” covers a variety of conducts related to practical arrangements connected with travelling, such as the purchase of tickets and the planning of itineraries. The term “facilitation” is used to cover any other conduct than those falling under “organisation” which assists the traveller in reaching his or her destination. As an example, the act of assisting the traveller in unlawfully crossing a border could be mentioned. In addition to acting intentionally, the perpetrator must know that the assistance is rendered for the purpose of terrorism.

Article 11: Terrorist financing - This provision requires Member States to criminalise the provision of funds that are used to commit terrorist offences and offences related to terrorist groups or terrorist activities. The definition is in line with the definition of terrorist financing in Directive 2015/849/EU, which covers the financing of all offences as defined in Article 1 to 4 of the Framework Decision 2002/475/JHA, as amended by Framework Decision 2008/919/JHA. The concept of funds is defined in Article 2 of the proposed Directive.

In addition, the inclusion of financing of travelling abroad for terrorism (an offence not previously contained in the Framework Decision 2002/475/JHA) implements Article 5 of the Additional Protocol as well as Recommendation No 5 of FATF (as this was clarified by the recently adopted amendment to the Interpretative Note to Recommendation No 5). Pursuant to Article 15, it is not necessary that the offence is actually committed or to establish a link to a specific terrorist offence or offences related to terrorist activities. Article 11 in combination with Article 15 implements the abovementioned FATF Recommendation which requires that terrorist financing be criminalised even in the absence of a link to a specific terrorist act or acts.

The funds may come from a single source, e.g. as a loan or a gift which is provided to the traveller by a person or legal entity, or from various sources through some kind of collection organised by one or more persons or legal entities.

Article 12-14: aggravated theft, extortion and fraud to commit terrorist offences - A final set of terrorist-related offences (cf. Article 12 to 14 concerns aggravated theft, extortion and fraud with a view to committing one of the offences listed in Article 3 or 4(b)). These offences already formed part of Article 3 Framework Decision 2002/475/JHA. Member States should take the necessary measures to ensure that preparatory acts for the commission of these offences with a view to committing certain terrorist offences would be criminalised as a terrorist related activity irrespective of whether the terrorist offence as such has been committed, eg. the theft of explosives to eventually commit a terrorist act but where the planned terrorist attack is not carried out.

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 - This provision of horizontal application makes clear that for any of the offences related to a terrorist group or terrorist activities (including the offences defined in Article 16), it shall not be necessary that a terrorist offence is actually committed, as already stipulated in Article 3(3) of the Framework Decision 002/475/JHA, as amended by Framework Decision 2008/919/JHA. For instance the criminalisation of participating in the activities of a terrorist group does not require that terrorist acts have already or are committed. Furthermore, it shall not be necessary to establish a link to a specific terrorist offence or, insofar as the offences in Articles 9 to 11 are concerned, to specific offences related to terrorist activities. For instance, for the criminalisation of the recruitment to terrorism it is not necessary that the person is solicited to commit a specific terrorist offence or that the person providing training for terrorism instructs a person in the commission of a specific terrorist offence. In the same spirit, for the criminalisation of the financing of terrorism, it is sufficient that there is knowledge about the use of the funds for purposes furthering the terrorist activities in general without there being a need to be linked to for instance a specific already envisaged travel abroad.

Article 16: Aiding or abetting, inciting and attempting - This is a provision applicable to the offences mentioned above, which requires Member States to criminalise also forms of aiding and abetting, inciting and attempting many of the mentioned offences.

Aiding and abetting a terrorist offence may comprise a large variety of activities which can range from providing the financial resources for the execution of a terrorist attack, to the provision of supportive services or material such as (means of) transportation, weapons, explosives or shelter.

In addition to the requirements as currently laid down in Article 4 of the Framework Decision 2002/475/JHA, as amended by Framework Decision 2008/919/JHA, it is proposed to criminalise also aiding and abetting in relation to the receiving of training. While this is not required under the Additional Protocol, criminalising such activities is coherent with the criminalisation of aiding and abetting to other preparatory activities. Indeed helping a person to get instructed (for instance by translating terrorist content in a foreign language in full knowledge of the content as well as the intended use of such instruction) is not less reprehensible than offering similar (translation) support to a person providing the training.

It is proposed to extend the criminalisation of incitement to all offences. Indeed, the one inciting is often the driving force behind the actions taken by direct offenders. In addition to

what had already previously been criminalised under the Framework Decision 2002/475/JHA, the current proposal criminalises incitement to the offences related to terrorist activities as contained in Title III. For instance, the person instigating another person to actively recruit others or to travel abroad for terrorist purposes would therefore be covered by Article 16.

In comparison to the Framework Decision 2002/475/JHA, the additional obligations created for Member States are to criminalise the attempt of travelling abroad for terrorist purposes, in line with Article 4(3) of the Additional Protocol. Moreover, an additional obligation consists in criminalising the attempt as well as the aiding and abetting of terrorist financing, in line with FATF Recommendation No. 5 and the definition of terrorist financing in Directive 2015/48/EU. It is also proposed to criminalise the attempt to provide training, as well as recruitment for terrorism. This takes into account the requirements of Article 9(2) of the Council of Europe Convention on the prevention of terrorism, as well as the situation in most Member States, which have - as the 2014 implementation report has shown - criminalised attempt for these offences already.

Article 17: Penalties for natural persons — This provision, already contained in Article 5 of Framework Decision 2002/475/JHA, is applicable to all offences and requires Member States to apply effective, proportionate and dissuasive criminal penalties, which entail extradition. The second paragraph underlines that the terrorist offence should be punishable with a more severe sanction than the similar offences in national law committed without a terrorist intent. For some offences, a minimum is set to the maximum penalty to be imposed.

It is proposed to keep this provision unchanged. In particular Article 11 of the Council of Europe Convention on the prevention of terrorism, which - in accordance with Article 9 of the Additional Protocol - applies accordingly, does not require any changes.

Article 18: Mitigating circumstances – This provision was already contained in Article 6 the Framework Decision 2002/475/JHA (referring to “particular circumstances”), following Council Resolution of 20 December 1996 on individuals who cooperate with the judicial process in the fight against international organised crime. It allows Member States to take into account certain mitigating circumstances that may reduce the penalty imposed to terrorists. It is proposed to keep the substance of this provision unchanged.

Article 19: Liability of legal persons – This is a provision applicable to all offences mentioned above, which requires Member States to ensure liability of legal persons, while excluding that such liability is alternative to that of natural persons. The provision is in line with Article 10 of the Council of Europe Convention on the prevention of terrorism, which - in accordance with Article 9 of the Additional protocol - applies accordingly.

This provision is taken from Article 7 of Framework Decision 2002/475/JHA, following a standard formula that can be found in other EU legal instruments, obliging Member States to ensure that legal persons can be held liable for offences referred to in Articles 1 to 4 committed for their benefit by any person with certain leading positions, within the legal person. It is not required that such liability be exclusively criminal.

Article 20: Minimum sanction types for legal persons – This provision, already contained in Article 8 of Framework Decision 2002/475/JHA, is applicable to sanctions for legal persons. It is proposed to keep this provision unchanged. In particular Article 10 of the Council of Europe Convention on the prevention of terrorism, which - in accordance with Article 9 of the Additional Protocol - applies accordingly, does not require any changes.

Article 21: Jurisdiction and prosecution – This provision, already contained in Article 9 of the Framework Decision 2002/475/JHA and applicable to all offences mentioned above, requires the existence of competence bases for the judicial authorities which allow them to initiate investigation, pursue prosecutions and bring to judgment the offences defined in this Directive.

The starting point is the territoriality principle in Article 9(1)(a), according to which each Member State must establish its jurisdiction over terrorist offences committed in whole or in part in its territory. Articles 9(1)(b) and 9(4) can be considered as an extension of this principle. Additionally, Member States must take extra-territorial jurisdiction over offences referred to in Articles 1 to 4, where the offender is one of its nationals or residents, or the offence is committed for the benefit of a legal person established in its territory, or against its institutions or people, an institution of the European Union or a body set up in accordance with the Treaty establishing the European Community or the Treaty on European Union and based in that Member State. Article 9(3) sets up the necessary jurisdiction for the application of the principle “aut dedere aut iudicare”, which obliges Member States to be able to prosecute terrorist offences in cases where they refuse to extradite the suspect or the convicted person. Finally, the introduction of extended jurisdictional rules also obliged to introduce criteria to solve positive conflicts of jurisdiction that might appear between Member States. Article 9(2) establishes a list of factors that must be sequentially taken into account to this end.

In comparison to the rules laid down in the Framework Decision 2002/475/JHA, it is proposed to establish jurisdiction for the offence of providing training for terrorism as defined in Article 7 of the proposed Directive. This special provision is necessary to ensure that the offence can be effectively prosecuted as regards those (typically) non-EU nationals that are providing training for terrorist purposes. In the absence of this special provision, the (typically EU national/resident) trainee could be prosecuted for the newly introduced offence of receiving training for terrorism (under Article 21(1) a) or c) of the proposed Directive), but not the (typically non-EU national/resident) trainer. That would create an unwarranted loophole. It therefore appears necessary 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.

Title V: Provisions on protection support and rights of victims of terrorism

As clarified in recital 16 of the proposed Directive, the measures foreseen under this title are applicable to “victims of terrorism” in line with the definition in the Victims’ Rights Directive. The added value of incorporating this definition to this Directive lays in reminding and clarifying the status of the family members of victims who died as a result of a terrorist offence. Since the terrorist offences often result in casualties, it is crucial to clarify that the family members of victims whose death was directly caused by such offences and who suffer harm as a result of that person’s death are assimilated with direct victims and can benefit from the same rights. The proposed Directive limits the victims of terrorism to those who suffered harm directly from terrorist offences listed in Article 3 of the proposed Directive. Other offences covered by this Directive, in particular offences related to a terrorist group or offences related to terrorist activities should not be covered by the definition of victim of terrorism, since they are more of a preparatory nature and do not result in direct victims.

Article 22: Protection of and assistance to victims of terrorism –

The first paragraph was already contained in Article 10(1) of Framework Decision 2002/475/JHA. It requires the Member States to ensure that investigation and prosecution of offences covered by this Directive are not dependent on a report or accusation made by the victim, at least if committed on the territory of the Member State in question.

In the European Union's approach against terrorism particular importance has been attached to the protection of and assistance to victims. Given their specific needs it is proposed to clarify in paragraph 2 the measures that Member States should take to accommodate these needs with a view to further specify the obligation for Member States as currently laid down in Article 10(2) of the Framework Decision 2002/475/JHA to take if necessary all measures possible to ensure appropriate assistance.

The Victims' Rights Directive applies to all victims of crime, without creating any categories of victims. However, the Victims' Rights Directive acknowledges that certain victims have specific protection needs that should be assessed individually and that particular attention shall be paid to victims who have suffered considerable harm due, inter alia, to the severity of the crime. Victims of terrorism should be duly considered in this regard.

The Victims' Rights Directive does not specify in detail how to accommodate the specific needs of victims of terrorism. Victims of terrorism need in particular proper support and assistance. It is therefore crucial that well-organised and professional emergency assistance is provided to victims of terrorism, immediately after an attack and for as long as necessary afterwards. Such immediate assistance is often described by surviving victims of terrorism as a "lifesaver". Moreover, since victims of terrorism are likely to suffer from Post-Traumatic Stress Disorder (PTSD) and other trauma-related harm, it is crucial to offer them a psychosocial assistance for as long as it is necessary in each individual case. The proposed provision provides for such qualified support services.

Access to information is another important element in situations following a terrorist attack with high media coverage while the confidentiality of criminal investigations has to be respected. Victims are often confused by conflicting and incomplete information. Therefore the proposed provision requires also that access to information for victims about their rights and about available assistance and support as well as information about the victims is provided.

The proposed provisions do not aim at amending the already existing EU provisions on victims' rights, but to qualify them in a way that accommodates best the specific needs of victims of terrorism.

Article 23: Rights of victims of terrorism resident in another Member State – The terrorist attacks aim to hurt large groups of people and victims often come from or have their residences in a different country than the one of the terrorist attack. That is why the Member States shall ensure that their competent authorities can take appropriate measures to minimise the difficulties faced by such victims, particularly with regard to access to information about the victims' rights and about accessible compensation schemes. Moreover, the Member States shall ensure that the victims of terrorism have access to a long-term emotional and psychological support and assistance in the place where they live.

Title VI: Final provisions

Article 24: Replacement of Framework Decision 2002/475/JHA on combating terrorism – This is a provision which replaces the Framework Decision 2002/475/JHA, as amended by Framework Decision 2008/919/JHA.

Article 25: Transposition - Given the urgency to implement the proposed additional offences, a short transposition time is necessary. The transposition deadline of 12 months has been set on the assumption that negotiations will be conducted swiftly.

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/JHA²¹ 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,²² Council Decision 2008/615/JHA²³ and Council Decision 2005/671/JHA,²⁴ Regulation (EU) No

²¹ Council Framework Decision of 13 June 2002 on combating terrorism (OJ L 164, 22.6.2002, p. 3).

²² 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).

²³ 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).

²⁴ Council decision 2005/671/JHA on the exchange of information and cooperation concerning terrorist offences (OJ L 253, 29.9.2005, p. 22).

603/2013 of the European Parliament and of the Council,²⁵ Council Framework Decision 2002/584/JHA²⁶ and Council Framework Decision 2002/465/JHA.²⁷

- (4) The terrorist threat has grown and rapidly evolved in recent years. Individuals referred to as "foreign terrorist fighters" travel abroad for terrorism purposes. Returning foreign terrorist fighters pose a heightened security threat to all EU Member States. Foreign terrorist fighters have been linked to several recent attacks 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.
- (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.
- (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.
- (9) Criminalisation of the receiving training for terrorism complements the existing offence of providing training and specifically addresses the threats resulting from

²⁵ 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).

²⁶ 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).

²⁷ Council Framework Decision 2002/465/JHA of 13 June 2002 on joint investigation teams (OJ L 162, 20.6.2002, p. 1).

those actively preparing for the commission of terrorist offences, including those ultimately acting alone.

- (10) Terrorist financing should be punishable in the Member States and 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 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.
- (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 terrorist offence may be effectively prosecuted. In particular, it appears necessary 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.
- (16) Member State should adopt specific measures of protection, support and assistance responding to the specific needs of victims of terrorism, further qualifying and deepening the rights already contained in the Directive 2012/29/EU of the European Parliament and the Council²⁸. Victims of terrorism are those defined in Article 1 of the Directive 2012/29/EU, in relation to terrorist offences as referred to in Article 3. The measures to be taken by Member States should ensure that in the event of a terrorist attack, the victims of terrorism will obtain emotional and psychological support, including trauma support and counselling, and any relevant legal, practical or financial information and advice.

²⁸ 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 co-operate among each-other to ensure that access to information about the victims' rights, about available support services and about accessible compensation schemes is provided to all victims of terrorism. 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.
- (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.
- (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 or discrimination.
- (21) The Directive should replace Framework Decision 2002/475/JHA²⁹ 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

²⁹ 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).

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

HAVE ADOPTED THIS DIRECTIVE:

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 specific 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
- (d) "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) threatening to commit any of the acts listed in points (a) to (h).

Article 4
Offences relating to a terrorist group

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

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

TITLE III: OFFENCES RELATED TO TERRORIST ACTIVITIES

Article 5
Public provocation to commit a terrorist offence

Member States shall take the necessary measures to ensure that the distribution, or otherwise making available, of a message to the public, with the intent to incite the commission of one of the offences listed in points (a) to (h) of Article 3(2), where such conduct, whether or not directly advocating terrorist offences, causes a danger that one or more such offences may be committed, is punishable as a criminal offence when committed intentionally.

Article 6
Recruitment for terrorism

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

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 or contributing to one of the offences listed in points (a) to (h) 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.

Article 8
Receiving training for terrorism

Member States shall take the necessary measures to ensure that to receive instruction, from another person 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 (h) of Article 3(2) is punishable as a criminal offence when committed intentionally.

Article 9
Travelling abroad for terrorism

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

Article 10
Organising or otherwise facilitating travelling abroad for 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 financing

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

Article 12
Aggravated theft to commit a terrorist offence

Member States shall take the necessary measures to ensure that aggravated theft with a view to committing one of the offences listed in Article 3 is punishable as a criminal offence when committed intentionally.

Article 13
Extortion to commit a terrorist offence

Member States shall take the necessary measures to ensure that extortion with a view to committing one of the offences listed in Article 3 is punishable as a criminal offence when committed intentionally.

Article 14

Drawing up false administrative documents to committing a terrorist offence

Member States shall take the necessary measures to ensure that drawing up false administrative documents with a view to committing one of the offences listed in points (a) to (h) of Article 3(2) and point (b) of Article 4 is punishable as a criminal offence when committed intentionally.

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 to establish a link to a specific terrorist offence or, insofar as the offences in Articles 9 to 11 are concerned, to specific offences related to terrorist activities.

Article 16

Aiding or abetting, inciting and attempting

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

Article 17

Penalties for natural persons

1. Each Member State shall take the necessary measures to ensure that the offences referred to Articles 3 to 14 and 16 are punishable by effective, proportionate and dissuasive criminal penalties, which may entail 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 imposed under national law for such offences in the absence of the special intent required pursuant to Article 3, save where the sentences imposed 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(a), and for the offences listed in point (b) of Article 4(b) a maximum sentence of not less than eight years. Where the terrorist offence referred to in point (i) 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 14 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 14 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 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 14 and 16 where:
 - (a) the offence is committed in whole or in part in its territory;
 - (b) the offence is committed on board of a vessel flying its flag or an aircraft registered there;
 - (c) the offender is one of its nationals or residents;
 - (d) the offender provides training for terrorism, as referred to in Article 7, to nationals or residents;
 - (e) the offence is committed for the benefit of a legal person established in its territory;
 - (f) the offence is committed against the institutions or people of the Member State in question or against an institution, body, office or agency of the European Union and based in that Member State.

Each Member State may extend its jurisdiction if the offence is committed in the territory of a Member State.

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. Sequential 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 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.
 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.

TITLE V: PROVISIONS ON PROTECTION SUPPORT AND RIGHTS OF VICTIMS OF TERRORISM

Article 22

Protection of and assistance to victims of terrorism

1. Member States shall ensure that investigations into, or prosecution of, offences covered by this Directive are not dependent on a report or accusation made by a victim of terrorism or other person subjected to the offence, at least if the acts were committed on the territory of the Member State.
2. Member States shall ensure that specific services to assist and support victims of terrorism are in place. Such services shall have the capacity and organisational structure necessary to provide assistance and support to these victims immediately after an attack and as long as necessary thereafter, in accordance with the specific needs of each victim. The services shall be confidential, free of charge and easily accessible to all victims of terrorism. They shall include in particular:
 - (a) emotional and psychological support, such as trauma support and counselling;
 - (b) provision of advice and information on any relevant legal, practical or financial matter.

3. This Directive shall apply in addition to and without prejudice to measures laid down in Directive [2012/29/EU](#).

Article 23

Rights of victims of terrorism resident in another Member State

1. Member States shall ensure that their competent authorities cooperate among each other to ensure access to information for victims of terrorism who are residents of a Member State other than that one where the terrorist offence was committed. The access to information shall include in particular information about the victims' rights, available support services and accessible compensation schemes.
2. Member States shall ensure that all victims of terrorism have access to the assistance and support services as laid down in Article 22 on the territory of the Member State of their residence, even if the terrorist offence was committed in another Member State.

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 [12 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