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

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Delegations will find attached document COM(2020) 619 final.

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Brussels, 30.9.2020  
COM(2020) 619 final

**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND  
THE COUNCIL**

**based on Article 29(1) of Directive (EU) 2017/541 of the European Parliament and of the  
Council of 15 March 2017 on combating terrorism and replacing Council Framework  
Decision 2002/475/JHA and amending Council Decision 2005/671/JHA**

## 1. INTRODUCTION

### 1.1. Objectives and main elements of Directive (EU) 2017/541

On 15 March 2017, the Parliament and the Council adopted Directive (EU) 2017/541 on combating terrorism<sup>1</sup> (“the Directive”). The Directive was adopted to strengthen Framework Decision 2002/475/JHA<sup>2</sup> by extending the crimes related to terrorism and to include measures that respond more precisely to the needs of victims of terrorism. The co-legislator adopted the Directive on 15 March 2017. Member States bound by the Directive<sup>3</sup> are to criminalise conduct such as training and travelling for terrorism, as well as terrorist financing. These harmonised definitions of terrorist offences serve as a benchmark for cooperation and information exchange between national authorities.

The Directive also complements legislation on the rights for victims of terrorism<sup>4</sup>. They are entitled to access to professional, specialist support services, immediately after an attack and for as long as necessary. Member States should have in place protocols and mechanisms to provide for efficient emergency response, including access to reliable information, thereby avoiding any additional suffering for victims of terrorism and their families.

The deadline for incorporating the rules into national law was 8 September 2018.

### 1.2. Purpose and structure of the report, information gathering and methodology

In accordance with Article 29(1) of the Directive, this report assesses the extent to which Member States have taken the necessary measures to comply with the Directive. It first outlines the general level of transposition of the Directive by the Member States, and then highlights certain transposition issues.

The description and analysis in this report are primarily based on the information that Member States have provided to the Commission through notification of national measures transposing the Directive by April 2020. Notifications received after that date have not been taken into account. In its analysis of the information received from the Member States, the Commission was supported by an external contractor. Member States also submitted comments to the preliminary findings of the contractor, which is an

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<sup>1</sup> OJ L 88/6, 31.03.2017.

<sup>2</sup> OJ L 164/3, 22.6.2002.

<sup>3</sup> From this point onwards, ‘Member States’ or ‘all Member States’ refer to the Member States bound by the Directive (i.e. all EU Member States except Denmark, Ireland and the United Kingdom). In accordance with Articles 1 and 2 of Protocol 22 on the Position of Denmark, Denmark did not take part in the adoption of the Directive, nor does the Directive apply to it. In accordance with Article 3 of Protocol 21 on the position of the United Kingdom and Ireland, both did not take part in the adoption of the Directive and are not bound by it. However, Council Framework Decision 2002/475/JHA continues to be applicable to and binding upon Denmark, Ireland and the United Kingdom.

<sup>4</sup> Directive 2012/29/EU (OJ L 315/57, 14.11.2012) establishes minimum standards on the rights, support and protection of victims of crime. This includes rights, support and protection of victims of terrorism, as Member States should take particular account of the needs of victims of terrorism. Directive (EU) 2017/541 further qualifies the specific needs of victims of terrorism.

additional source of information. The report also takes into account information provided by the Member States during the five transposition workshops organised by the Commission between June 2017 and September 2018, as well as publicly available information. In addition, the Commission has taken into account the findings of the Commission report on the implementation of Council Framework Decision 2008/919/JHA of 28 November 2008 amending Framework Decision 2002/475/JHA on combating terrorism<sup>5</sup>.

Beyond the analysis provided by this report, there may be further challenges in transposition and other provisions not reported to the Commission or further legislative and non-legislative developments. Therefore, this report does not prevent the Commission from further evaluating some provisions in order to continue supporting Member States in the transposition and implementation of the Directive.

## 2. ASSESSMENT OF THE TRANSPOSITION OF THE DIRECTIVE

### 2.1. General assessment and impact of the Directive on the national legal systems

The deadline for transposition of the Directive expired on 8 September 2018. Seven Member States – **France, Germany, Hungary, Italy, Latvia, Slovakia and Sweden** – notified transposition of the Directive by the deadline, and two (**Finland and The Netherlands**) did so shortly after.

The Commission launched infringement procedures on 22 November 2018 against sixteen Member States for failing to communicate the adoption of national legislation which fully transposes the Directive<sup>6</sup>.

By the end of July 2020, fifteen out of those sixteen Member States have declared the transposition to be completed.

Almost all Member States adopted, at least in part, specific legislation to transpose the Directive. The exceptions were **France and Italy**, which considered that its pre-existing legislation was sufficient to transpose the Directive.

Where legislation was adopted for the purpose of the transposition of the Directive, this was almost always to introduce amendments to pre-existing legislation, normally the Criminal Code and, to a lesser extent, the Code of Criminal Procedure or other, more specific, legislation. The exception was **Cyprus**, where new, separate, legislation was adopted.

Overall, the transposition of the Directive appears to be satisfactory. However, a number of transposition issues encountered by the Commission in one or several Member States pose a particular concern:

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<sup>5</sup> COM(2014) 554 final, 5.9.2014.

<sup>6</sup> Austria, Belgium, Bulgaria, Croatia, Cyprus, Czechia, Estonia, Greece, Lithuania, Luxembourg, Malta, Poland, Portugal, Romania, Slovenia and Spain.

- the incomplete or incorrect transposition of one or more of the terrorist offences listed in **Article 3** of the Directive, including not qualifying the listed offences as terrorist offences, which impacts on the transposition of several other provisions;
- the lack of transposition of the element “**contribute to the commission**” in Articles 6, 7, 8, 9 and 11 of the Directive;
- the incomplete or incorrect transposition of **Article 9** on travelling for the purposes of terrorism and **Article 11** on terrorism financing, two of the new provisions introduced by the Directive, and;
- shortcomings in the transposition of specific provisions for **victims of terrorism**.

## 2.2. Specific assessment of the transposing measures in the Member States

### 2.2.1. Subject matter (Article 1)

This provision explains what the Directive is about and notes that it sets minimum rules. Accordingly, Member States are allowed to go beyond the obligations of the Directive. This provision does not require transposition.

### 2.2.2. Definitions (Article 2)

**Article 2** of the Directive lists the definitions of the terms used in the Directive, namely: “funds”, “legal person”, “terrorist group” and “structured group”. In some Member States, some definitions are not explicitly transposed but rather established through case law. Overall, the transposition of this article is satisfactory.

As regards **Article 2(1)**, **Czechia’s** legislation does not appear to provide for a definition of “funds”.

As regards **Article 2(3)**, several Member States appear to have transposed the definition of “terrorist group” in a more limited way, which may limit the scope of application of the crime of participation in a terrorist group (Article 4).

**Cyprus’** legislation appears to add a limitation to the definition – terrorist groups must be on the lists of natural or legal persons or other groups which have been subject to anti-terrorism sanctions or other measures, created in compliance with resolutions of the United Nations Security Council or restrictive measures by the Council of the European Union, and updated by the Ministry of Foreign Affairs. In **Lithuania**, terrorist groups that do not have formally defined roles for its members or continuity of its membership do not seem to qualify as terrorist groups in its national legislation.

### 2.2.3. Scope (Article 3)

**Article 3(1)** of the Directive provides that Member States ensure that the intentional acts listed within its sub-paragraphs are criminalised as terrorist offences where committed with one of the aims listed in its paragraph 2.

Article 3(1) does not just entail a requirement to criminalise specific acts, but also that such acts are labelled as terrorist offences in national legislation. However, in **Germany**, there seems to be no provision that qualifies any of the listed offences in Article 3(1) as ‘terrorist offences’ if they are committed with any of the aims of Article 3(2). The only offences explicitly defined as terrorist offences are terrorist financing and offences

related to a terrorist group. This seems to preclude that a person acting alone that commits a listed offence with a terrorist aim, without participating in or supporting a terrorist group, is indicted for a *terrorist* offence, except for terrorist financing, which is defined as a terrorist offence in German law. In addition, a common qualification of terrorist offences is important as it allows for effective use of law enforcement cooperation instruments, such as Council Decision 2005/671/JHA<sup>7</sup>.

In comparison to Framework Decision 2002/475/JHA, which already included the obligation to criminalise a list of acts as terrorist offences, this Directive introduces a new terrorist offence related to illegal system and data interference (**Article 3(1)(i)**) as referred to in Directive 2013/40/EU<sup>8</sup>. This is transposed by all Member States, but in **Croatia**, the legislation seems to concern only critical infrastructure.

Secondly, the Directive extends the manufacture, possession, acquisition, transport, supply or use of nuclear, chemical and biological weapons (**Article 3(1)(f)**) to cover also radiological weapons. Legislation in certain Member States does not seem to include certain types of weapons, such as radiological (**Czechia, France and Malta**) and nuclear weapons (**France and Malta**). In addition, with Directive 2017/541, the crime of research and development into such weapons now covers all four types of weapons (whereas previously it only covered biological and chemical weapons). In **Austria, Bulgaria, France, Malta, and Poland**, the legislation does not appear to include research into, and **France's** and **Malta's** legislation does not seem to include the development of certain weapons. More generally, **Germany's** transposing legislation does not seem to contain an explicit reference to research into certain weapons as stipulated by Article 3(1)(f).

In relation to those parts of the offence that were already introduced by Framework Decision 2002/475/JHA, several issues still exist.

As regards **Article 3(1)(c)** of the Directive, on kidnapping or hostage-taking, **Lithuania's** legislation does not seem to cover the situation in which the kidnapping or hostage-taking was performed with the aim to seriously intimidate a population or to seriously destabilise or destroy the fundamental political, constitutional, economic or social structures of a country or an international organisation. **Finland's** legislation does not appear to explicitly cover all cases of kidnapping, only aggravated human trafficking.

As regards **Article 3(1)(e)** of the Directive, on seizure of aircraft, ships or other means of public or goods transport, five Member States (**Bulgaria, Cyprus, Lithuania, Luxembourg and Poland**) do not appear to cover the seizure of other means of public or goods transport.

As regards **Article 3(1)(g)** on the release of dangerous substances, or causing fires, floods or explosions, **Luxembourg's** legislation appears to cover the intentional delivery, placement or detonation of an explosive or other lethal device only when the offence is committed in a public place, a government or other public facility, a public transport system or infrastructure. Causing floods seems covered only in cases of intentional flooding of mines.

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<sup>7</sup> OJ L 253, 29.9.2005.

<sup>8</sup> OJ L 218/8, 14.08.2013.

As regards **Article 3(1)(h)** of the Directive, on interfering with or disrupting the supply of water, power or any other fundamental natural resource, the effect of which is to endanger human life, **Bulgaria's** legislation does not seem to refer to water and power supply disturbance. **Luxembourg's** legislation only appears to cover the alteration of the conditions of the water or groundwater.

As regards **Article 3(1)(i)** of the Directive, on illegal system interference and illegal data interference, **Croatia's** legislation seems to cover only interference with the operation of the computer system of critical infrastructure. This does not cover illegal system interference not committed against a critical infrastructure information system which causes serious damage or in which a significant number of information systems have been affected through the use of a tool designed or adapted primarily for that purpose (as referred to in Directive [2013/40/EU](#)<sup>9</sup>).

As regards **Article 3(1)(j)** of the Directive, on threatening to commit a terrorist act, **Greece's** legislation requires that the threat is made publicly. **Germany's** legislation does not appear to cover the threat to commit the offences of Article 3(1)(d) and Article 3(1)(f). **Portugal's** legislation also does not seem to cover the threat to commit the offence of Article 3(1)(f) of the Directive. In **Luxembourg**, if the threat is not accompanied by an order or certain conditions, it does not constitute a terrorist offence.

**Bulgaria** does not appear to have transposed the aim of **Article 3(2)(c)** of the Directive, on seriously destabilising or destroying the fundamental political, constitutional, economic or social structures of a country or an international organisation.

#### 2.2.4. Offences related to a terrorist group (Article 4)

**Article 4** of the Directive requires Member States to take the necessary measures to ensure that directing a terrorist group and participating in the activities of a terrorist group are punishable as a criminal offence. In general, the measures that Member States have taken to comply with this article are satisfactory.

As regards **Article 4(a)**, **Hungary's** legislation appears to refer to persons who organise a terrorist group, rather than persons who direct a terrorist group. **Sweden's** legislation does not contain a self-standing offence in relation to directing a terrorist group as provided for in Article 4(a), but instead transposes it through criminal responsibility for ancillary offences. As for participation in a terrorist group (**Article 4(b)**), **Sweden** also relies on ancillary offences. Since the offences in Article 4(a) and (b) do not require a link to a specific terrorist offence, criminalisation by ancillary liability risks that participation in the activities of a terrorist group remains unpunished. **Sweden** has recently criminalised collaboration with a terrorist group as a self-standing offence. The provision only seems to cover the supply of certain material resources, and does not appear to cover the supply of information.

In relation to **recital 38** excluding humanitarian activities by impartial humanitarian organisations recognised by international law, including international humanitarian law, from the scope of the Directive, four Member States (**Austria, Belgium, Italy** and **Lithuania**) have legislation that provides limitations to the application of counter-

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<sup>9</sup> OJ L 218/8, 14.08.2013.

terrorism legislation in case of humanitarian or other activities. In other Member States<sup>10</sup>,) generic legislation (such as the Criminal Code) can be interpreted to this effect, or the national authorities indicated that this is followed in practice.

#### **2.2.5. Public provocation to commit a terrorist offence (Article 5)**

**Article 5** of the Directive requires Member States to criminalise the intentional distribution, or otherwise making available by any means, of a message to the public, with the intent to incite the commission of a terrorist offence, where such conduct, either directly or indirectly advocates the commission of terrorist offences, thereby causing a danger that one or more such offences may be committed. Overall, the transposition of this article is satisfactory.

Legislation in **Lithuania** does not appear to cover cases in which a person distributes or otherwise makes available a message to the public with the intent to incite the commission or contribution of a terrorist offence, without this actually leading to another person following up on that incitement.

#### **2.2.6. Recruitment for terrorism (Article 6)**

**Article 6** of the Directive requires Member States to criminalise soliciting another person to commit or contribute to the commission of one of the offences listed in points (a) to (i) of Article 3(1), or in Article 4.

In **France**, the transposing measure covers “soliciting” as making offers or promises, offering gifts, presents or other benefits, threatening or exerting pressure on a person to commit a terrorist offence. Article 6 also requires criminalising recruitment to *contribute* to a terrorist offence, an element which does not appear to be explicitly covered by **Bulgaria’s, Greece’s, Portugal’s** and **Spain’s** legislation. In **Latvia, Malta, Poland and Slovenia**, this element appears to be covered by ancillary offences, e.g. aiding and abetting. However, in transposing several other offences of the Directive, the legislation of these Member States does explicitly refer to the element of “contribution”.

In addition, in **Portugal**, recruitment for offences relating to a terrorist group (Article 4) is not covered. In **Germany**, Article 6 has been transposed by several provisions, which together do not appear to cover all the required offences of the Directive.

#### **2.2.7. Providing training for terrorism (Article 7)**

**Article 7** of the Directive requires Member States to criminalise intentionally providing instruction on the making or use of explosives, firearms or other weapons or noxious or hazardous substances, or on other specific methods or techniques, for the purpose of committing, or contributing to the commission of, one of the offences listed in points (a) to (i) of Article 3(1), knowing that the skills provided are intended to be used for this purpose.

Just as Article 6 on recruitment, Article 7 on providing training also covers training to *contribute* to a terrorist offence, an element which does not appear to be explicitly covered by **Bulgaria’s, Portugal’s** and **Spain’s** legislation. In **Latvia, Malta, Poland**

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<sup>10</sup> Bulgaria, Croatia, Cyprus, Czechia, Estonia, Finland, France, Germany, Hungary, Latvia, The Netherlands, Romania, Slovakia, Spain and Sweden.



and **Slovakia**, this element appears to be covered by ancillary offences like aiding and abetting, whereas other offences of the Directive are transposed with an explicit reference to the element of “contribution”.

In **Germany**, Article 7 has not been transposed by a specific provision but by several provisions, which together do not appear to cover all terrorist offences of the Directive.

#### 2.2.8. Receiving training for terrorism (Article 8)

**Article 8** of the Directive requires Member State to criminalise receiving instruction on the making or use of explosives, firearms or other weapons or noxious or hazardous substances, or on other specific methods or techniques, for the purpose of committing, or contributing to the commission of, one of the offences listed in points (a) to (i) of Article 3(1).

The offence also covers receiving training to contribute to a terrorist offence, an element which does not appear to be explicitly covered by **Bulgaria’s, Portugal’s and Spain’s** legislation, as is the case for Articles 6 and 7. In **Slovakia**, this element appears to be covered by ancillary offences like aiding and abetting, whereas other offences of the Directive are transposed with an explicit reference to the element of “contribution”. Equally, **Germany’s** legislation transposes this provision through several provisions, which together do not appear to cover all terrorist offences of the Directive.

In **Cyprus, Malta, Slovakia and Slovenia**, the legislation does not appear to include self-study.

#### 2.2.9. Travelling for the purpose of terrorism (Article 9)

**Article 9** of the Directive requires Member States to criminalise the intentional travelling for the purposes of committing, or contributing to the commission of, a terrorist offence, for the purpose of the participation in the activities of a terrorist group with knowledge of the fact that such participation will contribute to the criminal activities of such a group, or for the purpose of the providing or receiving of training for terrorism. Member States are given two options for transposition, through Article 9(2)(a) or Article 9(2)(b).

**Article 9(1)** of the Directive requires Member States to criminalise travelling to a country other than the Member State in question. In **Germany**, there appears to be no explicit reference to the purpose of participating in the activities of a terrorist group. In **Bulgaria, Portugal, Romania and Slovenia**, the scope of the offence seems narrower than in the Directive because the legislation contains a more limited definition of the persons that travel or the territories they travel to. **Article 9(2)** of the Directive refers to travelling to that Member State, giving Member States two options for transposition. **Poland** does not appear to transpose this provision at all.

Under **Article 9(2)(a)** Member States may criminalise travelling to that Member State for the abovementioned terrorist purposes. This option was transposed by eighteen Member States<sup>11</sup>.

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<sup>11</sup> Austria, Belgium, Bulgaria, Croatia, Cyprus, Czechia, Estonia, Finland, Greece, Hungary, Latvia, Lithuania, Malta, Portugal, Romania, Slovakia, Slovenia and Sweden.

In **Bulgaria**, there seems to be no reference to the purpose to participate in the activities of a terrorist group. In **Portugal**, travelling to contribute to the commission of terrorist offences appears not to be covered, and the national provision would not cover persons travelling to Portugal if they are Portuguese nationals or have their residence in Portugal. Similarly, in **Romania**, it is unclear if a resident of a state travelling back to the state of his or her citizenship in order to commit (or contribute to the commission of) a terrorist offence would be covered.

Alternatively, Member States under **Article 9(2)(b)** may criminalise preparatory acts undertaken by a person entering that Member State with the intention to commit, or contribute to the commission of, a terrorist offence under Article 3. This option was transposed by fourteen Member States<sup>12</sup>. Indeed, eight Member States (**Belgium, Bulgaria, Croatia, Cyprus, Czechia, Estonia, Slovakia** and **Sweden**) transposed both options.

In **Germany**, transposition of Article 9(2)(b) has been ensured through the criminalisation of conspiracy, but this appears to be narrower than the preparatory acts of Article 9(2)(b). As to the element of “contributing” to the commission of terrorist offences, some Member States do not appear to have explicitly transposed this. This concerns **Poland** in relation to Article 9(1), **Slovenia** in relation to Article 9(2)(a), **Bulgaria** and **Spain** in relation to Article 9(2)(b), and **Slovakia** in relation to all paragraphs.

#### **2.2.10. Organising or otherwise facilitating travelling for the purpose of terrorism (Article 10)**

**Article 10** requires Member State to criminalise any intentional act of organisation or facilitation that assists any person in travelling for the purpose of terrorism, as referred to in Article 9(1) and point (a) of Article 9(2), knowing that the assistance thus rendered is for that purpose. In general, the measures that Member States have taken to comply with this article are satisfactory.

In **Bulgaria** and **Lithuania**, the legislation appears to require that the crime of travelling for terrorist purposes is actually committed for the facilitation or organisation of travelling to be criminalised. In **Slovakia**, the transposing provision seems to limit the geographical scope of the travel.

#### **2.2.11. Terrorist financing (Article 11)**

**Article 11** of the Directive requires Member States to punish terrorist financing as a criminal offence when committed intentionally. It also specifies that where terrorist financing concerns any of the offences laid down in Articles 3, 4 and 9 of the Directive, it is not necessary that the funds be in fact used nor that the offender knows for which specific offence or offences the funds are to be used.

In **Bulgaria, Germany, Malta, Poland** and **Portugal**, terrorist financing does not appear to cover the financing of all offences in Articles 3 to 10 as required by the Directive. In **Bulgaria, Latvia, Portugal** and **Spain** the element “contribute to the commission” does

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<sup>12</sup> Belgium, Bulgaria, Croatia, Cyprus, Czechia, Estonia, France, Germany, Italy, Luxembourg, The Netherlands, Slovakia, Spain, and Sweden.

not seem to be reflected in national law. In **Poland**, **Slovakia** and **Slovenia**, the approach to the transposition of the element “contribute to the commission” is not consistent throughout the transposing legislation. In **Luxembourg**, national legislation adds the condition that the funds were unlawfully collected.

#### **2.2.12. Other offences related to terrorist activities (Article 12)**

**Article 12** of the Directive requires Member States to criminalise as offences related to terrorist activities, aggravated theft and extortion with a view to committing one of the offences listed in Article 3 of the Directive, and drawing up or using false administrative documents with a view to committing one of the offences listed in points (a) to (i) of Article 3(1), point (b) of Article 4, and Article 9 of the Directive.

**Croatia’s** and **Greece’s** legislation does not appear to criminalise the intentional acts of aggravated theft, extortion and drawing up or using false administrative documents as offences related to terrorist activities. In **Finland**, only aggravated theft with a view to committing a terrorist offence, and not extortion or drawing up or using false administrative documents, seems to be covered as an offence related to terrorist activities.

#### **2.2.13. Relationship to terrorist offences (Article 13)**

**Article 13** of the Directive provides that for an offence referred to in Article 4 or Title III to be punishable, it shall not be necessary that a terrorist offence be actually committed, nor shall it be necessary, insofar as the offences referred to in Articles 5 to 10 and 12 of the Directive are concerned, to establish a link to another specific offence laid down in the Directive.

In **Bulgaria**, the transposition of the offence in Article 10 of the Directive and the contribution to the commission of certain offences related to terrorist activities is done via the criminalisation of aiding and abetting. Under their national law, aiding and abetting only seems to be penalised when the main offence is actually committed. In **Greece**, the offence of Article 10 is not a self-standing offence, and therefore it appears necessary to establish a link to another specific offence in the Directive (Article 9). In **Lithuania**, the preparation to commit a crime that is not classified as “serious”, such as those transposing Articles 5, 9 and 10 of the Directive, does not appear to be criminalised. Therefore, if the offence is discontinued at the stage of preparation, preparatory actions would not be criminalised.

#### **2.2.14. Aiding and abetting, inciting and attempting (Article 14)**

**Article 14** of the Directive requires Member States to ensure that aiding and abetting an offence referred to in Articles 3 to 8, 11 and 12 of the Directive, inciting an offence referred to in Articles 3 to 12 of the Directive, and attempting to commit an offence referred to in Articles 3, 6, 7, Article 9(1), point (a) of Article 9(2), and Articles 11 and 12 of the Directive, with the exception of possession as provided for in point (f) of Article 3(1) and the offence referred to in point (j) of Article 3(1), is punishable. Overall, the transposition of this article is satisfactory.

**Poland** has transposed Article 6 by the same measure as **Article 14(1)** and **14(2)**. It is therefore unclear whether aiding and abetting or inciting the offence of Article 6 is criminalised.

In **Greece**, inciting the offence of Article 10 does not seem punishable, as Article 10 is not transposed as a self-standing offence.

As regards **Article 14(3)**, referring to attempting, in **Malta**, the attempt of certain offences covered under Article 3, and the attempt of offences mentioned under Articles 6, 7, 11 and 12 of the Directive does not seem criminalised.

#### **2.2.15. Penalties for natural persons (Article 15)**

**Article 15** of the Directive requires Member States to ensure that the offences referred to in Articles 3 to 12 and 14 of the Directive are punishable by effective, proportionate and dissuasive criminal penalties. Specifically, it requires Member States to ensure that the terrorist offences referred to in Article 3 and aiding and abetting, inciting and attempting such offences, are punishable by custodial sentences heavier than those imposable under national law for such offences in the absence of the special intent (except where the sentences imposable are already the maximum possible sentences under national law).

Regarding **Article 15(2)**, in **Bulgaria** the penalty for the offence in Article 3(1)(j) of the Directive (threatening to commit a terrorist offence) seems to be lighter than the penalty for threatening to commit a crime. In **Czechia**, the national law does not appear to stipulate heavier punishments for the acts of gaining control over means of air transport, civilian vessels and fixed platforms committed with the terrorist intent required pursuant to Article 3 of the Directive.

**Article 15(3)** of the Directive requires Member States to provide in their national legislation for custodial sentences with a maximum penalty for the offences in Article 4(a) and (b) of the Directive, as well as for the offence referred to in point (j) of Article 3(1) when committed by a person directing a terrorist group, at least at the level set out in Article 15(3).

In **Bulgaria**, if the terrorist offence referred to in point (j) of Article 3(1) is committed by a person directing a terrorist group the maximum sanction appears lower than the one envisaged in Article 15(3). In **Finland**, the maximum sentence for the offence in Article 4(a) of the Directive if not committed in combination with another offence, seems lower than stipulated by Article 15(3). In **Hungary**, some of the activities concerning directing a terrorist group appear to be punishable with lower sanctions than stipulated in the Directive. In **Luxembourg**, depending on the extent to which a person participated in a terrorist group (Article 4(b)), the maximum sanction could be a fine rather than a custodial sentence. In **Sweden**, some of the activities concerning the participation in a terrorist group appear to be punishable with a maximum sanction that is lower than stipulated in the Directive.

#### **2.2.16. Mitigating circumstances (Article 16)**

**Article 16** of the Directive gives Member States the option to reduce the penalties referred to in Article 15 if the offender renounces terrorist activity and if the offender provides the administrative or judicial authorities with information which they would not otherwise have been able to obtain, helping them to prevent or mitigate the effects of the offence; identify or bring to justice the other offenders; find evidence; or prevent further offences referred to in Articles 3 to 12 and 14.

Twenty-three Member States<sup>13</sup> have made use (or partial use) of this option. Two Member States (**Estonia** and **Slovenia**) have not used the option in Article 16 of the Directive at all.

The option in **Article 16(1)(a)** – renouncement of terrorist activity – has been used by seventeen Member States<sup>14</sup>.

The option in **Article 16(1)(b)** – provision of information to the competent authorities which they would not otherwise have been able to obtain – has been used by twenty-two Member States<sup>15</sup>, although ten of these<sup>16</sup> have not used all the options listed in sub paragraphs (i) to (iv).

### **2.2.17. Liability of legal persons (Article 17)**

**Article 17** of the Directive establishes that Member States must ensure that legal persons can be held liable for offences referred to in Articles 3 to 12 and 14 of the Directive 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, as well as where the lack of supervision or control of such a person has made the commission of such an offence possible. It also determines that where legal persons are held liable, this does not exclude the possibility of bringing criminal proceedings against natural persons who are involved as perpetrators, inciters or accessories. In general, the measures that Member States have taken to comply with this article are satisfactory.

In **Bulgaria**, it appears that legal persons cannot be held liable for the offence in Article 10 of the Directive, and in **Poland**, it seems that legal persons cannot be held liable for the offence in Article 9 of the Directive. In **Croatia** and **France** there appears to be no explicit reference to the lack of supervision or control (**Article 17(2)**). In **Croatia**, however, legal persons can be held liable whenever a legal person's responsible person commits a crime for the benefit of the legal person.

### **2.2.18. Sanctions for legal persons (Article 18)**

**Article 18** of the Directive requires Member States to ensure that a legal person held liable pursuant to Article 17 is punishable by effective, proportionate and dissuasive sanctions, which shall include criminal or non-criminal fines and may include other sanctions. It also includes a list of optional other sanctions.

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<sup>13</sup> Austria, Belgium, Bulgaria, Croatia, Cyprus, Czechia, Finland, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, The Netherlands, Poland, Portugal, Romania, Slovakia, Spain, and Sweden.

<sup>14</sup> Austria, Belgium, Bulgaria, Croatia, Cyprus, Czechia, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Malta, Poland, Portugal, Slovakia and Spain.

<sup>15</sup> Austria, Belgium, Bulgaria, Croatia, Cyprus, Czechia, Finland, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, The Netherlands, Poland, Portugal, Slovakia, Spain, and Sweden.

<sup>16</sup> Finland, France, Hungary, Latvia, Lithuania, Luxembourg, The Netherlands, Poland, Portugal and Romania.

Twenty-one out of twenty-five Member States<sup>17</sup> have made use (or partial use) of the options listed under Article 18 of the Directive. Four Member States (**Estonia, Finland, The Netherlands** and **Sweden**) have not used those options at all.

The option under **Article 18(a)** – exclusion from entitlement to public benefits or aid – has been used by thirteen Member States<sup>18</sup>.

The option under **Article 18(b)** – temporary or permanent disqualification from the practice of commercial activities – has been used by eighteen Member States<sup>19</sup>.

The option under **Article 18(c)** – placing under judicial supervision – has been used by five Member States (**Cyprus, France, Malta, Romania** and **Spain**).

The option under **Article 18(d)** – a judicial winding-up order – has been used by seventeen Member States<sup>20</sup>.

The option under **Article 18(e)** – temporary or permanent closure of establishments which have been used for committing the offence – has been used by nine Member States (**Belgium, Cyprus, France, Greece, Lithuania, Malta, Portugal, Romania** and **Spain**).

#### 2.2.19. Jurisdiction and prosecution (Article 19)

**Article 19** of the Directive requires Member States to establish jurisdiction over the offences referred to in Articles 3 to 12 and 14 in certain cases, allowing them, at the same time, to extend that jurisdiction to other specified cases. Article 19 also requires Member States to cooperate in cases of conflicting jurisdiction. It also requires Member States to establish jurisdiction over the offences referred to in Articles 3 to 12 and 14 in cases where a Member State refuses to surrender or extradite a person, as well as to cover cases in which any of the offences referred to in Articles 4 and 14 has been committed in whole or in part within its territory, regardless of where the terrorist group is based or pursues its criminal activities.

The cases in which jurisdiction has to be established are referred to in point (a) to (e) of **Article 19(1)**.

As regards point (c) on jurisdiction where the offender is one of its nationals or residents, **Germany's** legislation does not seem to contain a general rule establishing the domicile

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<sup>17</sup> Austria, Belgium, Bulgaria, Croatia, Cyprus, Czechia, Spain, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, Poland, Portugal, Romania, Slovenia and Slovakia.

<sup>18</sup> Croatia, Cyprus, Czechia, France, Germany, Greece, Italy, Luxembourg, Malta, Poland, Portugal, Slovakia and Spain.

<sup>19</sup> Austria, Belgium, Croatia, Cyprus, Czechia, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Malta, Portugal, Romania, Slovakia, Slovenia and Spain.

<sup>20</sup> Belgium, Bulgaria, Croatia, Cyprus, Czechia, France, Germany, Hungary, Latvia, Lithuania, Luxembourg, Malta, Portugal, Romania, Slovakia, Slovenia, and Spain.

principle<sup>21</sup>, and in **Portugal**, there seems to be no general rule establishing the nationality principle<sup>22</sup>.

As regards point (d) on jurisdiction where the offence is committed for the benefit of a legal person established in its territory, this appears not to have been transposed by **Germany, France, The Netherlands, Poland and Portugal**.

As regards point (e) on jurisdiction where 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 Union based in that Member State, in **Belgium, Bulgaria, Hungary, Romania and Spain** legislation does not appear to cover residents who are not nationals. In **Germany**, neither residents nor EU institutions seem explicitly covered. In **Poland**, the national law does not expressly cover institutions, bodies, offices or agencies of the Union. **Portugal's** law only seems to cover situations in which “the institutions or people” are in Portugal or have their domicile there.

Seventeen Member States<sup>23</sup> have made use (or partial use) of the option under Article 19(1) second sub paragraph allowing a Member State to extend its jurisdiction if the offence is committed in the territory of another Member State.

Six Member States (**Belgium, Finland, Germany, Lithuania, The Netherlands and Spain**) have made use of the option under **Article 19(2)** allowing a Member State to extend jurisdiction over providing training for terrorism as referred to in Article 7, where the offender provides training to its nationals or residents, in cases where the rules on jurisdiction established under Article 19(1) of the Directive are not applicable.

**Article 19(4)** of the Directive, requiring Member States to establish its jurisdiction over the offences referred to in Articles 3 to 12 and 14 in cases where it refuses to surrender or extradite a person, does not appear to be explicitly transposed by **Germany, Italy and Poland**. In **Cyprus**, the transposing provisions for Article 19(4) and **Article 19(5)** of the Directive do not seem to apply to all the offences covered by the Directive.

#### **2.2.20. Investigative tools and confiscation (Article 20)**

**Article 20** of the Directive requires Member States to ensure effective investigative tools, such as those used in organised crime or other serious crime cases, for investigating or prosecuting terrorism. It also requires that Member States ensure that their competent authorities freeze or confiscate, as appropriate, in accordance with Directive 2014/42/EU<sup>24</sup>, the proceeds derived from and instrumentalities used or intended to be used in the commission or contribution to terrorism. Overall, the transposition of this article is satisfactory.

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<sup>21</sup> Which would allow it to exercise criminal jurisdiction over its residents.

<sup>22</sup> Which would allow it to exercise criminal jurisdiction over its nationals.

<sup>23</sup> Belgium, Czechia, Finland, France, Germany, Hungary, Italy, Latvia, Lithuania, Luxembourg, Poland, Portugal, Romania, Sweden, Slovakia, Slovenia and Spain.

<sup>24</sup> OJ L 127/39, 29.04.2014.

As regards **Article 20(1)**, in **Germany**, effective investigative tools such as those used in organised crime or other serious crime cases do not seem available for the investigation of all offences required by the Directive. For example, they are not available for the terrorist offence of attacks upon the physical integrity of a person with a terrorist aim (Article 3(1)(b)). In **Lithuania**, not all investigative tools appear to be available to investigate the travelling for the purpose of terrorism. In the case of **Poland**, it does not seem possible to use interception of communications to investigate or prosecute all terrorist offences.

As regards **Article 20(2)**, in **Czechia, Estonia, The Netherlands, Slovakia** and **Sweden**, legislation does not impose a mandatory requirement to apply freezing and confiscation measures in relation to the offences covered under this Directive. Typically, national provisions enable the use of these measures, as mandated by Directive 2014/42/EU, but do not contain a strictly formulated obligation to apply them in relation to offences of terrorism.

### 2.2.21. Measures against public provocation content online (Article 21)

**Article 21** of the Directive requires Member States to ensure the prompt removal of online content hosted in their territory constituting a public provocation to commit a terrorist offence. When removal of the content is not feasible, Member States may take measures to block access to such content. These measures must be transparent and provide adequate safeguards (including judicial redress) to ensure that they are limited, proportionate and that users are informed of the reason for those measures. Overall, the transposition of this article is uneven across Member States. In September 2018, the Commission has proposed a dedicated regulation on preventing the dissemination of terrorist content online, with specific obligations on hosting service providers. This proposal is currently being negotiated by co-legislators.

**Greece** did not transpose this article. Its legislation only covers the seizing of digital data in the context of criminal investigations, but not removal or blocking of online content. The **first sentence of Article 21(1)** of the Directive, with regard to removal of online content, does not seem to be transposed by two Member States (**Bulgaria** and **Poland**) as their laws only refer to blocking of content. **Croatia** and **Latvia** provide measures that may result in the removal of content, but there appears to be no explicit obligation to this end. In **Czechia**, the law allows the national authorities to request the removal of online content, but it does not provide for the relevant procedure.

The **second sentence of Article 21(1)**, which *encourages* Member States to obtain the removal of content hosted outside their territory, is covered by sixteen Member States<sup>25</sup>. This includes the two Member States (**Bulgaria** and **Poland**) that cover solely blocking and thus not removing of online content. In the case of **Slovenia**, the transposition measure covers service providers with their registered office in other Member States, but not in third countries.

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<sup>25</sup> Austria, Belgium, Bulgaria, Cyprus, Czechia, Germany, Hungary, Latvia, Lithuania, The Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain and Sweden.



The option under **Article 21(2)** in relation to blocking of access to content, when removal at its source is not feasible, is transposed by eighteen Member States<sup>26</sup>.

Regarding **Article 21(3)**, in **Belgium, Finland, Luxembourg, Poland** and **Slovenia** the legislation does not seem to require informing users on the reason for content removal.

#### **2.2.22. Amendments to Decision 2005/671/JHA (Article 22)**

**Article 22** of the Directive amends Articles 1 and 2 of Council Framework Decision 2005/671/JHA requiring Member States to make accessible as soon as possible relevant information gathered by its competent authorities in the framework of criminal proceedings in connection with terrorist offences covered by this Directive to the competent authorities of another Member State where the information could be used in the prevention, detection, investigation or prosecution of terrorist offences. Member States must also ensure that their competent authorities take timely measures upon receiving information from other Member States.

**Belgium, Finland, Greece, Italy, Luxembourg, Malta, Slovenia, Spain** and **Sweden** appear not to have explicitly transposed Article 22. Where transposition of this provision is explicitly provided in national law<sup>27</sup>, it does not always cover all the elements of this provision. For instance, the **Czechia** law only seems to cover spontaneous transmission of information, whereas transmission upon a request is not covered. **Latvia's, Lithuania's** and **Portugal's** legislation does not appear to cover the spontaneous exchange of information. **Czechia's, Estonia's, Croatia's** and **Hungary's** legislation does not seem to provide for an obligation to share information, only for such a possibility. Finally, **Lithuania, The Netherlands** and **Portugal** do not seem to have an explicit requirement in their legislation to act in a timely manner upon receiving information from another Member State.

#### **2.2.23. Fundamental rights and freedoms (Article 23)**

**Article 23(1)** of the Directive emphasises that this Directive must not have the effect of modifying the obligations to respect fundamental rights and fundamental legal principles, as enshrined in Article 6 TEU.

**Article 23(2)** allows Member States to establish conditions required by, and in accordance with, fundamental principles relating to freedom of the press and other media, governing the rights and responsibilities of, and the procedural guarantees for, the press or other media where such conditions relate to the determination or limitation of liability.

**Italy** and **Sweden** make use of the option under Article 23(2) of the Directive. **Italy's** Criminal Code provides specific defences associated with the right to report and the right to information for the press and other media. In **Sweden**, media covered by constitutional

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<sup>26</sup> Belgium, Bulgaria, Cyprus, Czechia, Finland, France, Germany, Hungary, Italy, Lithuania, Malta, The Netherlands, Poland, Portugal, Romania, Slovenia, Slovakia and Spain.

<sup>27</sup> Austria, Belgium, Croatia, Cyprus, Czechia, Estonia, France, Germany, Hungary, Latvia, Lithuania, The Netherlands, Poland, Portugal, Romania and Slovakia.

rules, such as the printed press and television, are subject to special procedural rules aiming to afford special protection, as allowed for under Article 23(2).

## 2.2.24. Assistance and support to victims of terrorism (Article 24)

**Article 24** of the Directive contains obligations of Member States with regard to the provision of assistance and support to victims of terrorism.

**Article 24(1)** of the Directive requires that investigations and prosecution of offences under this Directive are not dependent on a report or accusation. The transposition of this paragraph is satisfactory.

**Article 24(2)** of the Directive requires that support services for victims of terrorism are in place in line with Directive 2012/29/EU<sup>28</sup> and that they are available to victims immediately after a terrorist attack and for as long as necessary.

In **Lithuania**, general victim support services are not established, but there are services covering certain aspects such as legal support. **Luxembourg's**, **Poland's** and **Slovenia's** legislation does not seem to indicate that support services should have the ability to address the specific needs of victims of terrorism. The requirement that victim support services must be available for victims immediately after a terrorist attack and for as long as necessary does not appear to have been explicitly transposed by sixteen Member States<sup>29</sup>, although in many of those Member States this seems to be the case in practice.

**Article 24(3)** of the Directive specifies that support services must have the ability to meet the specific needs of victims of terrorism. The services should be confidential, free of charge, easily accessible and must include: (a) emotional and psychological support; (b) advice and information; (c) assistance with claims for compensation. The requirement that these services should be confidential and free of charge appears not to have been explicitly transposed by **Austria**, **Bulgaria**, **Croatia**, **Malta** and **Poland**.

With regard to the types of services that victim support must include, **Article 24(3)(a)** on emotional and psychological support seems not explicitly transposed by **Lithuania** and **Luxembourg**; **Article 24(3)(b)** regarding the provision of advice and information has been partially transposed by **Croatia**, **Czechia**, **Italy**, **Lithuania** and **Slovenia**. The transposition of these Member States does not appear to cover advice and information on practical or financial matters in particular. In **Romania** and **Slovenia**, the national measures seem not specific enough to conclude that actual assistance with claims regarding compensation will be provided (**Article 24(3)(c)**). Despite the lack of explicit transposition of these provisions, the existing information seems to indicate that the aforementioned types of services are available in practice in several of those Member States.

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<sup>28</sup> OJ L 315/57, 14.11.2012. Directive 2012/29/EU establishes minimum standards on the rights, support and protection of victims of crime. This includes rights, support and protection of victims of terrorism, as Member States should take particular account of the needs of victims of terrorism. Directive (EU) 2017/541 further qualifies the specific needs of victims of terrorism.

<sup>29</sup> Austria, Belgium, Bulgaria, Croatia, Czechia, Estonia, Finland, Germany, Latvia, Lithuania, Malta, Poland, Portugal, Romania, Slovakia and Slovenia.

**Article 24(4) of the Directive** emphasises that mechanisms or protocols should be in place for the activation of the support services as part of national emergency response infrastructures. A comprehensive response to the needs of victims and their family members should be ensured immediately after a terrorist attack and for as long as necessary. The national measures put in place appear to largely correspond to the support required under this Directive.

Similarly, **Article 24(5) of the Directive** requires Member States to ensure adequate medical treatment specifically to victims of terrorism immediately after a terrorist attack and for as long as necessary. This obligation appears to be covered by the provision of general medical treatment in accordance with national healthcare systems.

**Article 24(6)** of the Directive requires that victims of terrorism have access to legal aid in accordance with Directive 2012/29/EU<sup>30</sup> where they have the status of parties to criminal proceedings, ensuring that the severity and the circumstances of the offence are duly reflected in the conditions and procedural rules under which victims of terrorism have access to legal aid in accordance with national law. This latter part of Article 24(6) does not seem to be transposed by **Greece, Latvia, Luxembourg, Malta, Poland, Portugal and Spain**.

#### 2.2.25. Protection of victims of terrorism (Article 25)

**Article 25** of the Directive requires Member States to ensure that measures are available to protect victims of terrorism and their family members in accordance with Directive 2012/29/EU<sup>31</sup>. When determining whether and to what extent they should benefit from these measures, particular attention must be paid to the risk of intimidation and retaliation and to the need to protect the dignity and physical integrity of victims of terrorism. Issues were identified in relation to nine Member States (**Belgium, Bulgaria, Czechia, Lithuania, Malta, Poland, Romania, Slovakia and Slovenia**). In most cases, these stem from issues in the transposition of Directive 2012/29/EU<sup>32</sup>. Protection is not fully afforded to family members of victims of terrorism. In **Bulgaria**, the risk of intimidation and retaliation and the need to protect the dignity and physical integrity of victims during questioning and testifying does not seem covered. In **Poland**, the transposing provision does not appear to explicitly refer to ‘the risk of intimidation and retaliation and to the need to protect the dignity and physical integrity of victims of terrorism’, and **Slovenia’s** legislation does not seem to cover the protection of the physical integrity and dignity of victims of terrorism. **Slovakia’s** legislation provides for measures to avoid contact between victims and offenders, but these measures only appear to apply to victims before the main hearing and not throughout criminal proceedings.

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<sup>30</sup> OJ L 315/57, 14.11.2012.

<sup>31</sup> OJ L 315/57, 14.11.2012.

<sup>32</sup> See also the Commission report on the implementation of Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, COM(2020) 188 final, 11.5.2020.

### 2.2.26. Rights of victims of terrorism resident in another Member State (Article 26)

The **first sentence of Article 26(1)** of the Directive imposes an obligation on Member States to ensure that victims of terrorism, who are residents of a Member State other than that where the terrorist offence was committed, have access to information about their rights, support services and compensation schemes in the Member State where the terrorist offence was committed. Most Member States covered in this report ensure access to information on victims' rights regardless of the person's place of residence, and all Member States appear to meet this obligation.

According to **Article 26(2)** of the Directive, Member States must ensure that all victims of terrorism have access to the assistance and support services as laid down in points (a) and (b) of Article 24(3) on the territory of the Member State of their residence, even if the terrorist offence was committed in another Member State. **Bulgaria's** transposing measure seems to apply to all offences committed on its territory as well as to those committed outside its territory, however, only when the victim is a Bulgarian citizen. Victims resident in Bulgaria who are not Bulgarian citizens are, therefore, not covered by the transposing measure.

## 3. CONCLUSIONS

The Directive represents a comprehensive legal instrument establishing minimum rules concerning the definitions of criminal offences and sanctions in the area of terrorist and terrorist-related offences, as well as measures of protection of, and support and assistance to, victims of terrorism. Its transposition has led to a substantive strengthening of the Member States' criminal justice approach to terrorism and the rights afforded to victims of terrorism. Of the 25 Member States bound by the Directive, 23 adopted new legislation in order to ensure transposition of the Directive.

The Commission acknowledges the efforts made by Member States to take measures to comply with the Directive. The transposition of the Directive by EU Member States can be considered satisfactory overall. However, there are a number of potential concerns concerning the transposition of the terrorist offences listed in **Article 3** of the Directive into national law in several Member States, which also impacts on the transposition of several other provisions of the Directive. There is also a concern with not qualifying the offences of Article 3(1) when committed with the aims of Article 3(2) as terrorist offences. It is important that these offences are in themselves considered terrorist offences, to account for, for example, the possibility of charging lone offenders with terrorist offences. In addition, a common qualification of terrorist offences is important to allow for effective use of law enforcement cooperation instruments, such as Council Decision 2005/671/JHA<sup>33</sup>. Finally, it is important for victims of terrorist offences that they are recognised as such.

Another concern is the incomplete or incorrect transposition of **Article 9** on travelling for the purposes of terrorism, which could impact the way in which a person committing this offence is investigated and prosecuted, meaning that certain acts could remain unpunished. This could be the case, for example, when national legislation contains a

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<sup>33</sup> OJ L 253, 29.9.2005.

more limited definition of the persons that travel or the territories they travel to. Likewise and for similar reasons, the incomplete or incorrect transposition of **Article 11** on terrorism financing is a concern. National legislation does not always cover the financing of all offences in Articles 3 to 10 as required by the Directive, thereby reducing the scope for prosecution of certain acts. Finally, there are deficiencies as regards the transposition of specific provisions for **victims of terrorism**, which could have the effect of victims of terrorism not receiving assistance or support tailored to their specific needs.

In order to ensure full and correct transposition of the Directive the Commission will continue to support the Member States to address identified deficiencies. This includes monitoring that national measures comply with the corresponding provisions in the Directive. Where necessary, the Commission will make use of its enforcement powers under the Treaties through infringement procedures.

In September 2021, the Commission will evaluate the Directive more broadly, by submitting a report to the European Parliament and the Council assessing the added value of the Directive with regard to combating terrorism, as required by Article 29(2). This evaluation will also assess the impact of the Directive on fundamental rights and freedoms, including on non-discrimination, on the rule of law, and on the level of protection and assistance provided to victims of terrorism.