



**2015/0281(COD)**

9.3.2016

**\*\*\*I**

## **DRAFT REPORT**

on the 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  
(COM(2015)0625 – C8-0386/2015 – 2015/0281(COD))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Monika Hohlmeier

### ***Symbols for procedures***

- \* Consultation procedure
- \*\*\* Consent procedure
- \*\*\*I Ordinary legislative procedure (first reading)
- \*\*\*II Ordinary legislative procedure (second reading)
- \*\*\*III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

### ***Amendments to a draft act***

#### **Amendments by Parliament set out in two columns**

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

#### **Amendments by Parliament in the form of a consolidated text**

New text is highlighted in ***bold italics***. Deletions are indicated using either the **■** symbol or strikeout. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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## **DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION**

**on the 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  
(COM(2015)0625 – C8-0386/2015 – 2015/0281(COD))**

**(Ordinary legislative procedure: first reading)**

*The European Parliament,*

- having regard to the Commission proposal to Parliament and the Council (COM(2015)0625),
  - having regard to Article 294(2) and Articles 83(1) and 82(2) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0386/2015),
  - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
  - having regard to the United Nations Security Council Resolutions 2178(2014) of 24 September 2014 and 2249(2015) of 20 November 2015,
  - having regard to the Council of Europe Convention on the Prevention of Terrorism of 16 May 2005 and its Additional Protocol of 19 May 2015,
  - having regard to the Financial Action Task Force (FATF) Recommendations,
  - having regard to Rule 59 of its Rules of Procedure,
  - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A8-0000/2016),
1. Adopts its position at first reading hereinafter set out;
  2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
  3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

### **Amendment 1**

**Proposal for a directive  
Recital 3 a (new)**

***(3a) The United Nations (UN), Interpol and Europol have been reporting for years on the increasing convergence between organised crime and terrorism. Europol's latest Terrorism Situation and Trend Report concludes that the overall threat by terrorists to the security of citizens of the Union and interests is likely to increase and has been particularly exacerbated by the conflict in Syria and Iraq, while the nexus between terrorism and organised crime and the links between criminal and terrorist groups constitute an increased security threat to the Union.***

Or. en

## **Amendment 2**

### **Proposal for a directive**

#### **Recital 4**

(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.

(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 ***and within Europe***, but who remain within Europe.

Or. en

### Amendment 3

#### Proposal for a directive Recital 4 a (new)

*Text proposed by the Commission*

*Amendment*

*(4a) Certain forms of internet use are conducive to radicalisation, enabling fanatics throughout the world to connect with each other and recruit vulnerable individuals without any physical contact whatsoever and in a manner that is difficult to trace. The internet generates specific challenges given its global and cross-border nature, thus giving rise to legal gaps and jurisdictional conflicts. Every Member State should set up a special unit tasked with flagging illegal content on the internet and with facilitating the detection and removal of such content. The creation by Europol of the Internet Referral Unit (IRU), responsible for detecting illegal content and supporting Member States in this regard, while fully respecting the fundamental rights of all parties involved, represents a significant step forward in this regard. Member States' units should also cooperate with the Union counter terrorism coordinator and the European Counter Terrorist Centre within Europol, as well as with civil society organisations active in this field. Member States should enforce cooperation with each other and with the relevant Union agencies on these matters.*

Or. en

### Amendment 4

#### Proposal for a directive Recital 4 b (new)

*Text proposed by the Commission*

*Amendment*

***(4b) The UN Security Council Resolution (UNSCR) 2178(2014) under its operative paragraph 6 requires all UN Member States to ensure that their domestic laws and regulations establish as serious criminal offences the travel to a third country with the purpose of contributing to the commission of terrorist acts or the providing or receiving of training, as well as the funding, organisation or facilitation of such travel. In order to avoid prosecution gaps inside the Union, a harmonised implementation of UNSCR 2178(2014) is called for.***

Or. en

*Justification*

*UN Security Council Resolution 2178(2014) already obliges all EU Member States to implement the above mentioned criminal offences in their national law. Without a harmonised implementation of this UNSCR at EU level, a "patch work" of different national legislation could lead to clear prosecution gaps inside the EU. Therefore, updating the current Terrorism Framework Decision to inter alia include these criminal offences is the preferable option in order to achieve a coordinated and structured EU wide approach.*

## **Amendment 5**

### **Proposal for a directive Recital 6a (new)**

*Text proposed by the Commission*

*Amendment*

***(6a) The provision of humanitarian assistance by impartial and independent humanitarian non-governmental organisations recognised by international law such as the International Committee of the Red Cross (ICRC) should not be considered as contributing to the criminal activities of a terrorist group. However, as established by the case-law of the Court of Justice of the European Union<sup>1a</sup>, the applicability of international***



*humanitarian law to a situation of armed conflict and to acts committed in that context does not imply that legislation on terrorism does not apply to those acts.*

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*<sup>1a</sup> Judgement of the General Court (Sixth Chamber, extended composition) of 16 October 2014, Liberation Tigers of Tamil Eelam (LTTE) v Council of the European Union. Joint cases T-208/11 and T-508/11.*

Or. en

### *Justification*

*It is important to clarify that this Directive and especially Art. 4 should not affect the work of recognised humanitarian organisations such as the Red Cross.*

## **Amendment 6**

### **Proposal for a directive**

#### **Recital 7**

#### *Text proposed by the Commission*

(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.

#### *Amendment*

(7) The offenses related to public provocation to commit a terrorist offence act comprise, inter alia, the glorification and justification of terrorism or the dissemination of messages or images including those related to the victims of terrorism as a way to gain publicity for the terrorists cause or seriously intimidating the population, provided that such behaviour causes a ***clear and concrete*** danger that terrorist acts may be committed. ***To strengthen actions against public provocation to commit a terrorist offence, and also taking into account the increased use of technology, in particular the internet, it seems appropriate for Member States to take measures to remove or to block access to webpages publicly inciting to commit terrorist offences. Where such measures are taken,***

*they should be set by transparent procedures and provide adequate safeguards, in particular to ensure that restrictions are limited to what is necessary and are proportionate and fully respect fundamental rights.*

Or. en

## Amendment 7

### Proposal for a directive Recital 8

#### *Text proposed by the Commission*

(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.

#### *Amendment*

(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. ***The act of travelling should be criminalised under very specific conditions and only when the intention of doing so for a terrorist purpose is proven by inferring, as much as possible, from objective, factual circumstances.***

Or. en

#### *Justification*

*The proposed criminalisation of travelling for terrorism purposes is necessary in order to prevent foreign fighters to leave their country or for returned foreign fighters with bad intentions to return. However, since travelling on itself is not a crime, it is a paramount importance that the intention of terrorism purpose is proven with as many concrete facts and circumstances as possible.*

## Amendment 8

### Proposal for a directive

#### Recital 10

*Text proposed by the Commission*

(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.

*Amendment*

(10) ***Without prejudice to Directive 2015/849/EU of the European Parliament and of the Council<sup>1a</sup>***, 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, ***even in the absence of a link to a specific terrorist act or acts***. Aiding and abetting or attempting terrorist financing should also be punishable.

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<sup>1a</sup> ***Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).***

Or. en

*Justification*

*Implementing recommendation No5 of FATF.*

## Amendment 9

### Proposal for a directive

#### Recital 10 a (new)

***(10a) Given the increased convergence between organised crime and terrorism, fighting against organised crime networks should be part of any strategy in the fight against the financing of terrorism. Illicit trade in firearms, drugs, cigarettes and counterfeit goods, trade in human beings, racketeering and extortion have become very lucrative ways for terrorist groups to obtain funding, generating around 110 billion euros every year (without trade in counterfeit goods). The attackers for both terrorist attacks in Paris in 2015 (Charlie Hebdo and Bataclan) had criminal records related to illicit trade in drugs and counterfeit goods.***

Or. en

*Justification*

*In the report Financing of the Terrorist Organisation Islamic State in Iraq and the Levant, published in February 2015, the Financial Action Task Force (FATF) identified the terrorist organisation's primary sources of revenue, which include bank looting and extortion, control of oil fields and refineries, robbery of economic assets, donors who abuse non-profit organisations, kidnapping for ransom, cash smuggling, fundraising through the internet, etc.*

**Amendment 10**

**Proposal for a directive  
Recital 10 b (new)**

***(10b) Financial investigations may be fundamental in uncovering the facilitation of terrorist offences and the networks and schemes of terrorist organisations. Such investigations may be very productive, particularly when tax and customs authorities, financial intelligence units (FIUs) and judicial authorities are involved at an early stage of the investigation. Member States should***

*endeavour to ensure a more efficient and coordinated approach aiming at establishing specialised units at national level to deal with financial investigations into terrorism. Such a centralisation of expertise may have considerable added value and contribute substantially to securing successful prosecutions.*

Or. en

## **Amendment 11**

### **Proposal for a directive Recital 11**

#### *Text proposed by the Commission*

(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 the operations or the proceeds thereof are intended to be used, in full or part, for terrorist purposes or will benefit terrorist groups.

#### *Amendment*

(11) Furthermore, the provision of material support for terrorism through persons engaging in or acting as intermediaries in the supply or movement of services, assets and goods, including trade transactions involving the entry into or exit from the Union, *such as the sale, acquisition or exchange of a cultural object of archaeological, artistic, historical or scientific interest, where it is reasonable to believe that it has been stolen, illegally alienated, clandestinely excavated or illegally exported from an area controlled by a terrorist group* should be punishable in the Member States, as aiding and abetting terrorism or as terrorism financing if performed with the knowledge that the operations or the proceeds thereof are intended to be used, in full or part, for terrorist purposes or will benefit terrorist groups.

Or. en

## Amendment 12

### Proposal for a directive Recital 11 a (new)

*Text proposed by the Commission*

*Amendment*

***(11a) Furthermore, the development of IT-malware for terrorist purposes or to the benefit of terrorist groups should be punishable in the Member States.***

Or. en

## Amendment 13

### Proposal for a directive Recital 13

*Text proposed by the Commission*

*Amendment*

(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.

(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 **should as much as possible** be inferred from objective, factual circumstances.

Or. en

### *Justification*

*Since the proposed criminalisations can be very intrusive to our citizens' rights, such as the right of expression or the right of travel, it is key that the intention of terrorism purpose is proven with as many concrete facts and circumstances as possible.*

## Amendment 14

### Proposal for a directive Recital 15

*Text proposed by the Commission*

*Amendment*

(15) Jurisdictional rules should be

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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.

established to ensure that terrorist **offences** may be effectively prosecuted. In particular, it appears necessary to establish jurisdiction, for the offences committed by the providers of training for terrorism **of citizens of the Union and persons residing in the Union**, whatever the nationality **of the providers may be**, 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. **Any prosecution of a third-country national should respect the agreements on extradition and on police and judicial cooperation in criminal matters with the third countries concerned.**

Or. en

## Amendment 15

### Proposal for a directive Recital 15 a (new)

*Text proposed by the Commission*

*Amendment*

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

*effective procedural safeguards.*

Or. en

## **Amendment 16**

### **Proposal for a directive Recital 15 b (new)**

*Text proposed by the Commission*

*Amendment*

***(15b) This Directive should not have the effect of altering the rights, obligations, and responsibilities of Member States under international law, including under international humanitarian law. Actions by armed forces during periods of armed conflict, which are governed by international humanitarian law within the meaning of those terms under that law, and, inasmuch as they are governed by other rules of international law, actions by the armed forces of a state in the exercise of their official duties are not governed by this Directive.***

Or. en

### *Justification*

*This recital is already part of the Terrorism Framework Decision and confirms the principle that actions by armed forces during armed conflicts are not governed by this proposal and that international humanitarian law is excluded from the scope of this Directive. This is an important issue that has also been included in the Council of Europe Convention.*

## **Amendment 17**

### **Proposal for a directive Recital 15 c (new)**

*Text proposed by the Commission*

*Amendment*

***(15c) In order to prevent and combat terrorism, a closer cross-border cooperation among the competent national and European authorities is***



*needed with regard to expedient exchange of any relevant information from criminal records or other available sources on radicalised individuals, and in particular on individuals who are or have been subject to criminal proceedings or asset freezing.*

Or. en

## **Amendment 18**

### **Proposal for a directive Recital 15 d (new)**

*Text proposed by the Commission*

*Amendment*

*(15d) Member States should cooperate among each other, notably through Eurojust, to ensure that their judicial approach to addressing the complex issue of de-radicalisation and disengagement of so-called foreign fighters is consistently improved and enforced.*

Or. en

## **Amendment 19**

### **Proposal for a directive Recital 15 e (new)**

*Text proposed by the Commission*

*Amendment*

*(15e) Considering that terrorist organisations rely heavily upon various electronic tools, the internet and social media to communicate, promote, and incite terrorist acts, to recruit potential fighters, to collect funds, or to arrange for other support for their activities, the issues related to electronic evidence create challenges in investigations and prosecutions of terrorist offences.*

*Member States should therefore cooperate among each other, notably through Eurojust, to ensure a coordinated approach for the development of any measure that may prove efficient in dealing with the gathering, sharing, and admissibility of electronic evidence.*

Or. en

## **Amendment 20**

### **Proposal for a directive Recital 15 f (new)**

*Text proposed by the Commission*

*Amendment*

*(15f) A Eurojust report of November 2014<sup>1a</sup> notes that the growing sophistication and wider use of anonymisers, proxy servers, the Tor network, satellite links and foreign 3G networks create additional challenges to the gathering and analysis of electronic evidence, which are rendered even greater by the storage of data in the cloud. Member States should therefore cooperate among each other, in particular through Eurojust, to identify and remove possible obstacles that may occur in mutual legal assistance requests for electronic evidence.*

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*<sup>1a</sup> Council document 16130/14 of 26 November 2014: Foreign Fighters: Eurojust's Views on the Phenomenon and the Criminal Justice Response*

Or. en

## **Amendment 21**

### **Proposal for a directive Recital 16**

(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 Council<sup>28</sup>. 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.

(16) Member States 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 Council<sup>28</sup>. 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. ***Furthermore, Member States should take into account the risks of intimidation and retaliation for victims and, generally speaking, for persons who may give testimony in criminal proceedings related to terrorist offences. Victims of terrorism should also be granted legal aid by all Member States.***

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<sup>28</sup> Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA of 15 March 2001(OJ L 315, 14.11.2012 p. 37).

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<sup>28</sup> Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA of 15 March 2001(OJ L 315, 14.11.2012 p. 37).

Or. en

## **Amendment 22**

### **Proposal for a directive Recital 17**

*Text proposed by the Commission*

(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.

*Amendment*

(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 compensation schemes is provided to all victims of terrorism, ***as is easy access to such services and schemes***. 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. ***For the provision of medical countermeasures, Member States may utilise the joint procurement procedure set out in Decision No 1082/2013 of the European Parliament and of the Council<sup>1a</sup>.***

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***<sup>1a</sup> Decision No 1082/2013/EU of the European Parliament and of the Council of 22 October 2013 on serious cross-border threats to health and repealing Decision No 2119/98/EC (OJ L 293, 5.11.2013, p. 1).***

Or. en

**Amendment 23**

**Proposal for a directive  
Recital 17 a (new)**

*Text proposed by the Commission*

*Amendment*

***(17a) A comprehensive policy to prevent the radicalisation and recruitment of citizens of the Union by terrorist organisations can only be successfully put in place if accompanied by proactive de-radicalisation processes in the judicial sphere. Member States should therefore share good practices on the setting-up of de-radicalisation structures to prevent***

*citizens of the Union and third-country nationals legally residing in the Union from leaving the Union or to control their return to it and their judicial approach in this regard notably through Eurojust. They should share such good practices not only among each other but also with third countries which have already acquired experience and achieved positive results in this area.*

Or. en

## **Amendment 24**

### **Proposal for a directive Recital 17 b (new)**

*Text proposed by the Commission*

*Amendment*

*(17b) In addition to the implementation of this Directive, Member States should pursue their efforts to prevent terrorism by coordinating their strategies and sharing the information and experience at their disposal, by implementing good practices at both Union and national level, by cooperating with a view to taking new steps in combating radicalisation and recruitment to terrorism, by updating national prevention policies and by putting networks of practitioners in place in the ten priority areas for action as identified in the Union strategy for combating radicalisation and recruitment to terrorism.*

Or. en

## **Amendment 25**

### **Proposal for a directive Recital 19**

*Text proposed by the Commission*

(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.

*Amendment*

(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 **assembly and** 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 **interpreted** in accordance with these rights and principles.

Or. en

**Amendment 26**

**Proposal for a directive  
Recital 19 a (new)**

*Text proposed by the Commission*

*Amendment*

***(19a) Nothing in this Directive should be interpreted as being intended to reduce or restrict the dissemination of information for scientific, academic or reporting***

*purposes. The expression of radical, polemic or controversial views in the public debate on sensitive political questions falls outside the scope of this Directive and in particular of the definition of public provocation to commit terrorist offences.*

Or. en

## Amendment 27

### Proposal for a directive Recital 21

*Text proposed by the Commission*

(21) *The* Directive *should replace* Framework Decision 2002/475/JHA<sup>29</sup> for the Member States bound by this Directive.

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<sup>29</sup> *As amended by Council Framework Decision 2008/919/JHA of 28 November 2008 amending Framework Decision 2002/475/JHA (OJ L 330, 9.12.2008, p. 21).*

*Amendment*

(21) *This* Directive *replaces* Framework Decision 2002/475/JHA for the Member States bound by this Directive.

Or. en

## Amendment 28

### Proposal for a directive Article 1

*Text proposed by the Commission*

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.

*Amendment*

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 *and support* of and assistance to victims of terrorism.

## Amendment 29

### Proposal for a directive

#### Article 3 – paragraph 2 – point f

*Text proposed by the Commission*

(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;

*Amendment*

(f) manufacture, possession, acquisition, transport, supply or use of weapons, ***malicious software as referred to in Article 7 of Directive 2013/40/EU of the European Parliament and of the Council<sup>1a</sup>***, explosives or of nuclear, biological or chemical weapons, as well as research into, and development of, biological and chemical weapons;

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***<sup>1a</sup> Directive 2013/40/EU of the European Parliament and of the Council of 12 August 2013 on attacks against information systems and replacing Council Framework Decision 2005/222/JHA (OJ L 218, 14.8.2013, p. 8).***

*Justification*

*The production and use of malicious IT tools (malware) for terrorist purposes is a relatively recent phenomenon that should be taken more into account in this Directive.*

## Amendment 30

### Proposal for a directive

#### Article 3 – paragraph 2 – point h a (new)

*Text proposed by the Commission*

*Amendment*

***(ha) attacks against information systems as defined in Articles 4 and 5 of Directive 2013/40/EU likely to endanger human life***



*or result in major economic loss;*

Or. en

*Justification*

*The use of IT tools (hacking) for terrorist purposes is a relatively recent phenomenon that should be taken more into account in this Directive.*

**Amendment 31**

**Proposal for a directive**  
**Article 5**

*Text proposed by the Commission*

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.

*Amendment*

Member States shall take the necessary measures to ensure that the distribution, or otherwise making available **by any means, including the internet**, of a message to the public, with the intent to incite **or glorify** the commission of one of the offences listed in points (a) to **(ha)** of Article 3(2), where such conduct, whether directly or **indirectly** advocating **the commission of** terrorist offences, causes **a clear and substantial** danger that one or more such offences may be committed, is punishable as a criminal offence when committed intentionally.

Or. en

*Justification*

*Public provocation or incitement should only be criminalised if there is a clear and substantial danger that it will lead to terrorist offences be commissioned. Without this clear link to the possible commissioning of terrorist offences, it risks to become an instrument of censorship.*

**Amendment 32**

**Proposal for a directive**  
**Article 8**

*Text proposed by the Commission*

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 of 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.

*Amendment*

Member States shall take the necessary measures to ensure that to receive instruction, **including obtaining knowledge or practical skills**, 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 of or contributing to the commission of one of the offences listed in points (a) to **(ha)** of Article 3(2) is punishable as a criminal offence when committed intentionally.

Or. en

*Justification*

*Sticking to the exact text of Council of Europe Additional Protocol.*

**Amendment 33**

**Proposal for a directive**  
**Article 9 – Title**

*Text proposed by the Commission*

Travelling abroad for terrorism

*Amendment*

Travelling abroad for terrorism **purposes**

Or. en

**Amendment 34**

**Proposal for a directive**  
**Article 9**

*Text proposed by the Commission*

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

*Amendment*

Member States shall take the necessary measures to ensure that travelling **of their nationals or of any individual travelling from their territory**, to another country, **which is not the traveller's nationality or**

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.

**residence**, 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.

Or. en

### *Justification*

*This is a very sensitive article that requires prudence. It is therefore wise to stay as close as possible to the exact text agreed in the UNSCR and in the Council of Europe Additional Protocol. Furthermore, one should bear in mind that this Directive applies a minimum harmonisation and that therefore Member States that are willing and constitutionally able to go further are allowed to do so.*

### **Amendment 35**

#### **Proposal for a directive Article 10 – Title**

##### *Text proposed by the Commission*

Organising or otherwise facilitating travelling abroad for terrorism

##### *Amendment*

Organising or otherwise facilitating travelling abroad for terrorism **purposes**

Or. en

### **Amendment 36**

#### **Proposal for a directive Article 11 – paragraph 1 a (new)**

##### *Text proposed by the Commission*

##### *Amendment*

***1a. Member States shall take the necessary measures to ensure that importing, exporting, transiting, detaining, selling, acquiring or exchanging a cultural object of archaeological, artistic, historic or scientific interest, while knowing that it***

*comes from an area of operations of terrorists groups, is punishable as criminal offence.*

Or. en

### **Amendment 37**

#### **Proposal for a directive Article 11 a (new)**

*Text proposed by the Commission*

*Amendment*

*Article 11a*

*Asset freezing*

*Member states shall take the necessary measures to freeze without delay funds and other financial assets or economic resources of persons who commit, or attempt to commit terrorist acts or participate in or facilitate the commission of terrorist acts, of entities owned or controlled directly or indirectly by such persons, and of persons and entities acting on behalf of, or at the direction of, such persons and entities, including funds derived or generated from property owned or controlled directly or indirectly by such persons and associated persons and entities.*

Or. en

*Justification*

*Wording taken from UNSCR 1373 (2001).*

### **Amendment 38**

#### **Proposal for a directive Article 14 – Title**

*Text proposed by the Commission*

*Amendment*

Drawing up false administrative documents

Drawing up, *possessing or using* false

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to committing a terrorist offence

administrative documents to committing a terrorist offence

Or. en

### **Amendment 39**

#### **Proposal for a directive Article 14**

##### *Text proposed by the Commission*

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.

##### *Amendment*

Member States shall take the necessary measures to ensure that drawing up, **possessing or using** false administrative documents with a view to committing one of the offences listed in points (a) to **(ha)** of Article 3(2) and point (b) of Article 4, **as well as in Articles 9 and 10**, is punishable as a criminal offence when committed intentionally.

Or. en

##### *Justification*

*In view of the recent phenomenon of foreign terrorist fighters it is advisable to extend the scope of this article to the travelling offences, where false documents have a particular relevance. Furthermore, not only the production but also the possession and use of false documents, if done intentionally, should be punishable.*

### **Amendment 40**

#### **Proposal for a directive Article 14 a (new)**

##### *Text proposed by the Commission*

##### *Amendment*

##### *Article 14a*

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

***1. Member States shall take the necessary measures to ensure the prompt removal of webpages publicly inciting to commit a terrorist offence, as referred to in Article***

*5, hosted in their territory and to endeavour to obtain the removal of such pages hosted outside of their territory.*

*2. Member States may take measures to block access to webpages publicly inciting to commit a terrorist offence towards the Internet users within their territory. These measures must be set by transparent procedures and provide adequate safeguards, in particular to ensure that the restriction is limited to what is necessary and proportionate and that users are informed of the reason for the restriction. Those safeguards shall also include the possibility of judicial redress.*

Or. en

#### **Amendment 41**

##### **Proposal for a directive Article 14 b (new)**

*Text proposed by the Commission*

*Amendment*

##### **Article 14b**

*Measures against the development and supply of malware for terrorist purposes*

*Member States shall take the necessary measures to ensure that developing or supplying malware for the purpose of committing or contributing to a terrorist offence referred to in Article 3 or the participating in the activities of a terrorist group referred to in Article 4 is punishable as a criminal offence when committed intentionally.*

Or. en

#### **Amendment 42**

##### **Proposal for a directive Article 16**

*Text proposed by the Commission*

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.

*Amendment*

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 **14b** is made punishable.
2. Each Member State shall take the necessary measures to ensure that inciting an offence referred to in Articles 3 to **14b** 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 **14b**, 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.

Or. en

**Amendment 43**

**Proposal for a directive  
Article 17 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

***3a. In accordance with Directive 2014/42/EU of the European Parliament and of the Council<sup>1a</sup>, Member States shall provide for the freezing and confiscation of assets used to commit or resulting from the commission of the offences laid down in this Directive.***

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***<sup>1a</sup> Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union (OJ L 127, 29.4.2014, p. 39).***

#### **Amendment 44**

##### **Proposal for a directive Article 18 – Title**

*Text proposed by the Commission*

*Amendment*

**Mitigating** circumstances

**Particular** circumstances

Or. en

#### *Justification*

*The expression “mitigating circumstances” may raise confusions, as the International Criminal Court’s Rules of Procedure and Evidence, under Rule 145, list as mitigating circumstances, inter alia, “the circumstances falling short of constituting grounds for exclusion of criminal responsibility, such as substantially diminished mental capacity or duress”.*

#### **Amendment 45**

##### **Proposal for a directive Article 20 – point e a (new)**

*Text proposed by the Commission*

*Amendment*

***(ea) freezing and confiscation of assets used for or resulting from the commission of one of the criminal offences laid down in this Directive, as provided by Directive 2014/42/EU.***

Or. en

#### **Amendment 46**

##### **Proposal for a directive Article 21 a (new)**

*Text proposed by the Commission*

*Amendment*

***Article 21a***



### *Investigative tools*

*Member States shall take the necessary measures to ensure that effective investigative tools, such as those which are used in organised crime or other serious crime cases, are available to persons, units or services responsible for investigating or prosecuting the offences referred to in this Directive.*

Or. en

### *Justification*

*To ensure the success of investigations and the prosecutions of terrorist offences, the relevant competent authorities should have the possibilities to make use of effective investigative tools. A similar provision exists already in other EU legislation, e.g. the Directive against Euro Counterfeiting and the Directive on Combatting Trafficking in Human Beings.*

### **Amendment 47**

#### **Proposal for a directive Article 21 b (new)**

*Text proposed by the Commission*

*Amendment*

#### *Article 21b*

#### *Exchange of information and cooperation concerning terrorist offences*

*Each Member State shall take the necessary measures to ensure that any relevant information concerning any of the offences referred to in Articles 3 to 14b, which affects or may affect another Member State, is effectively and timely transmitted to the competent authorities of that Member State established in accordance with Article 2 of Decision 2005/671/JHA.*

Or. en

## Amendment 48

### Proposal for a directive Article 21 c (new)

*Text proposed by the Commission*

*Amendment*

#### *Article 21c*

#### *Exchange of information and cooperation with Union agencies*

*Each Member State shall take the necessary measures to ensure that any relevant information concerning any of the offences referred to in Articles 3 to 14b, which affects or may affect another Member State, is effectively and timely transmitted to the relevant Union agencies such as Europol and Eurojust.*

Or. en

## Amendment 49

### Proposal for a directive Article 22 – Title

*Text proposed by the Commission*

*Amendment*

*Protection of* and assistance to victims of terrorism

*Support* and assistance to victims of terrorism

Or. en

## Amendment 50

### Proposal for a directive Article 22 – paragraph 2 – point a

*Text proposed by the Commission*

*Amendment*

(a) emotional and psychological support, such as trauma support and counselling;

(a) *medical*, emotional and psychological support, such as trauma support and counselling;

## Amendment 51

### Proposal for a directive

#### Article 22 – paragraph 2 – point a a (new)

*Text proposed by the Commission*

*Amendment*

***(aa) physical treatments such as medical countermeasures for attacks involving nuclear, biological or chemical weapons;***

Or. en

## Amendment 52

### Proposal for a directive

#### Article 22 a (new)

*Text proposed by the Commission*

*Amendment*

#### ***Article 22a***

#### ***Protection of victims of terrorism***

***Member States shall ensure that measures are available to protect victims of terrorism and their family members, in accordance with Directive 2012/29/EU. When determining whether and to what extent they should benefit from special protection measures in the course of criminal proceedings, particular attention should be paid to the risks of intimidation and retaliation and to the need to protect the dignity and physical integrity of victims of terrorism, including during questioning and when testifying.***

Or. en

#### *Justification*

*It is important to offer adequate protection to the victims of terrorism and their family. This article is in line with the existing provisions in the Victims' Rights Directive.*

## **Amendment 53**

### **Proposal for a directive**

#### **Article 23 a (new)**

*Text proposed by the Commission*

*Amendment*

#### *Article 23a*

##### *Proportionality, necessity and fundamental rights*

*1. In the implementation of this Directive, Member States shall ensure that criminalisation shall be proportionate to the legitimate aims pursued and necessary in a democratic society and shall exclude any form of arbitrariness and discrimination.*

*2. This Directive shall not have the effect of requiring Member States to take measures in contradiction of their obligation to respect fundamental rights as enshrined in the Charter of Fundamental Rights of the European Union.*

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

Or. en

#### *Justification*

*These provisions are part of FD 2002 and 2008. It is important to reinstate them here, even if the Charter of Fundamental Rights always applies for Member States implementing EU law. Since the definition and description of terrorist offences will always be relatively broad in EU legislation, a risk exists that it will be implemented and interpreted differently in different countries or circumstances, leading to arbitrariness or even sometimes to abuse of these provisions against political opponents.*

## **Amendment 54**

### **Proposal for a directive**

#### **Article 23 b (new)**

*Text proposed by the Commission*

*Amendment*

**Article 23b**

***Fundamental principles relating to  
freedom of expression***

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

Or. en

**Amendment 55**

**Proposal for a directive  
Article 23 c (new)**

*Text proposed by the Commission*

*Amendment*

**Article 23c**

***Fundamental principles relating to  
procedural rights***

***This Directive shall not have the effect of requiring Member States to take measures in contradiction with their obligations with regards to the procedural rights of suspects or accused persons in criminal proceedings.***

Or. en

## EXPLANATORY STATEMENT

Recent terrorist attacks on European soil and beyond, and most significantly the terrorist attacks in Paris on 13 November 2015, with more than 130 dead victims, have underscored the need to substantially boost our efforts to prevent and fight terrorism. Article 3 of the Charter guarantees the right of everybody to respect for his or her physical or mental integrity, which has been confirmed by the case law jurisdiction of the European Court of Justice repeatedly. If European citizens are no more able to feel safe in their country, the society's stability is in danger and has to be restored by all possible legal means.

With more than 5.000 EU nationals currently suspected of having joined the fighting in Iraq and Syria, the issue of so-called "foreign fighters" and their possible return to the EU is a very real one. Recently the EU Counter-Terrorism Coordinator, Gilles de Kerchove, stated that: "The threat posed by Europeans being radicalised, many of who are also travelling abroad to fight, is likely to persist in the coming years. An effective response to these issues requires a comprehensive approach and long term commitment."

In addition to that, so-called "lone wolves" can also cause a tremendous amount of havoc and terror. This type of potential offender poses a particular threat to public safety because lone-wolves often act anonymously in a quickly altering modus operandi. Their actions are less predictable than those of known terrorist groups, who often act after a certain pattern. With the rise of IS, Al Qaida and other extremist Islamist organisations and their very effective propaganda over the internet and other media, the number of lone-attackers has increased and is not expected to stop any time soon.

Europol recently concluded that "there is every reason to expect that ... a religiously inspired terrorist group will undertake a terrorist attack somewhere in Europe again, intended to cause mass casualties amongst the civilian population. This is in addition to the threat of lone actor attacks, which has not diminished."<sup>1</sup>

An additional, significantly serious challenge in the fight against terrorism is the growing convergence between terrorism and international organized crime. In fact, the distinction between the crimes of those two is more and more complicated and artificial as the nexus between terrorism and organised crime is increasing. In many cases terrorist organisations and organised crime networks cooperate or merge in order to benefit from each other's services, tools and other assets. In other cases the supporters of terrorist organisations are trained for and commit organised crimes on a large scale themselves for the financing of the terrorists actions (e.g. illegal organ harvesting and trafficking in combination with murder, trafficking in human beings, forced prostitution, sexual abuse of children and babies, enslavement and forced labour, extortion, racketeering, trafficking in drugs and counterfeit goods). It is therefore not sufficient to criminalize only the commission of a terrorist act neither is the condition of a direct link between the preparatory action or financing and the commission of a specific terrorist act useful for the effective prevention of terrorist attacks. If abetting or incitement to and aiding of terrorist attacks or the preparation of terrorist attacks by providing or receiving training, public provocation, recruitment, travelling abroad for terrorism purposes or the organisation/facilitation of such travel would not been criminalized, even with only an

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<sup>1</sup> Europol, Changes in modus operandi of Islamic State terrorist attacks, 18 January 2016.

indirect link to the commission of a specific terrorist offence, the networks of recruiters, decision-makers, contact-points and communication strategists would slip through the European and national law enforcements' and courts' investigations and judicial prosecution. The victims of this legal incapacity of acting would be the civil society within and outside of Europe, in war zones as well as in non-war zones. The danger of terrorist networks is not a theoretic, but a real one. Terrorist attacks leave deep wounds with the victims, their families and the regions where the attacks took place. Already now the cruelty of terrorist organisations and the brutal competition between them, forces dramatic numbers of migrants to flee terrorism in their country, putting themselves in a very vulnerable situation during their fleeing and often exposes them to criminal networks all over again.

The fight against terrorism requires a comprehensive, holistic approach of many different policy fields, including prevention, counter-radicalisation, de-radicalisation etc. The European Parliament and Council pointed out the need of this all-encompassing approach to fight terrorism in many occasions recently.<sup>1</sup> The criminal justice response is only a part of this comprehensive approach.

The fight against terrorism is a global fight that the EU cannot tackle and win by itself. The UN Security Council Resolution from 2014 puts legal obligations on all EU Member States to criminalize certain terrorist-related offences, such as the travelling for the purpose of the planning or perpetration of terrorist acts, the receipt of terrorist training, or the organisation, facilitation and financing of such terrorist travelling or training. This UNSCR has been translated into the Additional Protocol on foreign fighters in the Council of Europe.

#### Overall appraisal by the Rapporteur of the proposal

Overall, the Rapporteur is supportive of the proposal. The Rapporteur would like to point out, that the following elements in the proposal have already been part of the EU acquis since 2002 via Council Framework Decision on Combatting Terrorism (that has been amended in 2008):

The definitions of terrorist offences and offences related to a terrorist group have already been established in Framework Decision 2002/475/JHA (Article 1 and 2). The criminalization of terrorist financing has also already been foreseen in Article 2 Paragraph 2 letter b of Framework Decision 2002/475/JHA. Article 3 of Framework decision 2002/475/JHA criminalizes already aggravated theft, extortion and fraud to commit terrorist offences. Furthermore, Framework Decision 2002/475/JHA included provisions for the penalties for natural persons (Article 5 Framework Decision 2002/475/JHA), mitigating circumstances (Article 6 Framework Decision 2002/475/JHA), liability of legal persons (Article 7 Framework Decision 2002/475/JHA), minimum sanctions for legal persons (Article 8 Framework Decision 2002/475/JHA) and about prosecution and jurisdiction (Article 9 Framework Decision 2002/475/JHA).

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<sup>1</sup> See for example: Parliament resolution of 25 November 2015 on Prevention of radicalisation and recruitment of European citizens by terrorist organisations (P8\_TA(2015)0410), European Parliament resolution of 11 February 2015 on anti-terrorism measures (P8\_TA(2015)0032), Parliament resolution of 9 July 2015 on the European Agenda on Security (P8\_TA(2015)0269). Council conclusions on Counter-Terrorism of 20 November 2015, Conclusions of the European Council of 12 February 2015, Riga joint statement of 29 and 30 January 2015.

By means of Article 3 of Framework Decision 2008/191/JHA the offences of “public provocation to commit a terrorist offence”, “recruitment for terrorism” and “providing training for terrorism” have been added to the offences relating to terrorist activities. Article 3 Paragraph 3 of Framework Decision 2008/191/JHA already established that for the offences related to a terrorist group or terrorist activities, it is not necessary that a terrorist offence is actually committed. Thereby it is also not necessary to establish a link to a specific terrorist offence. Furthermore, Article 4 of Framework Decision 2008/191/JHA broadened the scope of activities which should be criminalised in terms of aiding, abetting, inciting or attempting. Framework Decision 2008/191/JHA leaves it up to the Member States to criminalize the attempt to provide terrorist training and to recruit for terrorist purposes. Most Member States already penalize those activities. The provisions from the Framework Decisions have all been implemented by all Member States.<sup>1</sup>

The changing threat has been analysed, experienced and observed by international entities such as the UN, European Agencies and national law enforcement institutions. The operative part of UNSCR(2014)2178 has been adopted under Chapter VII of the UN Charter and in particular paragraphs 4 to 6, which have binding force. Thus, Member States are required to ensure that their domestic laws establish serious criminal offences sufficient to prosecute and penalize travelling, training, funding and other preparatory acts that are linked to terrorism. The Council of Europe has adopted the UN Resolution in an Additional Protocol. Rather than to let each Member State individually implement the UN Resolution in its national law, the Rapporteur sees an added EU value in the directive because it creates a harmonised fundament of criminal law in which the national legislation will be based, so that Member States' legal actions against terrorism are coherent, consistent and effective and prosecution gaps are avoided. Furthermore, by "Lisbonizing" the existing Council Framework Decision on Terrorism, it is subject to the Charter of Fundamental Rights, to the infringement powers of the European Commission and to the judicial control of the Court of Justice. An important principle of legality is that criminal legislation needs be precise and foreseeable. Therefore, it is very important that in the implementation and in the concrete application, necessity and proportionality are leading principles and that the seriousness and intention of the offence is clearly demonstrated and proved with as many concrete facts and circumstances as possible in each case.

It is of vital importance to update the EU legal framework on combatting terrorism and terrorist networks on the following points:

- 1) The receiving of training for terrorist purposes by perpetrators within or outside of Europe, whether in training camps or through the internet;
- 2) The travelling of so called “foreign fighters” to conflict zones for terrorist purposes and the organisation or otherwise facilitation of such travel;
- 3) The inclusion of the FATF recommendation No 5 concerning terrorist financing and the funding of preparatory actions which lead to an activity with a terrorist purpose;
- 4) The inclusion of the new types of offences in and via cyberspace, in particular the darknet;

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<sup>1</sup> See also the Commission report of 5 September 2014 on the implementation of Council Framework Decision 2008/919/JHA (COM(2014)554).



- 5) Adaptation of the article about aiding, abetting, incitement and attempting to the new challenges;
- 6) Establishment of jurisdiction for the offence of providing training for terrorism;
- 7) The reinforcement of the victims' rights and the enhancement of protection, assistance and support of victims of terrorism throughout the Union.