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RECOMMENDATIONS ON DRAFT COMPROMISE AMENDMENTS TO DRAFT DIRECTIVE ON COMBATING TERRORISM

In view of the draft compromise amendments (COMP), European Digital Rights (EDRI), with the support of its members Access Now and Digitale Gesellschaft, recommends to:

	SUPPORT 	RECONSIDER 	NO POSITION
COMP 1			x
COMP 2		Part 3 (Article 21a)	Part 1, Part 2
COMP 3			x
COMP 4		Part 1 (Recital 5), Part 4 (Recital 10b)	Part 2, Part 3
COMP 5		x (Recital 7)	
COMP 6		x (Recital 7a)	
COMP 7	Part 3 (Recital 15c)	Part 1 (Recital 15a), Part 2 (Recital 15b), Part 4 (Article 21b)	
COMP 8		Part 4 (Recital 16c)	Parts 1, 2 and 3
COMP 9		x (Recital 15a)	
COMP 10		x (Recital 15b)	
COMP 11	Part 1 (Recital 6a)		Part 2 (Recital 6b)
COMP 12	Part 2 (Recital 19a), Part 3 (Article 23b), Part 5 (Article 23c)	Part 1 (Recital 19), Part 4 (Recital 19b)	
COMP 13	Part 1 (Recital 19a) and Part 2 (Article 23c)		

We suggest changes, where appropriate. For ease of reading, **our modifications** suggested are highlighted in yellow. Our suggestions for **deletions** are strike-through and **additions** appear in bold. A short justification is given for each compromise. We provide suggestions to improve the COMP that fall within our scope of work.¹

DETAILED ANALYSIS

COMP 1: Compromise on convergence terrorism and organised crime (covering AM 123, 126) NO POSITION

Recital 10 a (new)

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

Comments: COMP 1 falls outside our scope of work.

COMP 2: Compromise on prevention (covering AMs 23, 24, 61, 64, 66, 74, 76, 158, 161, 176, 177, 178, 179, 180, 195, 292) RECONSIDER COMP ON ART. 21a

Recital 17a (new) **NO POSITION**

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


Comments: Part 1 of COMP 2 falls outside our scope of work.

¹ NOTE: The compromises fail in most occasions to include the amendments tabled by the rapporteur in her draft report. These should be included, not to be voted on separately.


Recital 17b (new) **NO POSITION**

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


Comments: Part 2 of COMP 2 falls outside our scope of work. Nonetheless, we want to flag that “radicalisation” is not a harmonised concept. It is not defined in Article 2 of the proposed Directive and it falls outside the scope of this Directive (cf. Article 1).

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

Prevention

1. Member States shall take appropriate measures, **such as education and training**, to prevent the radicalisation and recruitment of citizens of the Union by terrorist organisations. 

2. Member States shall take appropriate action, including through the Internet, such as information, education and awareness-raising campaigns **and the development of alternative narratives to counter terrorist propaganda**, where appropriate in cooperation with **private companies**, relevant civil society organizations, local communities and other stakeholders, aimed at raising awareness and reducing the risk of radicalisation and recruitment by terrorist organizations.

3. Member States shall promote regular training for officials likely to come into contact with persons vulnerable to radicalisation, including front-line police officers and prison guards, aimed at enabling them to identify and deal with early signs of radicalisation and recruitment by terrorist organisations. **This includes human rights training to security forces including on how to respect human rights within the context of measures taken to counter violent extremism and terrorism.** 

Comments: We want to flag that “radicalisation” is not a harmonised concept. It is not defined in Article 2 of the proposed Directive and falls outside the scope of this Directive (cf. Article 1).

In any case, this compromise amendment omits wording of Article 23 of the Directive combating child abuse and sexual exploitation of children and child pornography (on which the proposed article is based) and some amendments that this compromise ostensibly includes.

- First paragraph: Article 23 of Directive combating child abuse and sexual exploitation of children and child pornography includes the wording “such as training and education”. In this direction, the need for education was stressed in AMs 64 and 176 to 180. Without this wording, the paragraph is

void of obvious meaning.

- Second paragraph: The proposed wording has no clear meaning and will not aid in creating a harmonised approach. It is not obvious what kinds of private companies might have expertise to donate or sell in the development of counter-narratives. The possible role of “private companies” in *developing* counter-narratives is far from clear. In any case, “private companies” are already included in “other stakeholders”. Article 23 of the Child Exploitation Directive says “in cooperation with relevant civil society organisations and other stakeholders”.

- Third paragraph: Human rights training is also necessary in dealing with prevention of terrorism and violent extremism (AM 74 and 76). Cf. Recommendation 50 of the United Nations Plan of Action against Violent Extremism leading to terrorism.

COMP 3: Compromise on nuclear/chemical terrorist threat (covering AMs 87 ,170) **NO POSITION**

Recital 5a (new)

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

Comments: COMP 3 falls outside our scope of work.

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

Recital 5 **RECONSIDER**

(5) Taking account of the evolution of terrorist threats and legal obligations to the Union and Member States under international law, the definition of terrorist offences, including offences related to a terrorist group and offences related to terrorist activities, should be further approximated in all Member States, so that it covers more comprehensively conduct related to in particular foreign terrorist fighters and terrorist financing, ~~including virtual currencies. These forms of behaviour should be punishable also if committed through the Internet, including social media,~~ while respecting the principle of proportionality and necessity, **with regard to the legitimate aims pursued and to the necessity of criminalisation in a democratic society.**

Comments:

- The European Parliament has recently argued to be cautious regarding regulating “virtual currencies” and not to overestimate the risks (see report on virtual currencies, rapporteur: German S&D member Jakob von Weizsäcker). We encourage you to follow the same approach. In any event, it is not conceivable that “financing” would be implemented in a Member State in a way that did not cover all forms of financing. See also, <http://ecrgroup.eu/news/virtual-currencies-find->

[support-in-the-european-parliament/](#)

- The first half of the last sentence should be deleted. Criminal offences should be technology-neutral insofar as possible. There is no conceivable situation where this wording would be of value. A compromise between its deletion and the original wording could be the addition of the wording of AM 83 and 84 (S&D). The current compromise does not take these two amendments fully into account.

Recital 10 **NO POSITION**


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

Comments: Part 2 of COMP 4 falls outside our scope of work.

Recital 10a (new) **NO POSITION**

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

Comments: Part 3 of COMP 4 falls outside our scope of work.

 Recital 10b (new) **RECONSIDER**

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

relevant financial intelligence information among all relevant **authorities** actors. In their efforts to prevent, investigate and combat terrorist financing, Member States should make utmost use of Europol's financial intelligence and counter terrorist financing capabilities, as well as endeavour to ensure a more efficient and coordinated approach by establishing specialised units at national level to deal with financial investigations linked to terrorism^s. Such a centralisation of expertise may have considerable added value and contribute substantially to securing successful prosecutions.

Comments: Most of part 4 of COMP 4 falls outside our scope of work. However, it should be noted that sharing intelligence information with "all relevant actors" is too broad. Who would be those actors? We recommend narrowing it down to relevant authorities.

 **COMP 5: Compromise on responsibility of service providers / internet (covering AMs 6, 92, 99, 100, 102, 103, 105, 316) RECONSIDER**

Recital 7

(7) ~~The offenses related to public provocation to commit a terrorist offence act comprise, inter alia, the glorification and justification of terrorism or the dissemination of *illegal* messages or images including those related to the victims of terrorism as a way to gain publicity for the terrorists cause or seriously intimidating the population, provided that such behaviour causes a clear and concrete danger that terrorist acts may be committed.~~ Where an information society service is provided that consists of the transmission in a communication network of information provided by a recipient of the service, or the provision of access to a communication network, Member States shall ensure that the service provider is not liable for the information transmitted, on condition that the provider does not initiate the transmission, does not select the receiver of the transmission, and does not select or modify the information contained in the transmission. ***To strengthen action against public provocation to commit a terrorist offence, Member States may take measures to remove webpages publicly inciting to commit terrorist offences. Such measures should be taken after adequate control by the judicial authority, in order to guarantee their proportionality and the full respect of fundamental rights and procedural safeguards. Where such measures are taken, they must be provided for by law, set by transparent procedures and provide adequate safeguards, in particular to ensure legal predictability and that restrictions are limited to what is necessary and proportionate. Such measures should be subject to periodic review, to assess if the stated goals of the legislation are being achieved.***

~~Member States should consider legal action, including criminal prosecutions, against internet and social media companies and service providers which refuse to comply with an administrative or judicial request to delete from their internet platforms illegal content or content extolling terrorism. The refusal or deliberate failure by internet platforms to cooperate, thus allowing such illegal content to circulate, should be regarded as an act of complicity that can be equated to criminal intent or neglect and in such cases those responsible should be brought to justice.~~

Comments: This text does not yet represent an actual compromise between the various amendments tabled or the positions of the various political groups.

- Internet access restrictions and websites' removal **fall outside the scope of the proposed Directive** (cf. Article 1). There is already a provision on liability of legal persons (Article 19).

- We recall **EU's legal framework for internet providers liability (the e-commerce Directive)**, which creates the possibility for Member States to take the necessary measures to take action against internet intermediaries who fail to act expeditiously upon receiving knowledge of clearly illegal information being hosted on their servers. Failure or refusal to cooperate can only lead to sanctions if expeditious measures are not taken upon gaining actual knowledge of the illegality of the content in question. The final sentence of the recital would create a new, vertical obligation, in a field that is regulated horizontally. There is also absolutely no evidence that a problem exists, or is likely to exist, in the EU that would necessitate such a measure. **Amendments 102, 103 and 316 need to be included in this compromise.**

- AM 99 and 100 delete the original recital 7. We support this as the text represents an unnecessary, disproportionate infringement of freedom of expression, including freedom of the press. In addition, it is not clear whether it would be criminalising individuals sharing messages or images for "journalistic purposes" as this is a very fluid term.

- **AM 6** is similar to the Council's position. If combined with AM 102,103 and 316, the Charter and the *acquis communautaire* would be complied with. This compromise does NOT include the safeguards the Parliament's rapporteur had tabled in her AM 6: "Where such measures are taken, they must be set by transparent procedures and provide adequate safeguards, in particular to ensure that restrictions are limited to what is necessary and proportionate."

- Amendment 92 should NOT be part of this compromise because:

- **"internet and social media companies and service providers" and "internet platforms"**: the Draft Directive does not define these terms. It is not coherent to sometimes refer to one type of companies and other times to other type of industry. There is also no common definition of "internet platforms".

- **"including criminal prosecutions" and the "complicity" of "Internet platforms"**: The internet industry has the obligation to remove content expeditiously once it becomes aware of "illegal content" under the e-commerce Directive. There is no experience/evidence in Europe that suggests that Internet platforms are leaving illegal terrorist material online – and certainly not at a scale that requires such a response. What is the experience that is so severe that criminal sanctions are necessary? What is the experience that shows that, in any European country, the existing sanctions are not adequate? While legislating to "solve" a problem that does not exist, there is considerable danger of unintentional or even counterproductive, consequences.

- **"illegal content or content extolling terrorism"**: "Illegal content or" can only mean that everything after the word "or" is legal content. A legal obligation to delete content which is legal is incoherent and unenforceable and below the minimum standards of predictability required by European and international law.

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

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


(7a) The most effective means of combatting **illegal terrorist content** on the Internet is to remove illegal content at source. Member States should use their best endeavours to cooperate with third countries in seeking to secure the removal of such content from servers within their territory. However, when removal of illegal content at its source is not possible, Member States may put in place measures to block access from the Union's territory to Internet pages identified as containing or disseminating **illegal** terrorist content. ~~The measures undertaken by Member States in accordance with this Directive in order to remove or, where appropriate, block websites could be based on various types of public action, such as legislative, non-legislative, judicial or other. In that context, this Directive is without prejudice to voluntary action taken by the Internet industry to prevent the misuse of its services or to any support for such action by Member States.~~ Member States should ensure that mechanisms to remove or block access to illegal content comply with the principles of proportionality and necessity and take due account of the rights of Internet Services Providers and of the end users and comply with existing legal and judicial procedures.

Comments: Contrary to what it is stated, **it DOES NOT properly include AM 102, 103 (S&D) or 105 (ALDE).**

- We support the objective of the first sentence. However, combating terrorism cannot rely upon removing content. Our changes bring clarity to the objective of this sentence.

- The Rapporteur's original proposal was much more legally coherent. It is quite clear that internet blocking is a breach of freedom of communication. This text is therefore in clear breach of the Charter of Fundamental Rights (Article 52 - restrictions must be provided for by law) and the Telecommunications Single Market Regulation (recital 13 & Article 3.3(2)a). If the blocking is "voluntary" (or "other"), then this is not provided for by law and it means that the listed safeguards can be ignored. In short, the text needs to be clear that the measure in question is provided for by, and has the predictability of, law.

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


 Recital 15a (new) **RECONSIDER**

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

Comments: We support the objective of this compromise and the safeguards outlined. We would only suggest the deletion of “any”, as only relevant information shall be shared, in line with the *acquis communautaire*.

In addition “other available sources” does not have an obvious meaning. It can mean “anything”.


Finally, we want to flag that “radicalisation” is not a harmonised concept. It is not defined in Article 2 of the proposed Directive and would fall outside the scope of this Directive (cf. Article 1).

 Recital 15b (new) **RECONSIDER**

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


Comments: This compromise is very similar to part 4 of COMP 7 and should be brought in line with it. Otherwise, it would fail to comply with the principle of presumption of innocence.

Systematically putting individuals into the SIS without any reasonable definition of “radicalisation” and “violent extremism” could lead to having innocent people in these systems. The focus should be put on people who are under investigation and those individuals suspected of having a relationship with terrorism activities. In any case, we want to flag that “radicalisation” is not a harmonised concept. The same applies to “violent extremism”. Neither of them are not defined in Article 2 of the proposed Directive and could fall outside the scope of this Directive (cf. Article 1). This legislation is a “Directive on combating terrorism”.

 Recital 15c (new) **SUPPORT**

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

Comments: We support the objective of this para. of COMP 7.

 Article 21b (new) **RECONSIDER**

Article 21b

Exchange of information and cooperation concerning terrorist offences

1. Each Member State shall take the necessary measures to ensure that its competent authorities transmit, without any prior request being necessary, in an effective and timely manner to the competent authorities of the Member State concerned **any**-relevant information in cases where there are factual reasons to believe that the information and intelligence could assist in the detection, prevention or investigation of offences referred to in this Directive.
2. Each Member State shall take the necessary measures to ensure that its contact point designated under Article 2 of Decision 2005/671/JHA transmits in an effective and timely manner to Europol and Eurojust the information referred to in that Decision.
3. Member States shall systematically flag up in the Schengen Information System any person who is suspected of having committed or who has been convicted of at least one of the offences referred to in Articles 3 to 14 of this Directive and shall exchange **all-relevant** PNR data concerning those persons;
4. Member States shall systematically forward to Europol details of any person who is suspected of having committed or who has been convicted of at least one of the offences referred to in Articles 3 to 14 of this Directive.
5. This article is without prejudice to existing EU legislation on the exchange of information.

Comments: We support the objective of this part of compromise 7, subject to the two proposed changes. It seems to make little sense for all (five years of data under the new PNR – or six months, depending on whether the “masked out” data would be considered under the wording “all PNR data”) to be shared. The text also does not mention with whom “all” this data should be shared. All national authorities to receive five years of data, every time the person flies?

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

Recital 16 **NO POSITION**

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

needed, and any relevant legal, practical or financial information and advice and adequate aid. Furthermore, each member States shall take into account the risks of intimidation and retaliation to victims and, generally speaking, to persons who may give testimony in criminal proceedings relating to terrorist offences.

Comments: Part 1 of COMP 8 falls outside our scope of work.

Recital 16a (new) **NO POSITION**


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

Comments: Part 2 of COMP 8 falls outside our scope of work.

Recital 16b (new) **NO POSITION**

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

Comments: Part 3 of COMP 8 falls outside our scope of work.

 Recital 16c (new) **RECONSIDER**

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

Comments: Part 4 of COMP 8 must be revisited. "Self-regulation" is too narrow to deal with the issues at stake here. There might be however merit for journalists to develop best practices on how to report information in the aftermaths of an attack to protect victims and their families in Member states where such behaviour is not already regulated. Respect for EU data protection laws must be ensured at all time, without jeopardising freedom of expression.

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

Recital 15a (new) **RECONSIDER**

(15a) To ensure the success of investigations and prosecutions of terrorist offences, including offences related to a terrorist group or offences related to terrorist activities, the competent authorities responsible for investigating and prosecuting such offences should have the possibility to make use of effective investigative tools such as those used in combating organised crimes or other serious crimes. Such tools should, in accordance with Member States' national law, be commensurate with the nature and the gravity of the offences under investigation, take into consideration the principle of proportionality, respect fundamental rights **and freedoms** and procedural safeguards, including the presumption of innocence, **judicial oversight** and effective remedies. **Mass surveillance should never be allowed.**

Comment: We support the objective and safeguards of this compromise. However, this compromise did not include key wording from AM 152 (S&D), i.e. judicial oversight and making clear that, in line with CJEU case law, mass surveillance measures must be prohibited.

COMP 10: Compromise on electronic evidence (covering AMs 19, 154, 160)

Recital 15b (new) **RECONSIDER**


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

Comments:

- First part: the first part of COMP 10 adds no clear meaning or sense to the recital and fails to recognise the essential value of the “Internet in promoting values of peace, tolerance and solidarity as well as promoting and protecting Human Rights and Fundamental Freedoms within and outside the European Union”, as AM 151 and 200 rightly recognise. The Internet is a democratic enabler and is used by virtually everybody in our society.

- Second part: We agree with the need to increase cooperation between Member States in combating terrorism. However, this compromise is too vague to achieve this goal while ensuring that the proposed measures are in line with applicable EU data protection laws. In addition, “electronic tools” and “electronic evidence” are undefined concepts, which, if introduced in legislation, would undermine legal certainty. **This amendment does not properly include AM 160.** Our suggested changes introduce relevant wording from that amendment.

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

 Recital 6a (new) **SUPPORT**

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


Comments: We support part 1 of COMP 11, as a reiteration of the obligations Member States have vis-à-vis human rights.

Recital 6b (new) **NO POSITION**

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

Comments: Part 2 of CAMP 11 falls outside our scope of work.

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

 Recital 19 **RECONSIDER**

(19) This Directive **is without prejudice to fundamental rights and fundamental legal** respects the principles recognised by Article 2 of the Treaty on the European Union, respects fundamental rights and freedoms and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union, including those set out in Chapters II, III, V and VI thereof which encompass inter alia the right to liberty and security, freedom of expression, freedom of speech, freedom of information, freedom of association and freedom of thought conscience and religion, the general prohibition of discrimination in particular on grounds of race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, the right to respect for private and family life and the right to protection of personal data, the principle of legality and proportionality of criminal offences and penalties, covering also the requirement of precision, clarity and foreseeability in criminal law, the presumption of innocence and the right to a fair trial, the


outcome of which is determined by the individual circumstances of the case, and the principles recognised in the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), as well as freedom of movement as set forth in Article 21(1) of the Treaty on the Functioning of the European Union and Directive 2004/38/EC, recognising that exceptions may be made on the grounds of public policy or national security. This Directive has to be implemented in accordance with these rights and principles.

Comments:

- Member States obligations have already human rights obligations, whether they are put in this Recital or not. Saying that this Directive respects fundamental rights is rather meaningless. Recital 22 of Directive 2006/24/EC, the Data Retention Directive, had similar wording as this recital. However, this Directive was ruled to be in violation of the Charter of Fundamental Rights (cf. Case C-293/12, Digital Rights Ireland, 2014). As a compromise, we suggest **including the wording of AM 187 (ALDE)**.


- **National security and public policy exceptions must not be abused and the reference in this text is superfluous.**

- The European Parliament should be at the forefront of ensuring that national security and public policy exceptions are not abused. AM 191 (ECR) must be rejected. Recently, the UK Minister Theresa May (ECR) announced the willingness for the UK to leave the European Convention of Human Rights (ECHR). France asked for a derogation of the ECHR during the internationally criticised prolongation of the emergency state. This is unacceptable in a modern democratic society. **AM 413 or 419 should be supported.**

 Recital 19a (new) **SUPPORT**

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

Comments: We support the objective of this compromise.

 Article 23b (new) **SUPPORT**

Article 23b

Fundamental principles


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

2. This Directive shall not have the effect of altering the obligation of Member States to respect fundamental rights enshrined in the Charter of Fundamental Rights of the European Union as well as

in the European Convention for the Protection of Human Rights and Fundamental Freedoms and international humanitarian law, and shall be implemented and interpreted in accordance with these rights and principles


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

Comments: While this COMP already states existing obligations, we support the reiteration of Member State obligations. Including these provisions in the operative part of a Directive should have a positive impact on implementation by Member States.

 Recital 19b (new) **RECONSIDER**

(19b) Nothing in this Directive should be interpreted as being intended to reduce or restrict the dissemination of information for the expression of an opinion or for scientific, academic or reporting purposes. **The expression of radical, polemic or controversial views in the public debate on sensitive political questions, including terrorism, falls outside the scope of this Directive and, in particular, of the definition of public provocation to commit a terrorist offence.** ~~as well as the expression of polemic or controversial views in the public debate on sensitive political questions.~~

Comments: This Compromise includes wording from **Recital 14 of the Council Framework Decision this Directive is intended to replace**, but it **excludes key wording** of the aforementioned recital. Our changes are a copy-paste of the missing wording, which has been reproduced in AM 194 (Greens), 258 (GUE), 259 (S&D), 411 (EFDD), 414 (Greens), 421 (GUE).

 Article 23c (new) **SUPPORT**


Article 23c

Fundamental principles relating to freedom of expression

This Directive shall not have the effect of requiring Member States to take measures in contradiction of fundamental principles relating to freedom of expression, ~~in particular~~ **including** 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.


Comments: This compromise includes the exact wording of Article 2 of the Council Framework Decision this Directive is intended to replace. We would prefer “including” instead of “in particular”, to include the freedom of expression of all EU citizens.

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

 Recital 19a (new) **SUPPORT**

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

Comments: We support the objective of this compromise.

 Article 23c (new) **SUPPORT**

Article 23c

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

2. Any person whose fundamental rights and freedoms have unduly been violated in the application of the provisions of this Directive shall have the right to an effective and enforceable judicial remedy.

Comments: We support the objective of this compromise.