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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 member Access Now, recommends to:

	 SUPPORT	 RECONSIDER	NO POSITION
COMP 1			x
COMP 2		Part 2 (Recital 17b), Part 3 (Article 21a)	Part 1
COMP 3			x
COMP 4		Part 1 (Recital 5), Part 4 (Recital 10b)	Part 2, Part 3, Part 5
COMP 5		Part 1 (Recital 7), Part 2 (Article 5)	
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 3 (Recital 16b)	Part 1, Part 2, Part 4, Part 5
COMP 9		Recital 15a	
COMP 10		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), Part 2 (Article 23c)		
COMP 14			x
COMP 15			x

We suggest changes, where appropriate. For ease of reading, all **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

DRAFT COMPROMISES TERRORISM DIRECTIVE (v2 – 29.04.2016)

COMP 1: Compromise on convergence terrorism and organised crime (covering AM [1](#), [9](#), [123](#), [126](#), [127](#)) 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 increasing convergence and 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 explicitly taken into account strongly by the 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](#), [158](#), [161](#), [176](#), [177](#), [178](#), [179](#), [180](#), [195](#), [292](#))


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 effective the setting up of de-radicalisation measures

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.


and projects in this field. Furthermore, Member States should share good practices on the use of effective alternative measures within the judicial approach 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, as well as the relevant EU agencies.

Comments: Recital 17a falls outside our scope of work.

 Recital 17b (new) **RECONSIDER**

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

Comments: “Radicalisation” is not a harmonised concept at EU level. 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 **educational** measures to prevent **the radicalisation and recruitment of citizens of the Union by terrorist organisations**.

2. Member States shall take appropriate action, including through the Internet, such as the provision of 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 organisations, local communities and other stakeholders, aimed at raising awareness and reducing the risk of **radicalisation** and recruitment by terrorist organisations.

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: The proposed changes aims at bringing clarity and certainty to the article.

1. "Radicalisation" remains an undefined concept at EU should level and should not be used until such definition exists.
2. "Measures" by itself can have several meaning. An adjective need to be added to provide clarity on the objective of these undefined measures.
3. It is not obvious why or how, or based on what business model, private companies would develop "alternative narratives".
4. There are no evidence of the efficiency of so called counter-narrative measures. What is more, the United States' plan on counter violent extremism has proven to be ineffective and lead to further discrimination online and is being extensively reconsidered at the moment.

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 a significant one of the greatest challenges to international security ~~and this threat is constantly evolving~~. Countering ~~theis~~ evolving 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, 36, 37, 81, 82, 83, 84, 85, 86, 117, 118, 119, 120, 121, 122, 123, 124, 125, 127, 128, 130, 131, 132, 293, 294, 295, 296, 297, 298, 299, 300, 301, 317, 374, 407)

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 by any means~~. ~~These forms of behaviour should be punishable also if committed through the Internet, including social media,~~ **These criminal offences must 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: We welcome the change brought in the text.

Further changes must be added for clarity. Criminal offences should be technology-neutral insofar as possible. There is no added value in the words we propose deleting – it is inconceivable that Member States would introduce a legal provision that would not follow this approach. The current compromise does not take AM 83 and 84 amendments fully into account. The proposal final sentence would remedy this problem.

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: This recital falls outside our scope of work.

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

(10a) Illicit trade in firearms, oil, drugs, cigarettes and counterfeit goods ~~and~~ artworks ~~and other cultural objects~~, ~~as well as~~ 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. ~~Member States should take the necessary measures to ensure that trading in goods whose trading is considered to be vulnerable to terrorist financing is being monitored. In this respect, appropriate and proportionate d~~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 could~~ have a preventative effect by materially impairing the trading activities of organised criminal groups and terrorist groups as a source of terrorist financing ~~and by~~. ~~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 helping to~~ tracking and prosecut~~ing~~ing organised crime and other commercial activities of terrorist organisations more effectively. ~~Where appropriate, Member States should sanction breaches of these requirements.~~

Comments: This recital 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, for instance by establishing specialised units at national level to deal with financial investigations linked to terrorisms, which. ~~Such a centralisation of expertise~~ may have considerable added value and contribute substantially to securing successful prosecutions.

Comments: The sharing of intelligence information with “all relevant actors” is too vague and lead to uncertainty and, inevitably, to divergent implementations among Member States. We recommend to narrow it down to “relevant authorities.”

[Article 11 \(cf. CoE additional protocol + Directive on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing\)](#) **NO POSITION**

[Article 11](#)

[Terrorist financing](#)

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

2. Member states shall take the necessary measures to ensure the freezing or seizure and confiscation of any funds and other assets used or allocated for the purpose of committing or attempting to commit any of the offences referred to in this Directive .

Comments: This article falls outside our scope of work.

COMP 5: Compromise on [responsibility of service providers / internet public provocation](#) (covering AMs 6, [31, 92, 99, 100, 105, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257](#)) **RECONSIDER**



Recital 7 **RECONSIDER**

~~(7) The offenses related to public provocation to commit a terrorist offence act comprise, inter alia, the glorification and justification of terrorism or the dissemination of messages or images including those related to the victims of terrorism as a way to gain publicity for the terrorists cause or seriously intimidating the population, provided that such behaviour causes a clear and concrete danger that terrorist acts may be committed. Where an information society service is provided that consists of the transmission in a communication network of information provided by a recipient of the service, or the provision of access to a communication network, Member States should ensure that the service provider is not liable for the information transmitted, on condition that the provider~~

does not initiate the transmission, does not select the receiver of the transmission, and does not select or modify the information contained in the transmission. Member States should consider legal action, including criminal prosecutions, against internet and social media companies and service providers which refuse to comply with an administrative or judicial request to delete from their internet platforms illegal content or content extolling terrorism. The refusal or deliberate failure by internet platforms to cooperate, thus allowing such illegal content to circulate, should be regarded as an act of complicity that can be equated to criminal intent or neglect and in such cases those responsible should be brought to justice.

Comments:


- While we welcome the deletion of the end of this recital, the current wording still fail to represent an actual compromise between the various amendments tabled or the positions of the various political groups. In addition, this last paragraph is reintroduced in the compromise regarding Recital 7a. Deleting it here and reinserting it there does not solve the problem.
- Internet access restrictions and websites' removal **fall outside the scope of the proposed Directive** (cf. Article 1).
- We support the proposal of AM 99 and 100 to delete the original recital 7 as the text represents an unnecessary, disproportionate infringement of freedom of expression, including freedom of the press.

 [Article 5 \(cf. FD 2002/475/JHA\)](#) **RECONSIDER**

[Public provocation to commit a terrorist offence](#)

[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 clear intent to incite the commission of one of the offences listed in points \(a\) to \(h\) of Article 3\(2\), where such conduct, whether expressly or not directly or indirectly advocating the commission of terrorist offences, causes a substantial and imminent danger that one or more such offences may will be committed, is punishable as a criminal offence when committed intentionally and unlawfully.](#)

Comments: This proposed compromise has no clear meaning and is extremely confusing. The suggested changes would bring a degree of clarity, in line with UN standards and amendments tabled. The current compromise does not duly include the amendments tabled by the political groups, such as AM 249, 251, 256, 257.

 **COMP 6: Compromise on blocking of websites (covering AMs [92](#), [101](#), [102](#), [103](#), [104](#), ~~[105](#)~~, [260](#), [315](#)) RECONSIDER**

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

(7a) ~~The most~~ **An** effective means of combatting terrorism ~~is~~ **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 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~~ **may** take measures to remove or to block access to webpages publicly inciting to commit terrorist offences. ~~Where such measures are taken, they must be set by~~ **law laying down** transparent procedures and provide adequate safeguards, in particular to ensure that restrictions are limited to ~~what is necessary and proportionate~~ 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. ~~Member States should consider legal action 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 punishable with effective, proportionate and dissuasive sanctions.~~


Comments: The proposed compromise DOES NOT properly include AM 102, 103 (S&D) or 105 (ALDE).

Terrorism online is very complex. In the absence of an impact assessment, it is a vast oversimplification to say that deleting content at source is the single best “solution” and it is also unwise to put this subjective assertion in legislation, as the online environment continues to change.

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”, whatever this might mean), 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.


Finally, the newly proposed final sentence creating liabilities for online companies falls outside the scope of this Directive.

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: 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, 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~~ issue an alert in the Schengen Information System for 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.

Systematically putting individuals into the SIS (in the absence of 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 recital, although the meaning of “quantitative” needs further explanation/clarification. Exchanging bulk data is not an end in itself.

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 or prosecution 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 Union ~~EU~~ legislation on the exchange of information.

Comments: We support the objective of this article, 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 [21](#), [22](#), [49](#), [50](#), [51](#), [52](#), [163](#), [164](#), [165](#), [166](#), [167](#), [168](#), [169](#), [171](#), [172](#), [173](#), [174](#), [181](#), [377](#), [384](#), [385](#), [386](#), [387](#), [388](#), [389](#), [390](#), [391](#), [392](#), [393](#), [394](#), [395](#), [396](#), [397](#), [401](#), [402](#), [403](#))

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. [Members States should encourage specific training for persons responsible for assisting victims of terrorist acts, as well as granting the necessary resources to that effect.](#) Furthermore, each member States ~~should~~ 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. [Victims of terrorism should also be granted legal aid in all Members States where they are parties to criminal proceedings or other legal proceedings to obtain a decision on compensation.](#)

Comments: Recital 16 falls outside our scope of work.

[Recital 16a \(new\)](#)

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

Recital 16~~a~~^b (new) **NO POSITION**

(16~~a~~^b) 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: This falls outside our scope of work.



Recital 16**eb** (new) **RECONSIDER**

(16**eb**) Member States should in full respect of freedom of expression, engage with media and journalists to agree on **developing self-regulatory 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: Recital 16b must be revisited. "Self-regulation" is too narrow to deal with the issues at stake here. Respect for EU data protection laws must be ensured at all time, without jeopardising freedom of expression.

Recital 17 **NO POSITION**

(17) Member States should co-operate among each-other to ensure that access to information about the victims' rights, support services and 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.

Comments: Recital 17 falls outside our scope of work.

Article 22 **NO POSITION**

Title: support and assistance to victims

Article 22, paragraph 1a (new)

1 a. In accordance with Directive 2012/29/EU, Member States shall ensure that measures are available to protect victims of terrorism and their family members;. With this regard, in the course of criminal proceedings, particular attention shall be paid to the risk of intimidation and retaliation and to the need to protect the physical and mental integrity of victims of terrorism, including during questioning and testifying.

In addition, Members States shall ensure an effective access to legal aid to victims of terrorism who are parties to the criminal proceedings and, where appropriate, in other legal proceedings to obtain a decision on compensation.

Article 22, paragraph 2

2. Member States shall ensure that specific services to assist and support victims of terrorism are in place. Such services shall have the capacity and organisational structure necessary to provide assistance and support to these victims immediately after an attack and as long as necessary

thereafter, in accordance with the specific needs of each victim. The services shall be confidential, free of charge and easily accessible to all victims of terrorism. They shall include in particular:

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

(b) provision of advice and information on any relevant legal, practical or financial matter.

Comments: Article 22 falls outside our scope of work.

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 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 and the European Commission should **therefore, in close cooperation with** ~~cooperate among each other, notably through Eurojust and Europol, to ensure a coordinated approach for the development of any~~ **necessary and proportionate** measures ~~that may prove efficient in improve the efficiency of~~ dealing with the gathering, sharing, and admissibility of electronic evidence, while respecting fundamental rights, including the right to privacy national and European law on and data protection;

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 welcome the changes introduced in the updated version of this compromise. We would just recommend to include a reference to the need to comply with the principles of necessity and proportionality.

 **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. Asserting 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 and it is crucial for the European Parliament to be clear on this. **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, 287, 318, 319, 339, 360, 405, 416, 418) SUPPORT**

Recital 19a (new)

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

Comments: We support the objective of this compromise.

Article 23c (new)

Article 23c

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

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

Comments: We support the objective of this compromise.

COMP 14: Compromise on receiving of training (covering AMs 32, 114, 115, 269, 270, 271, 272, 273, 274, 275, 276, 277) **NO POSITION**

Recital 9

(9) Wilfully receiving training for terrorism, including obtaining knowledge, documentation or practical skills, whether or not in the form of self study, complements the existing offence of providing training and specifically addresses the threats resulting from those actively preparing for the commission of terrorist offences, including those ultimately acting alone, and should be criminalised.

Article 8

Receiving training for terrorism

Member States shall take the necessary measures to ensure that to intentionally receive training or instruction, including by obtaining knowledge, documentation or practical skills, in the making or use of explosives, firearms or other weapons or noxious or hazardous substances or in other specific methods or techniques, for the purpose of committing or contributing to the commission of one of the offences listed in points (a) to (h) of Article 3(2) is punishable as a criminal offence when committed intentionally.

Comments: It falls outside our scope of work.

COMP 15: Compromise on travelling (covering AMs 7, 33, 34, 106, 107, 108, 109, 110, 111, 112, 278, 279, 280, 281, 282, 283, 284, 285) **NO POSITION**

Recital 8

(8) While it is not indispensable to criminalise the act of travelling as such, 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. Such act should be criminalised under specific conditions and only when the terrorist purpose of the travel is proven by inferring, as much as possible, from objective, factual circumstances. Any act of facilitation of such travel should also be criminalised.

Article 9

Travelling abroad for the purpose of terrorism

Notwithstanding the fact that it is not indispensable to criminalise the act of travelling as such, Member States shall take the necessary measures to ensure that travelling to another country for the purpose of the commission of or contribution to a terrorist offence referred to in Article 3, the participation in the activities of a terrorist group referred to in Article 4 or the providing or receiving of training for terrorism referred to in Articles 7 and 8 is punishable as a criminal offence when committed intentionally.

Comments: This compromise falls outside our scope of work.