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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:

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We suggest changes, where appropriate. For ease of reading, modifications [underlined](#) or [strike through in blue](#) refer to the changes made by the rapporteur vis-à-vis the previous version of the compromises. **Our suggested modifications** are highlighted in yellow: **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.<sup>1</sup>

## DETAILED ANALYSIS

### DRAFT COMPROMISES TERRORISM DIRECTIVE (v3 – 23.05.2016)

#### COMP 1: Compromise on convergence terrorism and organised crime (covering AM 1, 9, [62](#), [123](#), [126](#), [127](#)) **NO POSITION**

Recital 10a (new)

(10a) 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 more explicitly taken into account 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 [18](#), [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 [economic](#) inclusion and integration, as well as the provision of effective de-radicalisation and exit programmes. Member States should share good practices on effective measures and projects in this field. Furthermore, Member States should share good practices on the use of effective alternative measures within the judicial approach to prevent citizens of the Union and third-country nationals legally residing in the Union from leaving the Union [for terrorist purposes](#) or to control their return to it [from conflict zones](#). 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, where appropriate,~~ as well as the relevant EU agencies.

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


<sup>1</sup> 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) **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 and by updating national prevention policies 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).

**Recently, the British Police Chief responsible for fighting radicalisation criticised that the lack of definition of “extremism” renders the UK rules on fighting terrorism unenforceable. To avoid this situation at EU level, the undefined term “radicalisation” should not be used. See: <http://www.theguardian.com/uk-news/2016/may/24/anti-radicalisation-chief-says-ministers-plans-risk-creating-thought-police>**

 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 radicalization and recruitment by terrorist organizations.
3. Member States shall promote regular training for officials likely to come into contact with persons vulnerable to radicalization, including front-line police officers and prison guards, aimed at enabling them to identify ~~signals of~~ 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 meanings. An adjective needs 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". Contrary to what is stated, "counter-narratives" are not part of the Child Exploitation Directive. **Article 23 of the Child Exploitation Directive** (the article under which this compromise is based) only refers to "**awareness-raising campaigns, research and education programmes**".
4. There is **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. In the absence of an impact assessment, and in the absence of any consideration of this point in the [Impact assessment for amending the Framework Decision 2002/475/JHA](#), MEPS should not include this.

### 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 challenge to international security. Countering this evolving threat demands strengthened international cooperation and increased support 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 and aiding/abetting (covering AMs [8](#), [10](#), [11](#), [36](#), [37](#), [42](#), [43](#), [81](#), [82](#), [83](#), [84](#), [85](#), [86](#), [117](#), [118](#), [119](#), [120](#), [121](#), [122](#), [123](#), [124](#), [125](#), [128](#), [129](#), [130](#), [131](#), [132](#), [293](#), [294](#), [295](#), [296](#), [297](#), [298](#), [299](#), [300](#), [301](#), [317](#), [325](#), [326](#), [327](#), [328](#), [329](#), [330](#), [331](#), [332](#), [333](#), [334](#), [335](#), [338](#), [374](#), [375](#), [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, 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. Our proposed 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: Recital 10 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 due diligence, monitoring and reporting requirements 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 helping to track and prosecute organised crime and other commercial activities of terrorist organisations more effectively. Where appropriate, Member States should sanction breaches of these requirements.

Comments: Recital 10a 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 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 **authoritiesactors**. 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 terrorism, which 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**”, not actors.

[Recital 11](#) **NO POSITION**

[\(11\) 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 clear knowledge that these operations or the proceeds thereof are intended to be used, in full or in part, for terrorist purposes or will benefit terrorist groups.](#)


Comments: Recital 11 falls outside our scope of work.

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**

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: Article 11 falls outside our scope of work.

 **Article 16 RECONSIDER**

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.

Comments: The proposed compromise on Article 16 is the same proposal of the European Commission, not a compromise between the amendments tabled. There is an overlap between the provisions of Title III and this Article. While we would recommend its deletion, an acceptable compromise can be the **deletion of the second paragraph**, which is redundant, as **Article 5 is already dealing with incitement to terrorism**.


**COMP 5: Compromise on public provocation (covering AMs 6, 31, 99, 100, 105, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257)**

 **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 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 an information society ~~the~~ service provider is not liable for the information transmitted or stored in accordance with relevant provisions of Directive 2000/31/EC on electronic commerce.

Comments: We welcome the other changes proposed by the rapporteur. The **first part of the recital should be deleted**. As the Meijers Committee stated, “this recital leads to a **disproportional infringement of freedom of expression** including the freedom of the press”. “Member States may interpret this as meaning that, even if there is no real danger of future offences, offence to victims and their families is sufficient reason to criminalise expressions”.<sup>2</sup> In addition, it is not clear whether with this recital Member States would be criminalising individuals sharing messages or images for ‘journalistic purposes’.


<sup>2</sup> [http://www.commissie-meijers.nl/sites/all/files/cm1603\\_note\\_on\\_a\\_proposal\\_for\\_a\\_directive\\_on\\_combating\\_terrorism.pdf](http://www.commissie-meijers.nl/sites/all/files/cm1603_note_on_a_proposal_for_a_directive_on_combating_terrorism.pdf)

 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 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~~ **expressly or not** ~~directly or indirectly~~ **directly or indirectly** advocating the commission of terrorist offences, causes a **substantial and imminent** danger that one or more such offences ~~will~~ **may** 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 removing illegal content ~~blocking of websites~~ (covering AMs 40, 72, 75, 78, 91, 92, 101, 102, 103, 104, 260, 315, 316, 367, 372) **RECONSIDER****

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

(7a) ~~An~~ ~~The most~~ effective means of combatting terrorist ~~tm~~ **content** on the Internet is to remove illegal ~~terrorist~~ content at source. 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, such as detecting and flagging illegal content. Member States should take all necessary 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 transparent procedures and provide adequate safeguards under the control of independent authorities. 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. ~~Member States should 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 transparent procedures and provide adequate safeguards, in particular to ensure that restrictions are limited to what is necessary and proportionate. 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 consider legal action against internet and social media companies and service providers which refuse to comply with a n administrative or judicial request by an authorized public body to delete from their internet platforms illegal content or content extolling terrorism. Such ~~The refusal or deliberate failure by~~**




~~internet platforms to cooperate, thus allowing such illegal content to circulate, non-compliance 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).

This text is 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.

 [Article 14a \(new\) \(cf Directive on Combating the sexual abuse and sexual exploitation of children and child pornography\)](#) **RECONSIDER**


[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 \*\*after the illegality of the content have been confirmed by a legal authority\*\* 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.](#)

Comments: We strongly recommend reviewing the impact assessment of the 2007 Council Framework Decision before finalising this article, in particular pp. 41 and 54 on the removal and blocking of online content.


See: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SEC:2007:1424:FIN:EN:PDF>

 **COMP 7: Compromise on exchange of information (covering AMs 17, 47, 48, 79, 145, 150, 155, 156, 157, 159, [286](#), 288, 361, [362](#), 363, 365, 368, 369, 370, [373](#), 415)**

Recital 15a (new) **RECONSIDER**

(15a) [Information relevant to the detection, prevention, investigation or prosecution of the offences referred to in this Directive often concerns more than one Member State and may require urgent action.](#) 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 **radicalized or** violent and extremist 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 [for any of the offences referred to in this Directive](#), 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. [The competent national and Union authorities should therefore exchange in an efficient and timely manner this information while respecting, ~~with full respect to~~ applicable data protection legislation. Furthermore, Member States and their competent authorities should increase their utilisation of available systems and databases, provided for by Europol, Eurojust and Interpol, both in quantitative and qualitative terms, to enhance their prevention and counter-terrorism capabilities by sharing all relevant 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 compromise and the safeguards outlined. We would suggest the deletion of “any”, as only relevant information shall be shared, in line with the *acquis communautaire* and of “radicalized” for its absence of harmonised meaning.

 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 ~~of having committed or who has been convicted of any of the offences referred to in this Directive of violent extremism radicalisation or issue an alert in the Schengen Information System for any person who is suspected~~ consider all cases involving the offences as set out in this Directive as adequate, relevant and important within the meaning of Article 21 of Council Decision 2007/533/JHA to enter an alert in the Schengen Information System. Furthermore, Member States should, as a rule, consider all cases involving the offences as set out in this Directive as relevant and necessary within the meaning of Article 9 of [Directive (EU) 2016/... of the European Parliament and of the Council on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime] to transmit all relevant PNR data, or the result of processing those data, to the other Member States concerned, in accordance with that 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)~~ **NO POSITION**

~~(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: Recital 15 c was introduced in Recital 15a. 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**

Obligation to e~~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 could assist in the detection, prevention, 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 issue an alert flag-up in the Schengen Information System for 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 PNR data concerning those persons;~~

4. Members States shall ensure that, with regard to persons identified in accordance with Article 6(2) of [Directive (EU) 2016/... of the European Parliament and of the Council on the use of

[passenger name record \(PNR\) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime\]](#) in connection to the offences as set out in this Directive, their Passenger Information Unit systematically transmits the result of processing those data to the Passenger Information Units of other Member States.

45. 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.

56. This article is without prejudice to existing Union 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* PNR (both of potential suspect and innocent people ) to be shared. The text also does not mention with whom “all” this data should be shared, creating serious data security risks.

**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, [175](#), 181, [336](#), [377](#), [378](#), [379](#), [380](#), [381](#), [382](#), [383](#), 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, [398](#), [399](#), [400](#), 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 [24](#) 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) **NO POSITION**

(16a) 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, [as well as with assistance and support in dealing with media attention that the victims receive](#),~~and where appropriate to play a central role in communicating with press~~

Comments: Recital 16a falls outside our scope of work.

 Recital 16b (new) **SUPPORT**

(16b) Member States should in full respect of freedom of expression, [exchange best practices on how to deal](#)~~engage~~ with media and journalists ~~to agree on self-regulation~~ in order to guarantee the protection of the private life of victims and their family members and ~~in addition to~~ 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: We welcome the objective of this compromise and congratulate the rapporteur for the changes made.

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~~[Member State](#).

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, Member States shall ~~ensure an effective access to~~ that free legal aid is provided 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, [46](#), [152](#), [366](#))

Recital 15a (new) **RECONSIDER**

(15a) To ensure the success of investigations and prosecutions of terrorist offences, including offences related to a terrorist group ~~or and~~ 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, **in accordance with the principles of necessity and proportionality.** ~~Such tools may include the search of any personal property or computer system, the interception of communications, covert surveillance including electronic surveillance, the taking and the fixing of audio recordings and visual images of persons in private or public vehicles and places, the monitoring of bank accounts and other financial investigations. Taking into account, inter alia, the principle of proportionality, the use of such tools, in accordance with national law, should be commensurate with the nature and gravity of the offences under investigation. The right to the protection of personal data should be respected. 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 procedural safeguards, including the presumption of innocence and effective remedies.~~

Comment: The new proposed language contradicts EU case law. As established in several instance by the EU Court of Justice, the sytemtic search and collection of personal belonging and information, is neither necessary nor proportionate (see Joint Cases C-293/12 and C-594/12). This recital is therefore in breach of EU law. The suggested changes aim at fixing this issue.

 Article 21c (new) (cf. [Directive on preventing and combating trafficking in human beings and protecting its victims](#)) **RECONSIDER**


#### 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 Articles 3 to 14.~~

Comment: This proposal is unclear. Will the investigations of (organised) terrorism be conducted by a different LEA than the one in charge of organised crime?

We suggest deleting this article as it appear to be redundant.

#### **COMP 10: Compromise on electronic evidence (covering AMs [19](#), [20](#), [154](#), [160](#), [162](#))**

 Recital 15b (new) **RECONSIDER**


(15b) ~~Considering The fact~~ 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~~ creates challenges in investigations and prosecutions of terrorist offences. Member States ~~and the European Commission~~ should ~~therefore cooperate among each other ; notably through in close cooperation with~~ Eurojust and Europol ~~and with the European Commission; to ensure a coordinated approach in this field, while respecting fundamental rights, including the right to privacy and data protection. Further measures may be necessary with a view to develop measures that~~ improve the efficiency, **necessity and proportionality** of dealing with the gathering, sharing, and admissibility of electronic evidence, **while respecting fundamental rights, including the right to privacy and data protection. ; while respecting fundamental rights, including the right to privacy and data protection;**

Comment:

- 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 some of the changes made by the rapporteur, but we encourage you to reintroduce the references to fundamental rights safeguards in this cooperation, as per the amendments tabled, and the introduction of necessity and proportionality measures.

**COMP 11: Compromise on International humanitarian law (covering AMs 5, 16, 89, 94, 95, 206, 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 and organisations 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) ~~Without prejudice to established case law of the Court of Justice of the European Union, t~~The provision of humanitarian assistance by impartial ~~and independent~~ humanitarian organisations recognised by international law 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 COMP 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, 421)**


 Recital 19 **RECONSIDER**

(19) This Directive and its implementation should respects 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 [to the freedom of movement](#) on the grounds of public policy or national security. [Any limitation on the exercise of those rights and freedom shall be subject to the respect of the conditions enshrined in Article 52\(1\) of the Charter.](#) ~~This Directive has to be implemented in accordance with these rights and principles~~

Comments: We very much welcome the changes made in this version of the compromises.

 Recital 19a (new) **SUPPORT**

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

Comments: We support the objective of this compromise and welcome the modifications made.


Article 23b (new) **SUPPORT**  
 Fundamental [Rights and Freedoms](#)~~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 [article 2 and 6 of the Treaty on the European Union and](#) 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: The deletion made regarding para. 3 is not a change we welcome, but acknowledge similar wording has been introduced in other recitals. We would recommend this as a compromise.

 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: We encourage MEPs to take the exact words of **Recital 14 of the Council Framework Decision this Directive is intended to replace. This wording has also been included in the Council's General Approach** and in line with amendments 194 (Greens), 258 (GUE), 259 (S&D), 411 (EFDD), 414 (Greens), 421 (GUE).

 Article 23c (new) **RECONSIDER**

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, **including in particular** freedom of the press and the freedom of expression in other media and shall be without prejudice to national 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: We welcome this compromise, which mirrors 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 [of suspects or accused persons in criminal proceedings](#) 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

Article 23~~ed~~ (new)

1. This Directive shall not have the effect of requiring Member States to take measures in contradiction with their obligations [under Union law](#) with regards to the procedural rights of suspects or accused persons in criminal proceedings.

2. Any~~one 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: [before a tribunal pursuant to as enshrined in Article 47 of the Charter of Fundamental Rights.](#)

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 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.

Comments: COMP 14 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. ~~Facilitating or organizing. 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: COMP 15 falls outside our scope of work.