

KEY PRIORITY CONCERNS AND SOLUTIONS

- **Radicalisation/“radicalized”**: COMP 2 and 7

- **the use of this term falls outside of the scope of this Directive** (cf. Article 1 of the Draft Directive). In addition, this concept has not been defined (cf. Article 2 of the proposed Directive).
- If included, it would further broaden the scope of the Directive. Furthermore, its use is likely to violate key principles of Criminal, like the presumption of innocence and the principle of legality. It is important to learn from experience with regards to problems in the use of the terms “terrorism” and “violent extremism”.

Example 1: the British Police Chief responsible for fighting “radicalisation” criticised that the lack of definition of “extremism” renders the UK rules on fighting terrorism unenforceable.¹

Example 2: in COMP 7, its introduction will include people that are NOT criminal suspects in Member state databases.

⇒EDRI recommends eliminating this term from COMP 2 (recitals 17a and 17b; Article 21a) and COMP 7 (Recital 15a) and replacing it with “terrorism”, when appropriate.

- **Development of counter-narratives: COMP 2 (Article 21a)**

- The Child Exploitation Directive does NOT recommend elaborating “alternative narratives”.
- The US is currently reconsidering a similar initiative, as they are been clearly discriminatory, counterproductive and inefficient.
- What’s the dividing line between state propaganda or corporate speech and “alternative narratives”? Are we prepared to let governments/companies/a set of NGOs tell the population how to think? Education is the key. Counter-speech obviously has a role, but there legislating in this direction carries only risks and no demonstrable benefits.

⇒EDRI recommends deleting this phrase from COMP 2.

- **Public provocation to commit a terrorist offence: COMP 4 (Article 16) + COMP 5 (Recital 7 and Article 5)**

- Using terms such as “glorification” or “justification of terrorism”, while not defining them, further broadens the scope of the Directive and breaches the principle of legality in criminal law.
- It is important to reiterate that the behaviour to be punished must be unlawful, intentional (whether expressly or not) and presenting a clear, substantial and imminent danger.
- Including a “catch-all” provision (Article 16) arbitrarily and unnecessarily broadens the scope of the Directive.

⇒EDRI recommends following the recommendations of the former and current UN Special Rapporteurs on Counter-Terrorism and Human Rights; and the deletion of Article 16 or, at least, of its para. 2.

¹ See <http://www.theguardian.com/uk-news/2016/may/24/anti-radicalisation-chief-says-ministers-plans-risk-creating-thought-police>

- **Blocking and removal of content: COMP 6 (Recital 7a and Article 14a):**

- MEPS should ensure this compromise does not violate 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.
- The impact assessment of the 2007 for amending Council Framework Decision 2002 rules out measures for blocking and removing of content. The Commissions' assessment of the available evidence was that they are inefficient, bypass the rule of law, have counter-productive effects and obstruct investigations and prosecutions (cf. pages 29 and 41).²

⇒EDRI recommends not to further expand the scope of the Directive by adopting measures on blocking or removal of content. Failing that, meaningful safeguards must be in place, mainly on the principle of legality and the need of the intervention of the judiciary.

- **Passenger Name Records (PNR): COMP 7 (Recital 15a and 15b):** it makes little sense for all PNR data of both potential suspects and innocent people to be shared.

⇒EDRI recommends not to include provisions on PNR, as they add no obvious benefit. Failing that, only the result of the processing of PNR data that shows the commission or the suspicion of committing a terrorist offence should be shared.

- **Investigative tools: COMP 9 (Recital 15a and Article 21c).** The new proposed language (e.g. references to surveillance) contradicts EU case law. As established in several instances by the EU Court of Justice, the systemic search and collection of personal belongings and information, is neither necessary nor proportionate (see Joint Cases C-293/12 and C-594/12).

⇒EDRI recommends bringing back safeguards for fundamental rights and the principles of necessity and proportionality. Article 21c is redundant and should be deleted.

- **Electronic evidence: COMP 10 (Recital 15b).** “Electronic evidence” must be defined, if used in this Directive. Appropriate safeguards were included in the previous versions of the COMP. In addition, the compromise fails to acknowledge that the Internet is used by virtually everybody in our society. The COMP fails to consider the enormous positive value of the Internet.

⇒EDRI recommends bringing these safeguards back and delete the negative references to the Internet and undefined “electronic tools”, as these are unbalanced and unclear.

- **Freedom of expression:**

- Recital 14 of the Framework Decision 2008 that amended the Framework Decision of 2002 included wording to ensure freedom of expression.

⇒EDRI recommends bringing this wording back.

² <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SEC:2007:1424:FIN:EN:PDF>

DETAILED ANALYSIS

We suggest changes, where appropriate. 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.

COMP 1: NO POSITION

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) **RECONSIDER**

(17a) The prevention of ~~radicalisation~~ **terrorism** 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 **counter-terrorism** ~~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, where appropriate, as well as the relevant EU agencies.

Comments: “Radicalisation” is not a harmonised concept and as has not been defined. EDRI suggests deleting it. Exit programmes would logically cover everything.

⊖ 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 **terrorism** ~~radicalisation~~ and recruitment to terrorism. The Commission should, where appropriate, provide support to national, regional and local authorities in developing prevention policies.

⊖ 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 **terrorism** ~~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 organizations, local communities and other stakeholders, aimed at raising awareness and reducing the risk of ~~radicalization terrorism and~~ recruitment by terrorist organizations.

3. Member States shall promote regular training for officials likely to come into contact with persons vulnerable to ~~recruitment by terrorist organisations~~ radicalization, including front-line police officers and prison guards, aimed at enabling them to identify signals of and deal with ~~terrorism~~ 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:

- **Radicalisation** remains an undefined EU concept. The proposed compromise claims to mirror the Child Exploitation Directive (cf. Article 23). Conversely, the Child Exploitation Directive refers to “awareness raising campaigns, research and education programmes”. It does NOT include the “development of alternative narratives”.
- There is **no evidence of the efficiency** of so-called “counter-narratives”. What is more, the United States’ plan on counter violent extremism has proven to be ineffective and to 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/JHA³, MEPS should not include “alternative narratives” in the compromise.
- **Security forces must receive training on human rights**, as recommended by the **UN Secretary-General of Plan of Action** to combat violent extremism leading to terrorism, 24 December 2015 (cf. recommendation 50).

COMP 3: NO POSITION

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, 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, 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. ~~These forms of behaviour should be punishable if committed by any means, including through the Internet, while respecting the principle of proportionality and necessity;~~


³ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SEC:2007:1424:FIN:EN:PDF>

Comments:

- The suggested **deleted wording does not relate to financing of terrorism**, as however expressed in the title of COMP 4.
- 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.
- **Criminal offences should be technology neutral insofar as possible.**
- The Directive is already very broad in its scope. On the Internet, the offline threat to kill people is not tangible. The same requirements do not apply online and offline behaviour. **Are MEPs ready to criminalise protests (Article 3.1. c) or certain forms of speech** (e.g. article 3.1. b, article 5) or even the threat to protest or the threat to post something online (Article 3.2 i)) of the proposed Directive?
- Contrary to what is stated, **the current compromise does not take AM 83 and 84 (both tabled by S&D) into account to a meaningful extent.** Both amendments delete the wording we suggest to delete.

Recital 10 **NO POSITION**

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

 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 **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 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 leads to uncertainty and, inevitably, to divergent implementations among Member States. We recommend narrowing it down to “relevant authorities”, not actors.

Recital 11 **NO POSITION**

Article 11 **NO POSITION**

 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: **EDRI recommends the removal of this Article** because there is an overlap between the provisions of Title III and this Article. **As a compromise**, we suggest the deletion of the second paragraph, which is redundant, as **Article 5 is already dealing with incitement to terrorism**. The proposed text is the proposal of the European Commission, i.e. this is not a compromise between the amendments tabled.

COMP 5: Compromise on public provocation (covering AMs 6, 31, 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 as a way to gain publicity for the terrorists cause or seriously intimidating the population, provided that such behaviour causes a danger that terrorist acts may be committed.~~ 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 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:

- The first part of the recital should be deleted. It refers to **non-defined terms like “glorification” and “justification” of terrorism** and have been opposed by the Special rapporteur on Human Rights and Counter-terrorism. In the previous compromise, a safeguard had been introduced (cf. “clear and concrete” prior to “danger that terrorist acts may be committed”). However, this has been deleted in the latest versions.
- As the Meijers Committee stated, “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”.
- We welcome the progress made in the last part of this recital.



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 directly or indirectly advocating the commission of terrorist offences, causes a **substantial and imminent** danger that one or more such offences **will** be committed, is punishable as a criminal offence when committed intentionally **and unlawfully**.

Comments:

- **Criminal offences should be technology neutral insofar as possible.**

The proposed changes go in line with AMs 249 (S&D), 251 (Greens), 256 (GUE), 257 (EFDD), which reflect the recommendations made by the former and current Special Rapporteurs on Human Rights and Counter Terrorism:


- **Intent.** Article 5 must be read in conjunction with Recitals 13 and 14. In the words of the UN Special Rapporteur on Human Rights and Combating Terrorism, the **liability should not be in the illegality of the content of the speech alone, but on the “speaker's intention or the actual impact of the speech”**.

Otherwise, this would prevent unnecessary or disproportionate interferences with freedom of expression.⁴

- **“Unlawfully”** was included in **Article 5 of the Council of Europe's Convention on the Prevention of Terrorism and also in the model clause recommended by the UN Special Rapporteur** on Counter-Terrorism and Human Rights. As the latter states, without 'unlawfully', the Directive would be excluding criminal liability exemptions and legal defences against criminal liability. This word was introduced by most of the amendments referred to above.

- **“Expressly or not”** instead of “directly or not”. The UN Special Rapporteur on Counter-Terrorism and Human rights proposed this modification “to prove both a subjective intention to incite as well as an objective danger that a terrorist act will be committed”, while also including “coded language”. **“Expressly” refers to the intent to communicate a message and that this message incites the commission of a terrorist offence.** This recommendation is a reaction to EctHR case Leroy v France (2008) and is in line with Article 12(1) of the European Convention on Prevention of Terrorism.

COMP 6: Compromise on removing illegal content (covering AMs 3, 40, 72, 75, 78, 91, 92, 101, 102, 103, 104, 260, 315, 316, 367, 372)

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

(7a) An effective means of combatting terrorism 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 **illegal** 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 **judicial 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**

4 Para. 39.

illegal content. Member States should consider legal action against internet and social media companies and service providers which refuse to comply with a request to delete from their internet platforms illegal content or content extolling terrorism. Such non-compliance should be punishable with effective, proportionate and dissuasive sanctions. The right to judicial redress should be guaranteed to the internet and social media companies and service providers.

Comments:

* First paragraph: “Voluntary” mechanisms must be ruled out, as **the Commission stated in its impact assessment** for amending the Framework Decision 2002, **“the adoption of blocking measures...can only be imposed by law**, subject to the principle of proportionality, with respect to the legitimate aims pursued and to their necessity in a democratic society, excluding any form of arbitrariness or discriminatory or racist treatment.” (cf. p. 29:

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

If MEPs don’t follow this approach, this text will be **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 supported by Member States), then this is not provided for by law and it means that the listed safeguards can be ignored.

* Second paragraph: there is a need for judicial oversight in any removal or blockage of content.

* Last paragraph: EDRI suggests deleting it because:

1. There is no demonstrable problem in the real world that this proposal would fix.

2. **Article 19** of the proposed Directive already deals with the liability of legal persons (including internet companies).

3. **“comply with a request to delete”**: **from whom?** The current text is much broader than previous versions of the compromises. No request should be made by non-judicial authorities. And in any case, there is a need for judicial oversight.

4. The rapporteur talks about “illegal content **or** content extolling terrorism”. “illegal content **or**” can only mean “illegal content or **LEGAL content**”. This is legally impossible under criminal law.

5. Companies **“right to judicial redress”**: the last sentence is not solving any issue that needs to be resolved. What about the users (moral and natural persons) whose content is unduly removed? E.g. what happens in case of removals of legal content? What are the remedies available/proposed?

- Finally, the COMP claims to cover only removal of content (see the **title**), but is also covering internet blocking. The Parliament should refrain from adopting these measures, as ruled out by the European Commission in its 2007 impact assessment for amending the Framework Decision 2002: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SEC:2007:1424:FIN:EN:PDF> (see pp. 29 and 41).

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

Article 14a

Measures against websites publicly inciting to commit a terrorist offence

1. Member States shall take the necessary measures to ensure the prompt removal of **illegal** webpages publicly inciting to commit a terrorist offence, as referred to in Article 5, hosted in their territory, **after the illegality of the content has 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:

The first part of the COMP fails to address the illegality of the content that needs to be removed. We refer to the Commission's 2007 Impact assessment for amending the 2002 Framework Decision, in particular pp. 29 and 41: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SEC:2007:1424:FIN:EN:PDF>

We welcome the safeguards in the second paragraph, although point out that no credible positive assessment has ever been produced of any blocking measure in Europe, regardless of the public policy objective being pursued.

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 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 applicable data protection legislation. Furthermore, Member States and their competent authorities should increase their utilisation of available systems and databases, provided for by relevant agencies, 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 Directive. However, “radicalised” or “extremists” individuals are not defined and the wording appears superfluous. These measures would violate the presumption of innocence and the principle of legality. They individuals could be potentially anybody, therefore creating the possibility of abuses.



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 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, Members 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 ~~the hits as a all relevant PNR data, or the~~ result of processing ~~relevant PNR those~~ data, to the other Member States concerned, in accordance with that Directive.

Comments:

- The systematic assumption of data as being “adequate and relevant” without a proper review process is not compliant with EU case law (C-293/12 and C-594/12). Member States shall conduct an assessment of the data collected and share relevant data.
- EDRI considers the provisions on PNR fall outside the scope of this Directive. Barely no amendments were tabled on this. In any case, not all PNR data is relevant to be shared. Only the processing of data which shows a person might be a terrorist suspect should be shared, as per the proposal on Article 21b (4) below



Article 21b (new) **RECONSIDER**

Article 21b

Obligation to exchange information 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 reasons to believe is~~ **enough evidence showing** 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 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.
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.

5. 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.

6. This article is without prejudice to existing Union legislation on the exchange of information.


Comments:

EDRI considers the provisions on PNR fall outside the scope of this Directive. Barely no amendments were tabled on this. However, we can accept this wording as a compromise, as per our comments above. Finally, para. 6 is unnecessary.

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**


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

 Recital 16b (new) **SUPPORT**

Recital 17 **NO POSITION**

Article 22 **NO POSITION**

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, offences related to a terrorist group 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. **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, in accordance with the principles of necessity and proportionality. The use of such tools, in accordance with national law, should be commensurate with the nature and gravity of the offences under investigation and respect fundamental rights and procedural safeguards, including the presumption of innocence and effective remedies.**

Comments:

The new proposed language contradicts EU case law. As established in several instances by the Court of Justice of the European Union, the systematic search and collection of personal belongings 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, while bringing back wording included by the rapporteur in previous versions of the compromises.

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

Article 21c

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 law enforcement authority than the one in charge of organised crime?

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

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

⊖ Recital 15b (new) **RECONSIDER**

~~(15b) 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, creates challenges in investigations and prosecutions of terrorist offences.~~ Member States should ~~therefore~~ cooperate among each other notably through Eurojust and Europol and with the European Commission to ensure a coordinated approach in this field to improve the efficiency, **necessity and proportionality** of dealing with the gathering, sharing, and admissibility of electronic evidence, **as defined in national law, while respecting fundamental rights, including the right to privacy and data protection.**

Comments:

- The first part of this compromise 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. We should not undermine it just because terrorists resort to it.
- “Electronic evidence” is not defined in Article 2. This violates the principle of legality and the presumption or innocence.
- We regret the deletion of the fundamental rights safeguards included in previous versions of the compromises. EDRI asks that the be brought back.

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

+ Recital 6a (new): **SUPPORT**

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

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 **SUPPORT**

+ Recital 19a (new) **SUPPORT**

+ Article 23b (new) **SUPPORT**

- 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, as well as the expression of 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.**

Comments:

The proposed changes reflect the exact wording of **Recital 14 of the Council Framework Decision 2008, which amended the 2002 Framework Decision. This wording has also been included in the Council's General Approach and reintroduced by AMs 194 (Greens), 258 (GUE), 259 (S&D), 411 (EFDD), 414 (Greens), 421 (GUE).**

- Article 23c (new) **RECONSIDER**

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 and shall be without prejudice to national 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, not only the freedom of the press.

COMP 13: Compromise on procedural rights and effective remedies (covering AMs 55, 193, 287, 318, 339, 360, 405, 416, 418)

 Recital 19a (new) **SUPPORT**

 Article 23d (new) **SUPPORT**

COMP 14: Compromise on receiving of training (covering AMs 32, 115, 269, 270, 271, 272, 273, 274, 275, 276, 277)

Recital 9 **NO POSITION**

Article 8 **NO POSITION**

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)

Recital 8 **NO POSITION**

(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 such travel should also be criminalised.

 Article 9 **RECONSIDER**

Travelling ~~abroad~~ **to a third country** for the purpose of terrorism

Member States shall take the necessary measures to ensure that the travelling to a third country and the return from a third country to the EU with 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 **and intent is demonstrable**.

Member States shall take the necessary measures to ensure that the travelling to a country within the EU with 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 **and intent is demonstrable**.

Comments: The Commission justified the creation of the criminalisation of travel to be required by the UN Security Council decision 2178 (2014). However, the proposal in Article 9 goes well beyond what is requested by the UN Security Council as it covers travels to an individual own country.

Perhaps, most importantly, the UN Security Council also put the emphasis on important safeguards that are not mentioned in the proposed Directive:

*"Reaffirms that all States shall prevent the movement of terrorists or terrorist groups by effective border controls and controls on issuance of identity papers and travel documents, and through measures for preventing counterfeiting, forgery or fraudulent use of identity papers and travel documents, underscores, in this regard, the importance of addressing, **in accordance with their relevant international obligations**, the threat posed by foreign terrorist fighters, and encourages Member States to employ **evidence-based traveller risk assessment and screening procedures including collection and analysis of travel data, without resorting to profiling based on stereotypes founded on grounds of discrimination prohibited by international law**".*

More broadly, the Directive should focus on criminalising terrorism offences rather than neutral concept such as travel, as it appears to be the described in the recital.

For more information or clarification, please contact

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