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WORKING PAPER

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NOTE

From:	Presidency
To:	Working Party on Substantive Criminal Law Matters (DROIPEN) - Terrorism Directive
N° prev. doc.:	13686/16
Subject:	Proposal for a Directive on combating terrorism and replacing Council Framework Decision 2002/475/JHA on combating terrorism

Delegations will find in the Annex a compromise proposal by the Presidency for Article 9 (travel), Article 21d (exchange of information) and Article 22 to 23 (victims' rights).

Article 9

*Travelling **(…) for the purpose** of terrorism*[1]

1. **Each** Member State~~s~~ shall take the necessary measures to ensure that **travelling to ~~another~~ a country other than that Member State ~~within or outside the European Union, either directly or by transiting through one or several Member States,~~** for the purpose of the commission of or contribution to a terrorist offence referred to in Article 3, **for the purpose of** the participation in the activities of a terrorist group **with knowledge of the fact that such participation will contribute to the criminal activities of such a group as** referred to in Article 4, **or for the purpose of** the providing or receiving of training for terrorism referred to in Articles 7 and 8 is punishable as a criminal offence when committed intentionally.

2. Each Member State~~s~~ shall take the necessary measures to ensure that one of the following conducts is punishable as a criminal offence when committed intentionally:

a) travelling to that Member State, ~~directly or by transiting through one or several Member States,~~ for the purpose of the commission or contribution to a terrorist offence, as referred to Article 3 or

b) preparatory acts undertaken by a person entering ~~their territory~~ that Member State with the intention to commit or contribute to a terrorist offence, as referred to in Article 3.

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[1] Accompanying recitals:
(4) The terrorist threat has grown and rapidly evolved in recent years. Individuals referred to as "foreign terrorist fighters" travel abroad for terrorism purposes. Returning foreign terrorist fighters pose a heightened security threat to all EU Member States. **The United Nations Security Council has expressed its concern in UNSCR 2178 (2014) in relation to the foreign terrorist fighters. The Council of Europe has, in this respect, adopted in 2015 the Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism (CETS No 217).**
Foreign terrorist fighters have been linked to several recent attacks or plots, including the attacks in Paris on 13 November 2015 ***and in Brussels on 22 March 2016***. In addition, the European Union and its Member States face increased threats from individuals inspired or instructed by terrorist groups abroad but who remain within Europe.
(**4a** ~~8~~) Considering the seriousness of the threat and the need to in particular stem the flow of foreign terrorist fighters, it is necessary to criminalise the travelling abroad for terrorist purposes, being not only the commission of terrorist offences and providing or receiving training but also to participate in the activities of a terrorist group. Any act of facilitation of such travel should also be criminalised. **It is not indispensable to criminalise the act of travelling as such, since only travel with a terrorist purpose falls under the scope of this Directive. Furthermore, Member States may also decide to address terrorist threats arising from travel to the MS concerned by criminalising preparatory acts, which may include planning or conspiracy, with a view to commit or contribute to a terrorist offence.**

Article 21d (new)

Amendments to Council decision 2005/671/JHA

1. In Article 1, letter (a) shall be replaced by the following:

"(a) "Terrorist offences": the offences referred to in Directive …/…/EU on combating terrorism;"

2. Article 2 is amended as follows:

a) paragraph 6 is replaced by the following:

" 6. Each Member State shall take the necessary measures to ensure that **(…)** relevant information ~~**collected**~~ **gathered by its competent authorities in the framework of criminal proceedings** in connection with terrorist offences **is** made accessible as soon as possible to the ~~**respective**~~ competent authorities of another Member State, **where (…) the information could be used in the prevention, detection, investigation or prosecution of terrorist offences, referred to in Directive …/…/EU on combating terrorism in that Member State, either upon request or spontaneously,** and in accordance with national law and relevant international legal instruments."[2]

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[2] The following accompanying recital is suggested, including some further adjustments:

To combat terrorism effectively, ~~systematic~~ efficient exchange of information considered as relevant by the competent authorities for the prevention, detection, investigation or prosecution of terrorist offences between competent authorities and Union agencies is crucial. Member States should ensure that information is exchanged in an effective and timely manner in accordance with national law and the existing EU legal framework, such as Council Decision 2005/671/JHA, Council Decision 2007/533/JHA and Directive 2016/681/EU.

To strengthen the existing framework on information exchange in combating terrorism, as set out in Council Decision 2005/671/JHA, Member States should ensure that relevant information collected by their competent authorities in the framework of criminal proceedings, e.g. law enforcement ~~and judicial~~ authorities prosecutors, or investigative judges is made accessible to the respective competent authorities of another Member State to whom it considers this information could be relevant. As a minimum, such relevant information should include as appropriate the information that is transmitted to Europol or Eurojust in accordance with Council Decision 2005/671/JHA. This is subject to EU rules on data protection, as laid down under Directive (EU) 2016/680 as well as without prejudice to EU rules on cooperation between competent national authorities in the framework of criminal proceedings, such as Directive 2014/41/JHA or Framework Decision 2006/960/JHA.

b) the following paragraph 7 is added:

"7. **Paragraph 6 is not applicable where the sharing of information would** jeopardise current investigations **or the safety of an individual**, **nor when it would be contrary to essential interests of the security of the Member State concerned.** ~~**or to specific conditions of use set by the originating party. The providing Member State may set specific conditions on the use of the information, such as the obligation to obtain its prior consent before the information can be shared with the competent authorities of another Member State or a third country**~~[3]**."**

c) the following paragraph 8 is added[4]:

"8. Member States shall take the necessary measures to ensure that their competent authorities take, upon receiving the information referred to in paragraph 6, where appropriate, the necessary measures ~~**action**~~ **in a timely manner in accordance with national law.** ~~**They shall inform the sending authorities of those actions without undue delay, unless this would be contrary to the essential interests of the security of the Member State concerned, jeopardise current investigation or the safety of an individual."**~~

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[3] As pointed out by some delegations at the last meeting, these parts refer to modalities of exchange of information that are regulated in detail under the data protection legislation. Taking into account that data protection rules are indeed fully applicable, the Presidency proposes therefore to leave out the respective parts of the text.

[4] At the last trilogue, the EP accepted the Council argument that their proposal on duty to investigate may run against fundamental principles of criminal law systems in the MSs. At the same time, the rapporteur insisted on the need to address the underlying concern of the EP covered by this provision, which is crucial for securing the support of LIBE for the compromise text. Namely that a proper exchange of information is followed by appropriate and timely action by the receiving MS, thus addressing loopholes in action identified in the aftermath of the terrorist attacks on EU soil. The proposed provision builds on existing concepts in recent EU legislation and aims to address the concern of the EP the extent possible.

Article 22

(…) *Assistance **and support** to victims of terrorism*

1. Member States shall ensure that investigations into, or prosecution of, offences covered by this Directive are not dependent on a report or accusation made by a victim of terrorism or other person subjected to the offence, at least if the acts were committed on the territory of the Member State.

2. Member States shall ensure that **(…) support** services **addressing the specific needs of** victims of terrorism are in place **in accordance with Directive 2012/29/EU and that they are available for victims of terrorism immediately after a terrorist attack and as long as necessary thereafter. Such services shall be provided in addition to, or as an integrated part of general victim support services, which may call on existing entities providing specialist support**.

3. **The support** services shall have the **ability** to provide assistance and support to **victims of terrorism in accordance with their specific needs (…).** The services shall be confidential, free of charge and easily accessible to all victims of terrorism. They shall include in particular:

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

   b) provision of advice and information on any relevant legal, practical or financial matters***, including facilitating the exercise of the right to information of victims of terrorism, as laid down in Article 23;***

   c) assistance with (…) claims, **regarding compensation for victims of terrorism available under national law of the Member State concerned".**[5]

4. Member States shall ensure that mechanisms or protocols are in place allowing for activation of support services for victims of terrorism within the framework of their national emergency-response infrastructures. Such protocols or mechanism shall envisage the coordination of relevant authorities, agencies and bodies to be able to provide a comprehensive response to the needs of victims and their family members immediately after

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[5] Accompanying recital to Article 22 (3)(c):
The assistance with victims' compensation claims is without prejudice and in addition to the assistance which victims of terrorism receive from assisting authorities in accordance with Directive 2004/80/EC relating to compensation to crime victims. This is without prejudice to the national rules on legal representation for claiming compensation, including through legal aid arrangements, nor any other relevant national rules on compensation.

a terrorist attack and as long as necessary thereafter, including adequate means facilitating the identification of and communication to victims and their families[6]

5. ***Member States shall ensure that adequate medical treatment is provided to victims of terrorism immediately after a terrorist attack and for as long as necessary thereafter. Member States shall retain the right to organise the provision of medical treatment to victims of terrorism in accordance with their national health care system.***

6. ***Member States shall ensure that victims of terrorism have access to legal aid in accordance with Article 13 of Directive 2012/29/EU, where they have the status of parties to criminal proceedings. Member States shall ensure that the severity and the circumstances of the crime are duly reflected in the conditions and procedural rules under which victims of terrorism have access to legal aid, ~~where compatible with the relevant national legal orders~~ in accordance with national law.***

7. This Directive shall apply in addition to and without prejudice to measures laid down in Directive 2012/29/EU.

Article 22a

Protection of victims of terrorism

Member States shall ensure that measures are available to protect victims of terrorism and their family members, in accordance with Directive 2012/29/EU. When determining whether and to what extent they should benefit from protection measures 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 dignity and physical integrity of victims of terrorism, including during questioning and when testifying.

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[6] Accompanying recital 16a:
(16a) Member States should ensure that *a comprehensive response to* the specific needs of victims of terrorism immediately after a terrorist attack and for as long as necessary thereafter is provided *within the national emergency-response infrastructure. To that end, Member States* may ~~*consider setting up of*~~ *a single and updated website with all relevant information and an emergency support centre for victims and their family members providing for psychological first aid and emotional support. Initiatives of Member States in this respect should be supported by making full use of available common assistance mechanisms and resources at EU level.* Support services should take into account that specific needs of victims of terrorism may evolve in time. In that regard, the Member States should ensure that support services will address in the first place at least the emotional and psychological needs of the most vulnerable victims of terrorism, and will inform all victims of terrorism about the availability of further emotional and psychological support including trauma support and counselling.

Article 23

Rights of victims of terrorism resident in another Member State[7]

1. Member States shall ensure **(…) that** victims of terrorism who are residents of a Member State other than that **(…)** where the terrorist offence was committed **have access to** information **regarding** the**ir (…)** rights, the available support services and **(…)** compensation schemes **in the Member State where the terrorist offence was committed**. **In this respect, Member States concerned shall take appropriate action to facilitate cooperation between their competent authorities or entities providing specialist support to ensure the effective access of victims to such information.**

2. Member States shall ensure that all victims of terrorism have access to the assistance and **(…)** support services as laid down in Article 22 **(3) (a) and (b)**on the territory of the Member State of their residence, even if the terrorist offence was committed in another Member State.

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7 The Presidency upholds the GA text.