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JOINT RESOLUTION OF 1st AND 2nd STANDING COMMITTEES

(Constitutional Affairs)

(Justice)

(Rapporteurs ROMANO and STEFANI)

adopted at the session of 17 March 2016

ON THE

**PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE
COUNCIL ON COMBATING TERRORISM AND REPLACING COUNCIL
FRAMEWORK DECISION 2002/475/JHA ON COMBATING TERRORISM
(COM(2015) 625 final)**

in accordance with Rule 144(1) and (6) of the Rules of Procedure

Notified to the Office of the President on 23 March 2016

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Having examined the EU act (COM(2015) 625 final) — Proposal for a Directive of the European Parliament and of the Council on combating terrorism and replacing Council Framework Decision 2002/475/JHA on combating terrorism,

Having taken note of the comments made by the Committee on European Union Policies,

Given that:

Acts of terrorism constitute one of the most serious violations of the universal values of human dignity, freedom, equality and solidarity, the enjoyment of human rights and fundamental freedoms;

It is important to have adequate tools in place to protect EU citizens and all people living in the EU, which are adequate to meet up to the threats the EU is confronted with;

Member States are increasingly faced with terrorist phenomena and preparatory, preliminary or symptomatic activities, such as the increasing number of individuals who travel abroad for the purposes of terrorism and the threat they pose upon their return ('foreign terrorist fighters'), radicalised lone attackers and the use of new communication technologies;

In its legislative programme for 2016, and in line with the requirements laid down in the European Agenda on Security for 2015, the European Commission put forward a legislative proposal to revise the Council Framework Decision 2002/475/JHA on combating terrorism of 13 June 2002, as amended by Council Framework Decision 2008/919/JHA of 28 November 2008, in order to align and amend the existing rules of criminal law, addressing the foreign terrorist fighter phenomenon and risks related to travel to third countries to engage in terrorist activities but also the increased threats from perpetrators who remain within Europe;

Victims of terrorism require protection, support and assistance that respond to their specific needs. In particular, they should receive immediate access to professional, specialist support services providing for physical and psycho-social treatments;

Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 (transposed into Italian legislation by means of Legislative Decree No 212 of 15 December 2015) on the one hand lays down a set of binding rights for all victims of crime, but, on the other, does not provide for any specific measures for victims of terrorism;

Given also that:

The UN Security Council Resolution (UNSCR) 2178(2014) on threats to international peace and security caused by terrorist acts adopted on 24 September 2014 sets out a broad range of measures to combat the Foreign Terrorist Fighters phenomenon. Under operative paragraph 6, UN Member States are required to ensure that their domestic laws and regulations establish serious criminal offences sufficient to prosecute and to penalise in respect of the following crimes: travel or attempted travel to a third country with the purpose of contributing to the commission of terrorist acts or the providing or receiving of training; the funding of such travel; and the organisation or facilitation of such travel;

The Additional Protocol to the Council of Europe Convention on the prevention of terrorism signed by Italy and by the European Union on 22 October 2015 implements certain criminal law provisions of the UNSCR 2178(2014), and in particular its operative paragraph 6. The Additional Protocol requires the criminalisation of the following acts: participation in an association or group for the purpose of terrorism; receiving training for terrorism; travelling or attempting to travel for terrorist purposes; providing or collecting funds for such travels; and organising and facilitating such travels. It also requires parties to strengthen the timely exchange of information between them;

With reference to its Recommendations issued in February 2012 concerning monitoring of money laundering, the Financial Action Task Force (FATF) has revised the Interpretive Note to Recommendation 5, calling on countries to criminalise financing the travel of individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training;

Having noted that:

Framework Decision 2002/475/JHA, which is intended to be replaced, already criminalises certain terrorist acts, including in particular the commission of terrorist attacks, participation in the activities of a terrorist group, public provocation, recruitment and training for terrorism, and provides rules on aiding and abetting, incitement and attempt of terrorist offences. However, Framework Decision 2002/475/JHA does not explicitly require the criminalisation of travel to third countries with terrorist intentions, nor does it explicitly require the criminalisation of being trained for terrorist purposes referred to in the UNSCR 2178(2014) and required by the Additional Protocol. Furthermore, Framework Decision 2002/475/JHA currently only requires criminalisation of terrorist financing to the extent that funding is provided to a terrorist group but not also financing of terrorist offences, or financing of offences related to terrorist activities, such as recruitment, active and passive training, travelling abroad for terrorism purposes, and organising and facilitating such activities;

The draft Directive therefore proposes to criminalise the following behaviours: terrorist offences in the strict sense of the term (Article 3), namely those already contained in Article 1 of Framework Decision 2002/475/JHA; offences relating to a terrorist group (Article 4), public provocation to commit a terrorist offence (Article 5), recruitment and training for terrorism (Articles 6, 7 and 8), travelling abroad for terrorism (Article 9), organising or otherwise facilitating travelling abroad for terrorism

(Article 10), terrorist financing (Article 11), aggravated theft, extortion and drawing up false administrative documents to commit a terrorist offence (Articles 12, 13 and 14). The proposal also improves existing provisions on aiding and abetting, incitement and attempt (Article 16), as well as rules on jurisdiction (Article 21), ensuring consistency and effective application of the relevant provisions and avoiding loopholes, and strengthens the rules necessary to ensure that aiding and abetting, incitement and attempt to commit terrorist offences, as described above, are punishable (Article 16). Member States shall have the task of taking the necessary measures to ensure that the offences listed above are punishable by effective, proportionate criminal penalties, which may entail extradition (Article 17). Member States shall also take the necessary measures to ensure that legal persons can be held liable for these offences (Articles 19 and 20). With regard to the exercise of jurisdiction and prosecution, the proposal provides (Article 21) that each Member State shall take the necessary measures to establish its jurisdiction over terrorist offences in certain specific cases. When an offence falls within the jurisdiction of more than one Member State and when any of the States concerned can validly prosecute on the basis of the same facts, the Member States concerned shall cooperate in order to decide which of them will prosecute the offenders with the aim, if possible, of centralising proceedings in a single Member State. The remaining articles address the relationship to terrorist offences (Article 15), mitigating circumstances (Article 18), and the provisions relating to the victims of terrorism (Articles 22 to 28);

Given that the Italian legislators have already introduced a series of criminal offences related to the phenomenon of terrorism into the national legislation,

The Committees jointly approve the proposal for a Directive presented by the European Commission (COM(2015) 625 final), subject to the following conditions:

Increased mechanisms should be provided for cooperation and coordination, with associated exchanges of information, among all the judicial authorities in the various countries in identifying terrorism offences, where identification of those offences involves actions by judicial authorities from different EU Member States;

The jurisdiction of the European Prosecutor should be extended to cover terrorism offences, in addition to those that damage the financial interests of the EU. For this purpose, increased cooperation should be provided, with the participation of at least nine Member States, in accordance with the Treaty of Lisbon. In any case, a body should be created within Europe to coordinate investigations and collection of information, so that terrorist offences can be tackled more effectively. In the meantime, more effective use could be made of the Schengen Information System (SIS);

Provisions should be harmonised across Europe with regard to punishing illegal trafficking of cultural objects from countries in which terrorist groups operate, as this is one of the primary sources of financing for terrorism. Italy has always attributed great importance to this issue, both nationally and internationally, in particular in the context of its membership of the United Nations;

The use of all possible investigative tools for gathering evidence should be ensured, so that investigations can be conducted swiftly and terrorist offences prosecuted;

Measures should be adopted across Europe making it possible to shut down websites and remove content associated with activities involving support and propaganda for terrorist purposes;

With reference to Article 21 of the proposed Directive, relating to jurisdiction and prosecution, on the basis of the territoriality principle, procedural methods should be specified for resolving any conflicts of jurisdiction between individual Member States, where a criminal offence falls within the jurisdiction of more than one Member State. In this regard, we should refer to Framework Decision 2009/948/JHA on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings.

COMMENTS FROM THE 14TH STANDING COMMITTEE 14**(EUROPEAN UNION POLICIES)****(Rapporteur: GINETTI)**

3 February 2016

The Committee, having examined the proposed text,

Given that:

Acts of terrorism constitute one of the most serious violations of the universal values of human dignity, freedom, equality and solidarity, the enjoyment of human rights and fundamental freedoms, and one of the most serious attacks on the principles of democracy and the rule of law on which the European Union is founded;

It is important to have adequate tools in place to protect EU citizens and all people living in the EU;

Member States are increasingly faced with terrorist phenomena and preparatory, preliminary or symptomatic activities, such as the increasing number of individuals who travel abroad for the purposes of terrorism and the threat they pose upon their return ('foreign terrorist fighters'), radicalised lone attackers and the use of new communication technologies;

In its legislative programme for 2016, and in line with the requirements laid down in the European Agenda on Security for 2015, the European Commission put forward a legislative proposal to revise the Council Framework Decision 2002/475/JHA on combating terrorism of 13 June 2002, as amended by Council Framework Decision 2008/919/JHA of 28 November 2008, in order to align and amend the existing rules of criminal law, addressing the foreign terrorist fighter phenomenon and risks related to travel to third countries to engage in terrorist activities but also the increased threats from perpetrators who remain within Europe;

Given also that:

The UN Security Council Resolution (UNSCR) 2178(2014) on threats to international peace and security caused by terrorist acts adopted on 24 September 2014 sets out a broad range of measures to combat the Foreign Terrorist Fighters phenomenon. Under operative paragraph 6, UN Member States are required to ensure that their domestic laws and regulations establish serious criminal offences sufficient to prosecute and to penalise in a manner duly reflecting the seriousness of the offence in respect of the following crimes:

(a) travel or attempted travel to a third country with the purpose of contributing to the commission of terrorist acts or the providing or receiving of training;

(b) the funding of such travel;

(c) the organisation or facilitation of such travel;

An Additional Protocol to the Council of Europe Convention on the prevention of terrorism was adopted in May 2015 implementing certain criminal law provisions of

the UNSCR 2178(2014), and in particular its operative paragraph 6. The Additional Protocol requires the criminalisation of the following acts: participation in an association or group for the purpose of terrorism (Article 2), receiving training for terrorism (Article 3), travelling or attempting to travel for terrorist purposes (Article 4), providing or collecting funds for such travels (Article 5), and organising and facilitating such travels (Article 6). It also requires parties to strengthen the timely exchange of information between them (Article 7);

With reference to its Recommendations issued in February 2012 concerning monitoring of money laundering, the Financial Action Task Force (FATF) has revised the Interpretive Note to Recommendation 5 on the criminalisation of terrorist financing, calling on countries to criminalise financing the travel of individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training;

Having noted that:

Framework Decision 2002/475/JHA does not explicitly require the criminalisation of travel to third countries with terrorist intentions, nor does it explicitly require the criminalisation of being trained for terrorist purposes referred to in UNSCR 2178(2014) and required by the Additional Protocol. Furthermore, Framework Decision 2002/475/JHA currently only requires criminalisation of terrorist financing to the extent that funding is provided to a terrorist group but not e.g. if provided to any offence related to terrorist activities, including recruitment, training or travelling abroad for terrorism;

The proposal in question is intended to update the Framework Decision on combating terrorism, also bringing it into line with the new legal framework resulting from the Treaty of Lisbon;

The draft Directive therefore proposes to criminalise the following behaviours: terrorist offences in the strict sense of the term (Article 3); offences relating to a terrorist group (Article 4), public provocation to commit a terrorist offence (Article 5), recruitment and training for terrorism (Articles 6, 7 and 8), travelling abroad for terrorism (Article 9), organising or otherwise facilitating travelling abroad for terrorism (Article 10), terrorist financing (Article 11), aggravated theft, extortion and drawing up false administrative documents to commit terrorist offences (Articles 12, 13 and 14). The proposal also improves existing provisions on aiding and abetting, incitement and attempt (Article 16), as well as rules on jurisdiction (Article 21), ensuring consistency and effective application of the relevant provisions and avoiding loopholes. Lastly, the proposal contains additional provisions, compared to the 2012 Directive, governing specific support measures for victims of terrorism (Articles 22 and 23). The remaining articles address relationship to terrorist offences (Article 15), penalties for natural persons (Article 17), mitigating circumstances (Article 18), liability of legal persons (Article 19), sanctions applicable to legal persons (Article 20) and final provisions (Articles 24 to 28);

Considering that the Dutch Presidency of the Council is seeking to adopt a general approach in the Justice and Home Affairs (JHA) Council of 10 and

11 March 2016 and considering that the proposal for a Directive is currently being reviewed by the Council's 'Substantive Criminal Law' working group, which met on 7, 8 and 20 January 2016 and will meet again on 29 January and 8 and 26 February 2016,

The Committee hereby approves the proposed Directive, to the extent of its remit, subject to the following observations:

The legal basis for the proposed Directive is Article 83(1) of the Treaty on the Functioning of the European Union (TFEU), on the minimum harmonisation of the criminal rules concerning the definition of criminal offences and sanctions. These concern particularly serious crimes with a cross-border dimension, expressly including 'terrorism'. The proposed Directive is also supported by the legal basis provided by Article 82(2)(c) TFEU, concerning minimum rules on the rights of victims of crime.

These two competing and relevant legal provisions are subject to application of the 'emergency brake' referred to in Article 83(3) and Article 82(2) TFEU, which can be applied where proposed Directives affect 'fundamental aspects of [its] criminal justice system'.

In this regard, we do not believe that there is a need to apply that mechanism, particularly on the basis of Article 12(1) of Law No 234 of 24 December 2012;

The principle of subsidiarity, in respect of the area of freedom, security and justice, as a sector of shared competence under Article 4(2) TFEU, is observed because the fight against international terrorism requires action at EU level – intended to criminalise certain behaviours in all Member State legal systems – in order to guarantee effective management of prevention and suppression actions. This principle has also been observed because of the need to implement the Additional Protocol to the Council of Europe Convention on the prevention of terrorism, which implements certain criminal law provisions of the UNSCR 2178(2014), and the need to incorporate the FATF Recommendation on the criminalisation of terrorism into EU law;

The principle of proportionality has been observed to the extent that the actions requested from the supranational legislation, which are in turn in line with the severity of the offences included among terrorist crimes, are enshrined in EU law;

In this regard, we hope that the proposed Directive will be adopted quickly, so as to ensure that the behaviours indicated in the text of the proposal can be punished. This must be balanced against the guarantees provided in relation to the fundamental rights of EU citizens.

We must, however, provide strengthened mechanisms for cooperation and coordination, with associated information exchanges, between all competent authorities in the Member States, including the intelligence services.

It would also be desirable, with a view to greater reinforcement of the external borders of the Schengen Area, to make more effective use of the Schengen Information System (SIS).

We therefore believe it necessary to ensure that Member States – in accordance with strategic security objectives and fundamental rights – are able to use all possible

investigative tools for gathering evidence, in their most recent forms, so that investigations can be conducted swiftly and terrorist offences prosecuted.

Finally, with reference to Article 21 of the proposed Directive, relating to jurisdiction and prosecution, on the basis of the territoriality principle, we believe it necessary to strengthen the rules for coordination among the judicial authorities in the Member States intended to centralise prosecution in a single Member State, with reference to Council Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings. In this regard, the rules laid down in paragraph 5 of that Article, which does not exclude the exercise of jurisdiction in criminal matters as laid down by a Member State in accordance with its national legislation, should be limited where consensus has been reached among the judicial authorities.