

Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA

TITLE IV

GENERAL PROVISIONS RELATING TO TERRORIST OFFENCES, OFFENCES RELATED TO A TERRORIST GROUP AND OFFENCES RELATED TO TERRORIST ACTIVITIES

Article 13

Relationship to terrorist offences

For an offence referred to in Article 4 or Title III to be punishable, it shall not be necessary that a terrorist offence be actually committed, nor shall it be necessary, insofar as the offences referred to in Articles 5 to 10 and 12 are concerned, to establish a link to another specific offence laid down in this Directive.

Article 14

Aiding and abetting, inciting and attempting

- 1 Member States shall take the necessary measures to ensure that aiding and abetting an offence referred to in Articles 3 to 8, 11 and 12 is punishable.
- 2 Member States shall take the necessary measures to ensure that inciting an offence referred to in Articles 3 to 12 is punishable.
- 3 Member States shall take the necessary measures to ensure that attempting to commit an offence referred to in Articles 3, 6, 7, Article 9(1), point (a) of Article 9(2), and Articles 11 and 12, with the exception of possession as provided for in point (f) of Article 3(1) and the offence referred to in point (j) of Article 3(1), is punishable.

Article 15

Penalties for natural persons

- 1 Member States shall take the necessary measures to ensure that the offences referred to in Articles 3 to 12 and 14 are punishable by effective, proportionate and dissuasive criminal penalties, which may entail surrender or extradition.
- 2 Member States shall take the necessary measures to ensure that the terrorist offences referred to in Article 3 and offences referred to in Article 14, insofar as they relate to terrorist offences, are punishable by custodial sentences heavier than those imposable under national law for such offences in the absence of the special intent required pursuant to Article 3, except where the sentences imposable are already the maximum possible sentences under national law.
- 3 Member States shall take the necessary measures to ensure that offences listed in Article 4 are punishable by custodial sentences, with a maximum sentence of not less than

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15 years for the offence referred to in point (a) of Article 4, and for the offences listed in point (b) of Article 4 a maximum sentence of not less than 8 years. Where the terrorist offence referred to in point (j) of Article 3(1) is committed by a person directing a terrorist group as referred to in point (a) of Article 4, the maximum sentence shall not be less than 8 years.

4 Member States shall take the necessary measures to ensure that when a criminal offence referred to in Article 6 or 7 is directed towards a child, this may, in accordance with national law, be taken into account when sentencing.

Article 16

Mitigating circumstances

Member States may take the necessary measures to ensure that the penalties referred to in Article 15 may be reduced if the offender:

- (a) renounces terrorist activity; and
- (b) provides the administrative or judicial authorities with information which they would not otherwise have been able to obtain, helping them to:
 - (i) prevent or mitigate the effects of the offence;
 - (ii) identify or bring to justice the other offenders;
 - (iii) find evidence; or
 - (iv) prevent further offences referred to in Articles 3 to 12 and 14.

Article 17

Liability of legal persons

1 Member States shall take the necessary measures to ensure that legal persons can be held liable for any of the offences referred to in Articles 3 to 12 and 14 committed for their benefit by any person, acting either individually or as part of an organ of the legal person, and having a leading position within the legal person, based on one of the following:

- a a power of representation of the legal person;
- b an authority to take decisions on behalf of the legal person;
- c an authority to exercise control within the legal person.

2 Member States shall also take the necessary measures to ensure that legal persons can be held liable where the lack of supervision or control by a person referred to in paragraph 1 of this Article has made possible the commission of any of the offences referred to in Articles 3 to 12 and 14 for the benefit of that legal person by a person under its authority.

3 Liability of legal persons under paragraphs 1 and 2 of this Article shall not exclude criminal proceedings against natural persons who are perpetrators, inciters or accessories in any of the offences referred to in Articles 3 to 12 and 14.

Article 18

Sanctions for legal persons

Member States shall take the necessary measures to ensure that a legal person held liable pursuant to Article 17 is punishable by effective, proportionate and dissuasive sanctions, which shall include criminal or non-criminal fines and may include other sanctions, such as:

- (a) exclusion from entitlement to public benefits or aid;
- (b) temporary or permanent disqualification from the practice of commercial activities;
- (c) placing under judicial supervision;
- (d) a judicial winding-up order;
- (e) temporary or permanent closure of establishments which have been used for committing the offence.

Article 19

Jurisdiction and prosecution

1 Each Member State shall take the necessary measures to establish its jurisdiction over the offences referred to in Articles 3 to 12 and 14 where:

- a the offence is committed in whole or in part in its territory;
- b the offence is committed on board a vessel flying its flag or an aircraft registered there;
- c the offender is one of its nationals or residents;
- d the offence is committed for the benefit of a legal person established in its territory;
- e the offence is committed against the institutions or people of the Member State in question or against an institution, body, office or agency of the Union based in that Member State.

Each Member State may extend its jurisdiction if the offence is committed in the territory of another Member State.

2 Each Member State may extend its jurisdiction over providing training for terrorism as referred to in Article 7, where the offender provides training to its nationals or residents, in cases where paragraph 1 of this Article is not applicable. The Member State shall inform the Commission thereof.

3 When an offence falls within the jurisdiction of more than one Member State and when any of the Member 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. To this end, the Member States may have recourse to Eurojust in order to facilitate cooperation between their judicial authorities and the coordination of their action.

Account shall be taken of the following factors:

- a the Member State shall be that in the territory of which the offence was committed;
- b the Member State shall be that of which the offender is a national or resident;

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- c the Member State shall be the country of origin of the victims;
- d the Member State shall be that in the territory of which the offender was found.

4 Each Member State shall take the necessary measures also to establish its jurisdiction over the offences referred to in Articles 3 to 12 and 14 in cases where it refuses to surrender or extradite a person suspected or convicted of such an offence to another Member State or to a third country.

5 Each Member State shall ensure that its jurisdiction covers cases in which any of the offences referred to in Articles 4 and 14 has been committed in whole or in part within its territory, regardless of where the terrorist group is based or pursues its criminal activities.

6 This Article shall not exclude the exercise of jurisdiction in criminal matters as laid down by a Member State in accordance with its national law.

Article 20

Investigative tools and confiscation

1 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 12.

2 Member States shall take the necessary measures to ensure that their competent authorities freeze or confiscate, as appropriate, in accordance with Directive 2014/42/EU of the European Parliament and of the Council⁽¹⁾, the proceeds derived from and instrumentalities used or intended to be used in the commission or contribution to the commission of any of the offences referred to in this Directive.

Article 21

Measures against public provocation content online

1 Member States shall take the necessary measures to ensure the prompt removal of online content constituting a public provocation to commit a terrorist offence, as referred to in Article 5, that is hosted in their territory. They shall also endeavour to obtain the removal of such content hosted outside their territory.

2 Member States may, when removal of the content referred to in paragraph 1 at its source is not feasible, take measures to block access to such content towards the internet users within their territory.

3 Measures of removal and blocking must be set following transparent procedures and provide adequate safeguards, in particular to ensure that those measures are limited to what is necessary and proportionate and that users are informed of the reason for those measures. Safeguards relating to removal or blocking shall also include the possibility of judicial redress.

Article 22

Amendments to Decision 2005/671/JHA

Decision 2005/671/JHA is amended as follows:

- (1) in Article 1, point (a) is replaced by the following:
- (a) “terrorist offences”: the offences referred to in Directive (EU) 2017/541 of the European Parliament and of the Council⁽²⁾
- (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 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 competent authorities of another Member State where the information could be used in the prevention, detection, investigation or prosecution of terrorist offences as referred to in Directive (EU) 2017/541, in that Member State, either upon request or spontaneously, and in accordance with national law and relevant international legal instruments.;
- (b) the following paragraphs are 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.
8. Member States shall take the necessary measures to ensure that their competent authorities take, upon receiving the information referred to in paragraph 6, timely measures in accordance with national law, as appropriate..

Article 23

Fundamental rights and freedoms

1 This Directive shall not have the effect of modifying the obligations to respect fundamental rights and fundamental legal principles, as enshrined in Article 6 TEU.

2 Member States may establish conditions required by, and in accordance with, fundamental principles relating to freedom of the press and other media, governing the rights and responsibilities of, and the procedural guarantees for, the press or other media where such conditions relate to the determination or limitation of liability.

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- (1) Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union ([OJ L 127, 29.4.2014, p. 39](#)).
- (2) Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA ([OJ L 88, 31.3.2017, p. 6](#)).’;