



**COUNCIL OF
THE EUROPEAN UNION**

**Brussels, 3 December 2001 (05.12)
(OR. en,fr)**

14845/01

**Interinstitutional File:
2001/0217 (CNS)**

LIMITE

**DROIPEN 103
CATS 49**

OUTCOME OF PROCEEDINGS

of : COREPER

on : 3 December 2001

No. prev. doc. : 12647/4/01 DROIPEN 85 CATS 31 REV 4

No. Cion prop. : COM(2001) 521 final

Subject : Proposal for a Council Framework Decision on combating terrorism

I. Introduction

On 19 September 2001 the Commission proposed that the Council adopt a Framework Decision on combating terrorism (see 12103/01 DROIPEN 81). The purpose of the proposal is to approximate Member States' legislation on terrorism, in accordance with Article 34(2)(b) of the Treaty on European Union.

At its meeting on 20 September 2001 the Council welcomed the Commission's initiative and instructed the Article 36 Committee to make immediate preparations to examine the proposal in detail, so that the Council could record significant political agreement on the Commission proposal at its meeting on 6 and 7 December 2001.

At its extraordinary meeting on 21 September 2001 the European Council agreed to the adoption of a common definition of terrorism and asked the Council to flesh out that agreement during its meeting on 6 and 7 December at the latest.

The Article 36 Committee discussed the Commission proposal at its meetings on 1 and 2, 8 and 9, 22 and 23 October and 5 and 6 November 2001. The Council discussed two questions (penalties and jurisdiction – see Articles 4 and 9 in the Annex) on 16 October.

At its meeting on 5 and 6 November the Article 36 Committee reviewed the whole of the instrument with a view to forwarding it to Coreper/the Council.

This note contains the outcome of those proceedings and the discussions in Coreper on 12 and 14 November including the matters agreed in the Council on 16 November 2001.

Coreper and the JHA Counsellors have examined the draft instrument on several occasions after the meeting of the Council, most recently on 3 December 2001. The text as its results from these discussions is set out in the Annex.

The JHA Counsellors will examine the opinion of the European Parliament on 4 December 2001. The remaining questions after this examination, subject to the examination of the opinion of the European Parliament, are the following:

(a) Penalties (Article 4)

Article 5 of the Commission proposal contains a system of sentences and penalties for the various offences proposed, ranging from 2 to 20 years' imprisonment.

Following the discussions within the Article 36 Committee and Coreper, several delegations considered that this system was too complicated. Another suggestion by the Commission that took into account the horizontal discussion on penalties was not conclusive. Many delegations also considered that a strong political signal must be given in this matter. Following up these points, the Presidency has in principle proposed a simpler system with a maximum sentence of at least 15 years' imprisonment for directing a terrorist group and 8 years for the other related offences referred to in Article 2 (see Article 4(3) and Article 2). For other terrorist offences, the Presidency text proposes heavier sentences than those attracted by ordinary law offences under the national law of the Member State (Article 4(2) and Article 1).

The Commission has indicated that it is not in agreement with this approach and that it intends to make a unilateral statement on the subject. Austria has maintained a reservation on the approach, linked with its general hesitations as regards the "minimum/maximum penalties". Finland maintains a scrutiny reservation.

Coreper/Council is invited to resolve this matter.

(b) Parliamentary reservations

The Swedish, Danish and Netherlands delegations have entered parliamentary scrutiny reservations.

Proposal for a
COUNCIL FRAMEWORK DECISION
on combating terrorism¹

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Union, and in particular Article 29, Article 31(e) and Article 34(2)(b) thereof,

Having regard to the proposal from the Commission²,

Having regard to the Opinion of the European Parliament³,

Whereas:

- (1) Terrorism constitutes one of the most serious violations of the principles of human dignity, liberty, democracy, respect for human rights and fundamental freedoms and the rule of law, principles on which the European Union is founded and which are common to the Member States. The La Gomera Declaration adopted at the informal Council meeting on 14 October 1995 affirmed that terrorism constitutes a threat to democracy, to the free exercise of human rights and to economic and social development.

¹ Parliamentary scrutiny reservations by S/DK and NL.

² OJ C , , p. .

³ OJ C ,, p. .

- (2) All or some Member States are party to a number of conventions relating to terrorism. The European Convention on the Suppression of Terrorism¹ of 27 January 1977 establishes that terrorist offences cannot be regarded as political offences or as offences connected with political offences or as offences inspired by political motives. The United Nations has adopted the Convention for the suppression of terrorist bombings of 15 December 1997 and the Convention for the suppression of financing terrorism of 9 December 1999. A draft global Convention against terrorism is currently being negotiated within the United Nations.
- (3) At European Union level, on 3 December 1998 the Council adopted the Action Plan of the Council and the Commission on how best to implement the provisions of the Treaty of Amsterdam on an area of freedom, security and justice². Terrorism was referred to in the conclusions of the Tampere European Council of 15 and 16 October 1999³, and of the Santa María da Feira European Council of 19 and 20 June 2000⁴. It was also mentioned in the Commission communication to the Council and the European Parliament on the biannual update of the scoreboard to review progress on the creation of "freedom, security and justice" in the European Union (second half of 2000)⁵. On 30 July 1996 twenty-five measures to fight against terrorism were advocated by the leading industrialised countries (G7) and Russia meeting in Paris.

¹ ETS No 90.

² OJ C 19, 23.1.1999, p. 1.

³ <http://ue.eu.int/en/Info/eurocouncil/index.htm>

⁴ <http://ue.eu.int/en/Info/eurocouncil/index.htm>

⁵ COM(2000) 782 final.

- (4) The European Union has adopted numerous specific measures having an impact on terrorism and organised crime, such as the Council Decision of 3 December 1998 instructing Europol to deal with crimes committed or likely to be committed in the course of terrorist activities against life, limb, personal freedom or property ¹; Joint Action 96/610/JHA of 15 October 1996 adopted by the Council on the basis of Article K.3 of the Treaty on European Union concerning the creation and maintenance of a Directory of specialised counter-terrorist competences, skills and expertise to facilitate counter-terrorism-cooperation between the Member States of the European Union ²; Joint Action 98/428/JHA of 29 June 1998 adopted by the Council on the basis of Article K.3 of the Treaty on European Union on the creation of a European Judicial Network ³, with responsibilities in terrorist offences, in particular Article 2; Joint Action 98/733/JHA of 21 December 1998 adopted by the Council on the basis of Article K.3 of the Treaty on European Union on making it a criminal offence to participate in a criminal organisation in the Member States of the European Union ⁴; and the Council Recommendation of 9 December 1999 on cooperation in combating the financing of terrorism ⁵.
- (5) The definition of terrorist offences should be approximated in all Member States, including those offences connected with terrorist groups. Furthermore, penalties and sanctions should be provided for natural and legal persons having committed or being liable for such offences, which reflect the seriousness of such offences.
- (6) The circumstances should be considered aggravated where the offence is committed with particular ruthlessness, committed against several persons or against persons particularly exposed to terrorist offences.

¹ OJ C 26, 30.1.1999, p. 22.

² OJ L 273, 25.10.1996.

³ OJ L 191, 7.7.1998, p. 4.

⁴ OJ L 351, 29.12.1998, p. 1.

⁵ OJ C 373, 23.12.1999, p. 1.

- (7) Jurisdictional rules must be established to ensure that the terrorist offence may be effectively prosecuted.
- (8) Victims of terrorist offences are vulnerable, and therefore specific measures are necessary with regard to them.
- (9) Insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States unilaterally, and can therefore, because of the need for reciprocity, be better achieved at the level of the Union, the Union may adopt measures, in accordance with the principle of subsidiarity. In accordance with the principle of proportionality, this Framework Decision does not go beyond what is necessary in order to achieve those objectives.
- (10) This Framework Decision respects the fundamental rights and observes the principles recognised by Article 6(2) of the Treaty on European Union and reflected in the Charter of Fundamental Rights of the European Union, notably Chapter VI thereof. Nothing in this Framework Decision may be interpreted as being intended to reduce or restrict fundamental rights or freedoms such as the right to strike, freedom of assembly, of association or of expression, including the right of everyone to form and to join trade unions with others for the protection of his or her interests and the related right to demonstrate.
- (11) Actions by armed forces during periods of armed conflict, which are governed by international humanitarian law within the meaning of these 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 Framework Decision,

HAS DECIDED AS FOLLOWS:

Article 1 – Terrorist offences

Each Member State shall take the necessary measures to ensure that terrorist offences include the following list of intentional acts which, given their nature or their context, may seriously damage a country or an international organisation, as defined as offences under national law, where committed with the aim of:

- (i) seriously intimidating a population, or
- (ii) unduly compelling a Government or international organisation to perform or abstain from performing any act, or
- (iii) seriously destabilising or destroying the fundamental political, constitutional, economic or social structures of a country or an international organisation:
 - (a) attacks upon a person's life which may cause death;
 - (b) attacks upon the physical integrity of a person;
 - (c) kidnapping or hostage taking;
 - (d) (...);
 - (e) causing extensive¹ destruction to a Government or public facility, a transport system, an infrastructure facility, including an information system, a fixed platform located on the continental shelf, a public place or private property likely to endanger human life or result in major economic loss;
 - (f) seizure of aircraft, ships or other means of public or goods transport;

¹ The word "extensive" is used, as in the Convention for the Suppression of the Financing of Terrorism.

- (g) manufacture, possession, acquisition, transport, supply or use of weapons, explosives or of nuclear, biological or chemical weapons, as well as research into and development of biological and chemical weapons;
- (h) release of dangerous substances, or causing fires, explosions or floods the effect of which is to endanger human life;
- (i) interfering with or disrupting the supply of water, power or any other fundamental natural resource the effect of which is to endanger human life;
- (j) threatening to commit any of the acts listed above.

Article 1a – Offences linked to terrorist activities

Each Member State shall take the necessary measures to ensure that terrorist-linked offences also include the following acts:

- (a) aggravated theft with a view to committing one of the acts listed in Article 1;
- (b) drawing up false administrative documents with a view to committing one of the acts listed in Article 1(a) to (i) and Article 2(2)(b) and (c).
- (c) extortion with a view to the perpetration of one of the acts listed in Article 1.

Article 2 – Offences relating to a terrorist group

1. For the purposes of this Framework Decision, "terrorist group" shall mean a structured group of more than two persons, established over a period of time and acting in concert to commit terrorist offences. "Structured group" shall mean a group that is not randomly formed for the immediate commission of an offence and that does not need to have formally defined roles for its members, continuity of its membership or a developed structure.
2. Each Member State shall take the necessary measures to ensure that the following intentional acts are punishable:
 - (a) directing a terrorist group;
 - (b) participating in the activities of a terrorist group, including by supplying information or material resources, or by funding its activities in any way, with knowledge of the fact that such participation will contribute to the criminal activities of the group.

Article 3 –Inciting, aiding or abetting, and attempting

1. Each Member State shall take the necessary measures to ensure that inciting or aiding or abetting an offence referred to in Articles 1, 1a or 2 is made punishable.
2. Each Member State shall take the necessary measures to ensure that attempting to commit an offence referred to in Articles 1 and 1a, with the exception of possession as provided for in Article 1(g) and the offence stipulated in Article 1(j), is made punishable.

Article 4 – Penalties

1. Each Member State shall take the necessary measures to ensure that the offences referred to in Articles 1 to 3 are punishable by effective, proportionate and dissuasive criminal penalties, which may entail extradition.

2. Each Member State shall take the necessary measures to ensure that terrorist offences and offences referred to in Article 3, inasmuch 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 1(1), save where the sentences imposable are already the maximum possible sentences under national law.¹
3. Each Member State shall take the necessary measures to ensure that offences listed in Article 2 are punishable by custodial sentences, with a maximum sentence of not less than fifteen years for the offences listed in Article 2(2)(a), and for the offences listed in Article 2(2)(b) a maximum sentence of not less than eight years. Insofar as the offence listed in Article 2 (2)(a) refers only to the act in Article 1(j) the maximum sentence shall not be less than eight years.²

Article 5

(...)

Article 6 – Particular circumstances

Notwithstanding Article 4, each Member State may take the necessary measures to ensure that the penalties referred to in Article 4 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:

¹ The Commission pointed out that the solution proposed for Article 4(2) did not lead to a real harmonisation of penalties for terrorist offences. The Commission would make a unilateral statement when the instrument was adopted.

² Scrutiny reservation by FIN. Reservation by A, which opposes the principle of "minimum/maximum" penalties.

- (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 1 to 3.

Article 7 – Liability of legal persons

1. Each Member State shall take the necessary measures to ensure that legal persons can be held liable for any of the offences referred to in Articles 1 to 3 committed for their benefit by any person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on:
 - (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. Apart from the cases already provided for in paragraph 1, each Member State shall 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 has made possible the commission of any of the offences referred to in Articles 1 to 3 for the benefit of that legal person by a person under its authority.
3. Liability of legal persons under paragraphs 1 and 2 shall not exclude criminal proceedings against natural persons who are perpetrators, instigators or accessories in any of the offences referred to in Articles 1 to 3.

Article 8 – Penalties for legal persons

Each Member State shall take the necessary measures to ensure that a legal person held liable pursuant to Article 7 is punishable by effective, proportionate and dissuasive penalties, which shall include criminal or non-criminal fines and may include other penalties, 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 9 – Jurisdiction and prosecution

1. Each Member State shall take the necessary measures to establish its jurisdiction over the offences referred to in Articles 1 to 3 where:
 - (a) the offence has been committed in whole or in part in its territory. Each Member State may extend its jurisdiction if the offence has been committed in the territory of a Member State of the European Union;
 - (b) the offence has been 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 has been committed for the benefit of a legal person established in its territory;
 - (e) the offence has been committed against the institutions or people of the Member State in question or against an institution of the European Union or a body set up in accordance with the Treaties establishing the European Communities and the Treaty on European Union and based in that Member State.

2. 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. To this end, the Member States may have recourse to any body or mechanism established within the European Union in order to facilitate cooperation between their judicial authorities and the coordination of their action. Sequential account will be taken of the following factors:
 - the Member State shall be that in the territory of which the acts have been committed;
 - the Member State shall be that of which the perpetrator is a national or resident;
 - the Member State shall be the Member State of origin of the victims;
 - the Member State shall be that in which the perpetrator has been found.
3. Each Member State shall take the necessary measures also to establish its jurisdiction over the offences referred to in Articles 1 to 3 in cases where it refuses to hand over or extradite a person suspected or convicted of such an offence to another Member State or to a third country.
4. Each Member State shall ensure that its jurisdiction covers cases in which any of the offences referred to in Articles 2 and 3 has been committed in whole or in part within its territory, wherever the terrorist group is based or pursues its criminal activities.
5. This Article shall not exclude the exercise of jurisdiction in criminal matters as laid down by a Member State in accordance with its national legislation.

Article 10 – Protection of and assistance to victims

1. Member States shall ensure that investigations into or prosecution of offences covered by this Framework Decision are not dependent on a report or accusation made by a person subjected to the offence, at least if the acts were committed on the territory of the Member State.
2. In addition to the measures laid down in the Framework Decision on the standing of victims in criminal proceedings, each Member State shall, if necessary, take all measures possible to ensure appropriate assistance for victims' families.

Article 11 – Implementation and reports

1. Member States shall take the necessary measures to comply with this Framework Decision by 31 December 2002.
2. By the same date, Member States shall transmit to the General Secretariat of the Council and to the Commission the text of the provisions transposing into their national law the obligations imposed on them under this Framework Decision. On the basis of a report drawn up from that information and a written report from the Commission, the Council shall assess, by 31 December 2003, whether Member States have taken the necessary measures to comply with this Framework Decision.
3. The Commission report shall specify, in particular, transposition into the criminal law of the Member States of the obligation contained in Article 4(2). (...)

Article 12 – Entry into force

This Framework Decision shall enter into force on the day following its publication in the Official Journal of the European Communities.

Done at Brussels, [...]

Draft Council declarations

1. "The Council declares that the offence of threat specified in Article 1(j) should be viewed as defined by the national law of the Member State concerned. Should that offence require an additional qualification such as a "credible" threat, it is permissible under the Framework Decision to implement the instrument accordingly. Where the Framework Decision concerns the direction of a terrorist group that never commits any acts, but merely threatens to commit them, it would be permissible under the Framework Decision to implement the instrument by punishing that particular offence by a maximum sentence of not less than eight years."

2. "The Council declares that the Framework Decision on the fight against terrorism covers acts which are considered by all Member States of the European Union as serious infringements of their criminal laws committed by individuals whose objectives constitute a threat to their democratic societies respecting the rule of law and the civilisation upon which these societies are founded. It has to be understood in this sense and cannot be construed so as to argue that the conduct of those who have acted in the interest of preserving or restoring these democratic values, as was notably the case in some Member States during the Second World War, could now be considered as "terrorist" acts. Nor can it be construed so as to incriminate on terrorist grounds persons exercising their fundamental right to manifest their opinions, even if in the course of the exercise of such right they commit offences."

Draft Council Declaration relating to Article 1(g)

The Council agrees that the Framework Decision does not impose an obligation on Member States to criminalise the actions set out in Article 1(g) unless they are committed with a terrorist intent.

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