



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 19 April 2006

8466/06

**Translation provided by the
Presidency**

LIMITE

**DROIPEN 28
JAI 181**

NOTE

from :	Presidency
to :	COREPER/ Council (JHA)
Previous document No:	14642/05 DROIPEN 59 14248/1/05 DROIPEN 54 CATS 73 REV 1 + ADD 1 7527/06 DROIPEN 21 CATS 41 COR 1
Subject :	Proposal for a Council Framework Decision on certain procedural rights in criminal proceedings throughout the European Union

I. Introduction

On 3 May 2004 the Commission submitted a proposal for a Council Framework Decision on certain procedural rights in criminal proceedings throughout the European Union ¹. Discussions began under the Netherlands Presidency in the Council Working Party on Substantive Criminal Law and continued under the Luxembourg and United Kingdom Presidencies until the third reading was concluded. A progress report was made to the Council (Justice and Home Affairs) on 2 December 2005 ². On the basis of these results, including doubts still remaining on the legal basis, the Presidency carried out an analysis of the problem and, at the informal meeting

¹ 9318/04 DROIPEN 17.

² 14642/05 DROIPEN 59; 14248/1/05 DROIPEN 54 CATS 73 REV 1 + ADD 1.

of Ministers (Justice and Home Affairs) on 13 January 2006 and at the Article 36 Committee on 2 February 2006, suggested, as an interim step, the adoption of a declaration by the Council and continuing discussions on the text of the Framework Decision at the same time.¹ On the basis of the outcome of discussions at the meeting of the Article 36 Committee on 2 February 2006, in particular regarding the sceptical attitude of many Member States on the approach pursued by the Presidency, a joint meeting of the Working Party on Substantive Criminal Law and experts on the European Arrest Warrant was held on 6 March 2006. The Working Party on Substantive Criminal Law came to the conclusion that apparently no serious problems resulting from differing procedural systems existed in connection with cooperation and the application of legal acts in the area of mutual recognition.² The overwhelming majority of Member States was in favour of continuing the discussions.

II. Outstanding general issues relating to the draft Framework Decision

1. **Legal basis:** IE/AT/CZ/SK/DK and MT are not convinced that Article 31(1)(c) TEU constitutes the appropriate legal basis for the proposal for a Framework Decision and have upheld the reservations already tabled at the start of the discussions on the existence of a suitable legal basis. However, the majority of Member States has no doubts about the legal basis and is in favour – with reference to the opinion of the Council Legal Service³ – of continuing the discussions.
2. **Relationship with the ECHR:** While some Member States see no added value in relation to the ECHR (IE/UK/MT), other Member States (SK/CZ/F/PL/NL) object to the risks arising from a dual legal protection system (ECHR – Framework Decision). Some of the Member States in favour (D/FI/PT/EE/GR/and BE) already regard the general codification as a bonus. In addition to this "symbolic value" IT sees real progress in relation to the ECHR (for example, with the letter of rights provided for in Article 14). On the other hand, ES for its part is in favour of harmonising procedural rights on the basis of specific cases (for example, on the basis of the right of access to legal assistance).

¹ 5542/06 DROIPEN 8 CATS 10 COR 1.

² 6621/06 DROIPEN 15.

³ 12902/04 JUR 399 COPEN 117.

3. **Exceptions for serious and complex forms of crime, in particular terrorism:** The recitals in the proposal for a Framework Decision have not so far been discussed by the Working Party. **Recital 8** stipulates that the proposed provisions of the Framework Decision are not intended to affect specific measures in force in national legislation in the context of the fight against certain serious and complex forms of crime, in particular terrorism. The question of the exceptions was discussed in the Working Party on several occasions in connection with the possible exceptions provided for in individual provisions.

General reservations: UK/IE/DK/CZ/SE/SI and NL have lodged parliamentary reservations. LV and SI have entered linguistic reservations on the text as set out in 10880/05 DROIPEN 34. Details of delegations' positions are set out in Annex A to 13504/05 DROIPEN 45.

III. Recent developments

In an attempt to overcome the deadlock in the negotiations on the draft Framework Decision, the Presidency suggested restricting the content of the draft Framework Decision to particular rights in order to resolve problems linked to the legal basis.¹ Upon the questions based on the outstanding general issues the Presidency held an informal meeting in the margins of the Article 36 Committee on 10 April 2006.

IV. Outcome of the proceedings of the CATS meeting

During the discussions in the informal meeting in the margins of the Article 36 Committee on 10 April 2006 six Member States (UK, CZ, IE MT, CY and SK) referred to the earlier proposal of the Presidency suggesting a JHA Council Declaration on criminal procedural rights.² To further elaborate this idea they suggested a Resolution by Member States on ensuring fairness in criminal proceedings with particular reference to access to free legal aid and to an interpreter. Most of these delegations saw such a non-binding instrument as an interim measure to speed up work on the draft

¹ 7527/06 DROIPEN 21 CATS 41

² 5542/06 DROIPEN 8 CATS 10 COR 1.

Framework Decision. Several other Member States strongly favoured continuation of discussions on a binding instrument with a view to adoption as soon as possible. Agreement was reached to set up an Ad hoc Informal Working Party, inviting in particular the Member States that support a continuation of the discussions on the Framework Decision to participate actively in the work.

V. Mandate of the Ad hoc Informal Working Party

The Presidency will request this Working Party

- to examine whether common ground can be reached between the proposal for a Framework Decision on the one hand and the suggested non-binding instrument on the other hand (e.g. by stressing Member States' commitment to continue work aiming at a Framework Decision;
- to examine whether a compromise can be reached by way of limiting the scope of the draft Framework Decision, for the time being, to specific fundamental rights as proposed by the Presidency¹;
- to establish which rights should be covered by the scope of the instrument focussing on minimum standards, while fully respecting the ECHR, rather than elaborating detailed provisions as to how each of these rights should be exercised in specific criminal proceedings;
- to examine how possible conflicts between the draft instrument and the ECHR as well as the case law of the ECtHR could be avoided;
- to draft a new text that may serve as a basis for a compromise solution to accelerate negotiations on the proposal for a Framework Decision.

The Ad hoc Informal Working Party should provide the Article 36 Committee with a first report by mid May 2006.

¹ 7527/06 DROIPEN 21 CATS 41

VI. COREPER/COUNCIL is invited to take note

- 1. of the state of play of the negotiations on the proposal for a Framework Decision (see point I);*
- 2. of the reservations of several Member States on the legal basis for a binding Framework Decision (see points I and II.1);*
- 3. that certain delegations have suggested to consider the possibility of the adoption of a non-binding Resolution (see point IV);*
- 4. that the Ad hoc Informal Working Party will examine the questions set out in point V.*
