

Permanente commissie
van deskundigen in
internationaal vreemdelingen-,
vluchtelingen- en strafrecht

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To Ms. Kathalijne Buitenweg
Rapporteur
European Parliament
Civil Liberties, Justice and Home Affairs Committee
Rue Wiertz
BE-1047 BRUXELLES

Reference CM08006 II

Regarding Framework Decision on certain procedural rights in criminal proceedings throughout the European Union (COM(2004) 328)

Date 21 March 2008

Dear Ms. Buitenweg,

Please find enclosed a note by the Standing Committee of Experts in international immigration, refugee and criminal law on a draft Framework Decision on certain procedural rights in criminal proceedings throughout the European Union (COM(2004) 328).

We hope you will find these comments useful. Should any questions arise, the Standing Committee is prepared to provide you with further information on this subject.

Yours sincerely,

On behalf of the Standing Committee,



Prof. dr. C.A. Groenendijk
Chairman



Prof. dr. P. Boeles
Executive secretary

Note on the draft Framework Decision on certain procedural rights in criminal proceedings throughout the European Union (COM(2004) 328)

Since April 2004 the draft Framework Decision on certain procedural rights in criminal proceedings throughout the European Union is under negotiation (COM(2004) 328). The differences of opinion among the Member States with regard to its legal ground, its necessity and its content dominated the negotiations. It is to be expected that an amended proposal will be presented, although it is not clear when it will be tabled. It also remains uncertain to what extent its content will be changed.

For now the Standing Committee wishes to comment on the draft instrument on procedural rights nevertheless, assuming that such a harmonising instrument will be adopted ultimately.

1. Firstly, the Standing Committee would like to express its appreciation for the positive approach of The Netherlands and other Member States up till now with respect to the original proposal in hand, that we hopefully will be continued during the forthcoming negotiations.
2. In the light of the previous point the Standing Committee would like to emphasise the growing importance of an instrument harmonising procedural rights, especially in view of the speed at which the instruments on the application of mutual recognition are initiated and adopted. In order to strike the right balance between both issues, the Standing Committee recommends not to adopt new instruments on mutual recognition, until there is consensus on certain procedural rights.
3. The procedural rights in the Framework Decision should at least guarantee the suspect's right to be informed, as soon as possible, of the reasons for his arrest and of any charges against him.¹
4. Furthermore, the harmonising instrument should guarantee the suspect's right to legal assistance. This right should apply in all stages of criminal proceedings, starting from the very beginning. Legal assistance should also be guaranteed before any questioning has taken place and during any police interrogation.²
5. A non-national suspected of a criminal offence will be in an extremely vulnerable position if he cannot understand the language used in the proceedings. For this reason the person's right to interpretation and translations, as mentioned in the original proposal for the draft Framework Decision, should be guaranteed. Besides, the Standing Committee holds the opinion of that it should be made explicit in the Framework Decision that translation will take place in a language the suspect understands, even when that language is not an official language of the European Union.
6. With regard to the suspect's right to translation of documents, the Standing Committee advises that all documents available to the suspect and his lawyer, should be covered by this right. However if this right in the Framework Decision would only apply to 'relevant documents', the Standing Committee is of the opinion that the decision regarding which documents are relevant should be taken by the competent authorities together with the suspect's lawyer.
As a result, a fair balance between the suspect's interests on the one hand and considerations of time and costs on the other hand, may be struck. In case of differences of opinion about the relevance of certain documents, a final decision should be taken by a judge.

¹ In accordance with article 9(2) ICCPR

² The latter implies modification of Dutch Code of Criminal Procedure, which change should be supported explicitly by the Standing Committee.