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**DROIPEN 42
COTER 56
CATS 39
USA 81**

NOTE

from : General Secretariat

to : Working Party on Substantive Criminal Law

No. prev. doc. : 10694/04 DROIPEN 34 COTER 45 CATS 31 USA 60

Subject : Questionnaire on Prevention of Terrorism

Delegations will find enclosed the replies received from the Member States and the Commission to the above questionnaire.

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NOTE

From :	Presidency
To :	Working Party on Substantive Criminal Law
Subject :	Questionnaire on Prevention of Terrorism

In the context of several formal and informal meetings with EU authorities (e.g. the New Transatlantic Agenda EU-US meeting on Justice and Home Affairs, Dublin, 23 February 2004, doc. 6862/04 JAI 60 USA 20, and the EU-US JHA High Level Meeting, Wassenaar 7 July 2004, 11325/04 JAI 265 USA 77), the US authorities have conveyed several concerns regarding States' abilities to fight terrorism.

A first concern relates to the ability of law enforcement authorities to take action against preparatory acts for terrorism at a stage where no terrorist acts had been committed. A second concern related to the ability of states to afford mutual legal assistance and extradite persons for preparatory acts. A third issue which has been raised by the US is how to share intelligence information related to terrorism for use in criminal proceeding in another country, while ensuring that the intelligence is protected.

The US wants to step up co-operation with EU Member States in this regard and has asked the Presidency to bring this issue to the attention of the Member States. The G8 has already started work on this by way of a questionnaire that had been sent out to and replied by all G8 members. This questionnaire is attached to this document.

The Presidency invites delegations to examine the questionnaire and to reflect on the following questions:

- a. How could the questionnaire be used to gather the necessary information with a view to facilitating the cooperation between the US and EU Member States?
- b. Are relevant questions missing in the questionnaire ? Do we already have relevant information available from other sources?

Delegations are invited to submit their written reactions before 1 September 2004 to the Council Secretariat (att: bent.mejborn@consilium.eu.int). The Presidency has put the issue on the agenda for the meeting of the Working Party on Substantive Criminal Law on 8 and 9 September (together with the report of the Commission on the implementation of the Framework Decision on combating terrorism) with a view to concluding on how to move forward with regard to the questionnaire.

In responding to the following questions, please provide a brief description of the applicable legal framework, including case law requirements not readily apparent from relevant statutory provisions.

A. Questions regarding penal laws

1. To what extent is it a crime under your law to incite or recruit the commission of terrorist acts?
2. To what extent is it a crime under your law to provide, directly or indirectly, material support to terrorism in the form of training, financing, or the providing of other supplies or facilities?
3. Regarding offences described in response to the above questions, does your law impose liability only where such recruiting/inciting/supporting activities be for the purpose of committing, or knowing of the planned commission of a specific terrorist act? Can liability also arise where there is a more general mental state, such as where the recruiter/inciter/supporter intends to, or knows that his or her conduct will aid future unspecified terrorist acts?
4. Are there any other legal limitations in pursuing the offences described in response to the above questions? For example, are there any legal limitations that would arise were a religious leader or institution involved in such conduct? A charitable institution?
5. To what extent is it a crime under your law to offer compensation to suicide bombers, their families or other designated beneficiaries, before the commission of the attack? To what extent is it a crime to offer such compensation after the commission of the attack for the purpose of generally encouraging others to commit such attacks?

B. Questions regarding procedural or other pertinent laws

1. Are there limitations under your law in the employment of “special investigative techniques” in criminal investigations of offences described in response to the above questions where a religious or charitable entity may be involved? For example, can the government overtly or covertly observe conduct taking place in a house of worship or property otherwise belonging to a religious or charitable entity? Can electronic surveillance be conducted in such a location? Are there limitations to executing searches and seizures in such a location? What are the grounds or justifications that must be provided to carry out such techniques?
2. To what extent are there limitations under your law to, in a criminal investigation, the questioning of a religious figure, or the gathering of other information about such a figure? For example, are there any legal privileges that may bar gathering of such information or evidence?
3. Are there limitations under your law on your ability to detain or arrest religious figures?
4. To what extent do you have procedures under your law that permit the use in judicial proceedings of national security intelligence information in a manner that protects its source while adequately protecting rights of the defence?
5. To what extent does your law permit the offering of rewards or other incentives for information that may assist in preventing, investigating and/or prosecuting the offences described in response to the above questions, as well as attacks themselves? Is there any difference between rewards/incentives offered by the government and those offered by private persons or entities?

C. International co-operation

1. To what extent can you provide international mutual legal assistance and police co-operation with respect to the gathering of information and evidence by other countries for use in their criminal investigations or prosecutions? In particular, could you take the investigative techniques described in questions B(1) and B(2) upon request of another country?

Are the offences described in response to the questions under Section A, above extraditable offences under your law? Are there any other particular legal limitations that may apply to such terrorism-related conduct? For example, could extradition for such conduct be denied on “political offence” grounds?

BELGIUM

COMMENTS FROM THE BELGIAN DELEGATION

The Belgian delegation would like to thank the Presidency for bringing this questionnaire to the attention of the Member States. This delegation has no formal opposition to move forward with this questionnaire but considers that the work method and the finalities have to be previously clearly defined.

1. The method

The general framework in which the questionnaire takes place has to be clarified. This would enable to determine the work method for the future. If this process takes place in the framework of the Transatlantic Dialogue, then it would imply:

- a common drafting of the questionnaire (i.e. possibility for each of the partners to make some amendments)
- a mutual information between the partners (included from the US), on the basis of the replies to the questionnaire.

2. The finalities

The objective of this questionnaire should also be clarified. Indeed it is not possible to reflect on the content of the questionnaire if this question is not settled previously.

The current state of Member States legislation is well known. They all incriminate acts of terrorism, included the preparatory and accessory acts to terrorism, as required under the Framework Decision of 13 June 2002 on combating terrorism. Activities are also carried out at the level of the Council of Europe around the concepts of incitement and apology of terrorism.

If the objective is to overcome obstacles existing as regards to mutual assistance between EU and US, such obstacles should be clearly identified before elaborating the questionnaire.

Conclusion

Considering the pending questions on the method and on the finalities, the Belgian delegation considers that this issue has to be settled in the Article 36 Committee.

Moreover, this delegation would consider very useful to have an information from the Member States that are also G8 members on the activities carried out at that level.

THE CZECH REPUBLIC

Position of the Czech Republic

1. How could the questionnaire be used to gather the necessary information with a view to facilitating the cooperation between the US and EU Member States?

The Czech Republic holds the view that the questionnaire should be sent out and replied by all Member States (via the respective Council working groups) and the US. In our view, it could be very useful to gather information so as to identify possible problematic areas as regards the prosecution of acts related to terrorism, mutual legal assistance and sharing of intelligence information and thus create a basis for possible further actions in this field.

2. Are relevant questions missing in the questionnaire? Do we already have relevant information available from other sources?

As regards the missing questions, we hold the view that a question concerning the liability of legal persons for crimes connected with terrorism should be incorporated into the section A. of the questionnaire, especially there is a lack of detailed information about this issue in the US. Furthermore, the question regarding the foundation of criminal organization with the aim of committing terrorist acts, the participation in such organization and supporting it, should be added as well.

Regarding the relevant information on the issue concerned, we hold the view that valuable information are contained in the report of the Commission on the implementation of the Framework Decision on combating terrorism. Furthermore, useful information is embodied in the Action plan to combat terrorism and in the Report to the European Council on the implementation of the Declaration on combating terrorism. Moreover, the basic information on the conditions upon which the Member States of the EU provide mutual legal assistance in the criminal matters are contained in so called Belgian sheets published on the Internet website of the European Judicial network. However, the access to this website is subject to the access rights and is limited only to the judicial bodies of the Member States of the EU, not to the general public.

GREECE

Regarding doc.10694/04 DROIPEN 34 COTER 45 CATS 31 USA 60 we would like to send you the reaction of the Greek delegation:

General problematic

What is the scope of the questionnaire? How would it contribute to the already existing framework concerning terrorism between the E.U. and US as well as between the E.U. Member States? Is it a further goal the approximation of E.U. and US legislation in this field? Shouldn't we take into consideration the principle of reciprocity in transatlantic cooperation?

More specifically

- a) This questionnaire along with its answers could serve as a "source" of information towards taking of political decisions at EU level for a step-by-step approximation of legislation and practice between the MS in matters of terrorism. Nevertheless we (governments and public opinion) should be convinced that these "American style" proposals are of great necessity and effectiveness, so as to proceed to their adoption. On the other hand the US side should accept the E.U. concern resulting from the constitutional order of the Member States.
- b) We think that in the questionnaire questions relevant to the ECHR are missing. Such questions should be included since they are part of the constitutional framework in most MS and additionally they could help to the understanding by the US side of the EU systems. So, for example, in B 4 we could ask how the secrecy of communications is ensured in case of prosecution by law enforcement authorities. Regarding C (International Cooperation) we should consider mentioning matters of reciprocity, death penalty, personal data protection, as well as the time limits for execution of a mutual legal assistance request.

Finally we think that we could draw relevant information from the existing framework of EU-USA cooperation, as the Agreements of Mutual Legal Assistance and Extradition, Europol e.t.c.

IRELAND

Ireland's Response to the Questionnaire on Prevention of Terrorism
(Ref: 10694/04)

a) How could the questionnaire be used to gather the necessary information with a view to facilitating the co-operation between the US and EU Member States?

Members of the G8 have replied to this questionnaire, therefore some EU Member States, by virtue of their membership of the G8, have already responded to it. In those circumstances it might be useful to know what their responses have been. This would help to inform the other Member States about the usefulness or otherwise of the exercise. It may also be useful to cross-reference the information being gathered at Member State level against the position obtaining in the US so that we can make meaningful comparisons.

b) Are relevant questions missing in the questionnaire? Do we already have relevant information available from other sources?

The questions appear to be broad enough to elicit fairly comprehensive responses. However, information relevant to the questionnaire is already available from sources such as Annual Reports to the United Nations Counter-Terrorism Committee and the Council of Europe publication "*Apologie du Terrorisme" and Incitement to Terrorism' (2004).*

LATVIA

Re: Questionnaire on Prevention of Terrorism

For the discussions about the questionnaire on prevention of terrorism in the September 8 and 9 Working Party on Substantive Criminal Law meeting, the Latvian delegation would like to submit its response to the following questions of DROIPEN 34:

1. How could the questionnaire be used to gather the necessary information with a view to facilitating the co-operation between the US and EU Member States?

Regarding the EU Member States' abilities to fight terrorism, we would like to underline the necessity of this questionnaire as a first step in gathering appropriate information as to how the EU Member States are dealing with the prevention of terrorism in their legislation and practice.

The responses to this questionnaire would help the Member States to identify any gaps in their penal laws, procedural laws and laws dealing with international co-operation, and might present examples as to how to better facilitate the prevention of terrorism.

In this regard more attention should be paid to improve international co-operation between the EU and US. Thus, it would be essential to formulate a further common approach. The conclusions of this questionnaire could indicate the further steps to be undertaken to improve international co-operation in this field.

2. Are relevant questions missing in the questionnaire? Do we already have relevant information available from other sources?

This questionnaire contains all the relevant questions so as to obtain an appropriate overview about the Member States' methods and legal regulations to prevent preparatory acts of terrorism and to deal with mutual assistance requests in this regard. This initiative is of great importance and thus, all aspects and any recent changes should be included. We support the proposal that this questionnaire should be maintained as the main source of such information.

AUSTRIA

In reply to the questions in **section A**:

In Austria's view a **careful assessment** of this questionnaire would seem appropriate, in particular in view of the fact that it shows a **marked tendency to shift criminality into the area** where legally protected interests of individuals are actually put at risk. It also raises **sensitive issues** such as, for example, the principle of certainty, infringements of freedom of religious expression, the demarcation between secret service procurement of intelligence and prosecution, including the question of the utilisation of intelligence sources which are not revealed during the proceedings, however. There would be a risk that a reply to the questionnaire, which also covers these aspects, might in certain circumstances identify "obstacles" to an unrestricted prosecution which in turn might reinforce the impression of an inconsistent pursuit of suspected terrorists and might give rise to the **exertion of political pressure**.

In this connection reference should also be made in particular to the EU **guidelines for a common approach to the fight against terrorism** (COTER 15) in which it is emphasised inter alia that the fight against terrorism must **strictly respect human rights** whereby the right to life, the right to freedom from torture and from cruel, inhuman or degrading treatment, and the right to freedom of thought, conscience and religion are designated as inviolable (section II, subparagraph c) "Terrorism and human rights" - 12th and 13th guidelines).

Overall, the Austrian delegation considers that for the time being a request should be made for **the G8 States' replies to the questionnaire to be supplied to EU Member States** in order to learn more about the tendency of the present questionnaire.

In reply to the questions in **section B**:

It is not obvious which subject areas should be added to the questionnaire. On the contrary, in connection with the replies to the questions in section A, it might be appropriate to delete individual questions. In addition, already **existing relevant sources** such as, for example, OSCE/ODHIR legislationline (<http://www.legislationline.org/>; point 3: terrorism) or the discussions currently taking place in the Council of Europe Codexter working group of experts, in particular the production of a collection of "country profiles" initiated by the latter [Codexter profiles (2004) Germany and Romania] as well as the only recently published study " 'Apology for terrorism' and 'Incitement to terrorism' " by Dr Olivier Ribbelink should be made useable and the questionnaire should also be revised in this respect if necessary.

PORTUGAL

Portuguese reply to the Presidency questionnaire in 10694/04 DROIPEN 34 COTER 45 CATS 31 USA 60.

Questions regarding penal laws

The prevention and punishment of terrorism is regulated in Portugal by Law 52/2003 of 22 August 2003, which transposed Council Framework Decision 2002/475/JHA of 13 June 2002. That Law revoked the articles of the Penal Code relating to terrorism and terrorist organisations (Articles 300 and 301).

1. To what extent is it a crime under your law to incite or recruit the commission of terrorist acts?

In accordance with Law 52/2003 (Article 2(2)): "**Anyone who promotes** or sets up a terrorist group, organisation or association or is a member of or supports any such group, organisation or association, particularly by providing it with information or material resources, or by providing any other form of financial assistance to its activities, shall be punished by a prison sentence of between 8 and 15 years."

Hence, recruitment falls under the heading of activities necessary to the setting up of a terrorist group or organisation and it can therefore be said that it is covered by the terms **promote** or **set up** as used in the act in question.

As for the concept of incitement, although it is not expressly referred to in Law 52/2003, it is referred to in the general section of the Penal Code relating to instigation (Article 26, last part), whereby anyone who incites another person to commit terrorist acts is also punishable.

2. To what extent is it a crime under your law to provide, directly or indirectly, material support to terrorism in the form of training, financing, or the providing of other supplies or facilities?

In accordance with the terms of the Law in question (Article 2(2)), financing or in any other way supporting terrorism is considered a criminal offence. Since that provision merely gives examples and is not exhaustive, this could include training or the provision of any kind of resources.

3. Regarding offences described in response to the above questions, does your law impose liability only where such recruiting/inciting/supporting activities be for the purpose of committing, or knowing of the planned commission of a specific terrorist act? Can liability also arise where there is a more general mental state, such as where the recruiter/inciter/supporter intends to, or knows that his or her conduct will aid future unspecified terrorist acts?

The legislation in question establishes the criminal liability of any person who recruits, incites or supports a terrorist group, organisation or association, irrespective of whether any act is committed or whether that person knows that terrorist acts are planned.

The concept of "*general mental state*" is not recognised in national law. However, the example referred to in this part of the question could be covered by the reply to the first part.

It should also be noted that recruitment, incitement and support for future terrorist acts as yet unspecified may be regarded as acts preparatory to the setting up of terrorist groups; organisations or associations, as provided for in Article 2(4) of Law 52/2003.

4. Are there any other legal limitations in pursuing the offences described in response to the above questions? For example, are there any legal limitations that would arise were a religious leader or institution involved in such conduct? A charitable institution?

There are no limitations on the application of Law 52/2003.

In accordance with the principles laid down in the Constitution of the Portuguese Republic, citizens are equal before the law, which is applied universally and without favour.

5. To what extent is it a crime under your law to offer compensation to suicide bombers, their families or other designated beneficiaries, before the commission of the attack? To what extent is it a crime to offer such compensation after the commission of the attack for the purpose of generally encouraging others to commit such attacks?

Under national legislation there is no specific crime of offering compensation to a suicide bomber, his family or other beneficiaries before an attack is committed. However, under Article 135 of the Penal Code, assisting a suicide is a criminal offence.

The law is silent as regards the second half of question 5.

B. Questions regarding procedural or other pertinent laws

1. Are there limitations under your law in the employment of "special investigative techniques" in criminal investigations of offences described in response to the above questions where a religious or charitable entity may be involved? For example, can the government overtly or covertly observe conduct taking place in a house of worship or property otherwise belonging to a religious or charitable entity? Can electronic surveillance be conducted in such a location? Are there limitations to executing searches and seizures in such a location? What are the grounds or justifications that must be provided to carry out such techniques?

There are no limitations on employing special investigative techniques where religious or charitable entities are involved. Law 101/2002 of 25 August 2002 regulates the legal arrangements relating to undercover operations for the purposes of prevention and criminal investigation (Article 2(e)), whereas Articles 160-A, 160-B and 160-C of Law 144/99 of 31 August 1999 permit the use of controlled or monitored delivery, undercover operations and the interception of communications where necessary for the investigation.

As regards justification or grounds for the use of special investigative techniques, prevailing law indicates that they may be used only for the investigation of crimes which the law itself defines as such.

The limitations which exist with regard to searches and seizures are those in the Code of Criminal Procedure (Articles 174 et seq.), i.e. searches and seizures in a lawyer's chambers or doctor's practice (Article 180) and in a banking institution (Article 181). However, the Code also provides for certain persons – including ministers of religion or of a religious denomination – to invoke professional secrecy which, in the case of surrender of documents, they must do in writing (Article 182).

2. To what extent are there limitations under your law to, in a criminal investigation, the questioning of a religious figure, or the gathering of other information about such a figure? For example, are there any legal privileges that may bar gathering of such information or evidence?

There are no limitations on the investigation, with the exception of those laid down in the Code of Criminal Procedure (Articles 135 and 182), as regards questioning and the gathering of proof. The persons referred to in those articles, including ministers of religion or of religious denominations may be excused from giving evidence on information covered by professional secrecy (Article 135). They may also invoke professional secrecy, in writing, as mentioned above when ordered to produce to the judicial authority documents or any other objects in their possession which are to be seized (Article 182).

3. Are there limitations under your law on your ability to detain or arrest religious figures?

There are no such limitations. In accordance with the Constitution of the Portuguese Republic, the law is universal and without favour and applies equally to all citizens.

4. To what extent do you have procedures under your law that permit the use in judicial proceedings of national security intelligence information in a manner that protects its source while adequately protecting rights of the defence?

There is no specific legislation on this subject.

Nevertheless, we should mention Decree-Law 190/2003 of 22 August 2003, which regulates Law 93/99 of 14 July 1999, which in turn regulates the application of measures for the protection of witnesses in criminal cases, in accordance with the international movement for the recognition of witnesses' rights based on Council of Europe Recommendation R (97) 13.

The Decree-Law in question provides in Article 2(2) for the witness's identity to be kept confidential by the use of a code name and an address which is not his own. Ad hoc security measures may also be used.

Article 4 et seq. of Law 93/99 also provide for the possibility of disguising the appearance or distorting the voice of the witness, or both at the same time, to prevent recognition, as well as the use of video conferencing.

Finally, it should be noted that persons responsible for the investigation may be called to give evidence in the criminal proceedings.

5. To what extent does your law permit the offering of rewards or other incentives for information that may assist in preventing, investigating and/or prosecuting the offences described in response to the above questions, as well as attacks themselves? Is there any difference between rewards/incentives offered by the government and those offered by private persons or entities?

There is no legislation in this area.

C. International co-operation

1. To what extent can you provide international mutual legal assistance and police cooperation with respect to the gathering of information and evidence by other countries for use in their criminal investigations or prosecutions? In particular, could you take the investigative techniques described in questions B(1) and B(2) upon request of another country?

Mutual legal assistance and police cooperation with respect to the gathering of information and evidence requested by other countries are provided for in Law 144/99 of 31 August 1999, which regulates international judicial cooperation in criminal matters.

There are no limitations on the scope of legal assistance where a minister of religion or religious denomination is involved, except in the case of professional secrecy already referred to.

Hence, taking into account the reply to questions B1 and B2, the law on judicial cooperation in criminal matters applies. It states in Article 145(1) that "1- Assistance includes the communication of information, procedural documents and other public documents permitted under Portuguese law which prove necessary for achieving the objectives of the proceedings, as well as documents required for the seizure or recovery of instruments and property used in or proceeds obtained from the commission of the offence.

2- Assistance includes **in particular:** (a) service and surrender of documents; (b) obtaining evidence; (c) investigations, searches, seizures, inspections and expert studies; (d) the subpoenaing and hearing of suspects, accused persons, witnesses and experts; (e) the transfer of persons; (f) information on Portuguese or foreign law and information on the criminal records of suspects, accused persons and convicted offenders.

3 -(...)

4 -(...)

11 – The provisions of this Article shall not prejudice the application of more favourable provisions of agreements, treaties or conventions to which Portugal is a party."

As regards the investigative techniques described in questions B 1 and 2 at the request of another country, it is possible to use them in accordance with the following articles of Law 144/99:

Article 145-A on the principle and scope of mutual judicial assistance in criminal matters, which provides in paragraph that "Assistance includes the communication of information, procedural documents and other public documents permitted under Portuguese law which prove necessary for achieving the objectives of the proceedings, as well as documents required for the seizure or recovery of instruments and property used in or proceeds obtained from the commission of the offence"; Article 160-A on controlled and monitored deliveries; 160-B on undercover operations and 160-C on the interception of telecommunications.

Are the offences described in response to the questions under Section A, above extraditable offences under your law? Are there any other particular legal limitations that may apply to such terrorism-related conduct? For example, could extradition for such conduct be denied on "political offence" grounds?

Article 33 of the Constitution of the Portuguese Republic, which relates to deportation, extradition and right to asylum, states in paragraph 4 that extradition for crimes punishable under the law of the requesting State by a prison sentence or detention order for life or an indeterminate period is permitted only if the requesting State is a party to the international Convention by which Portugal is bound and offers guarantees that the sentence will not be imposed or enforced. Paragraph 6 provides that extradition or any form of surrender is not permitted on political grounds or for crimes punishable under the law of the requesting State by the death penalty or by any other penalty which would result in irreversible damage to physical integrity.

Law 144/99 of 31 August 1999 regulates extradition (Article 1(1a)). Pursuant to Article 31(2), all persons wanted for crimes or attempted crimes punishable by Portuguese law and by the law of the requesting State by imprisonment or detention for a maximum period of at least one year may be extradited. Hence, the offences referred to in this questionnaire – punishable by sentences of from 8 to 15 years – are extraditable.

In accordance with the Constitution of the Portuguese Republic, Law 144/99 imposes restrictions on extradition in Articles 6 to 8 and Article 32 "if there are substantial grounds for believing that the request for cooperation is being made for the purpose of prosecuting or punishing a person on account of his race, religion, gender, nationality, language, **political or ideological opinions** or membership of a particular social group" (Article 6(b)); "if the offence to which it relates is punishable by the death penalty or other penalty liable to result in irreversible damage to the integrity of the person"(Article 6(e)) or "if cooperation relates to an offence incurring a prison sentence or detention order for life or an indeterminate period" (Article 6(f)).

Law 144/99 provides in Article 7(1)(a) that a request for extradition shall be refused if the proceedings relate to:

(a) a political offence or an offence connected with a political offence under Portuguese law. Article 7(2)(b) also provides that, inter alia, the offences mentioned in Article 1 of the European Convention on the Suppression of Terrorism shall not be considered political.

In addition to those in Articles 6 to 8, Article 32 of the Law stipulates further cases in which extradition is excluded. These are: (a) when the crime is committed on Portuguese territory; (b) when the person sought has Portuguese nationality, save as provided for in paragraph 2 where extradition of nationals is possible inter alia if (a) the deeds in question constitute cases of terrorism or international organised crime and (b) if the legal system of the requesting State provides guarantees of a fair trial.

Since 1 January 2004 Portugal has been applying the European arrest warrant (Law 65/2003 of 23 August 2003) in relation to European Union Member States which have transposed Framework Decision 2002/584/JHA, of 13 June 2002, while using the classic extradition procedure for third countries and Community partners which have not yet transposed the Decision.

Pursuant to Law 65/2003, if the acts described in Section A relate to participation in a criminal organisation or to terrorism (Article 2(2)), the European arrest warrant may be applied together with surrender to the requesting State. Restrictions on execution and reasons for refusal to execute the European arrest warrant are set out in Articles 11 and 12. However, for our purposes, it is sufficient to draw attention to refusal based on Article 11(d) relating to crimes punishable by the death penalty or other penalty which might result in irreversible damage to the physical integrity of the person to be surrendered. Article 11(e) also states that issue of the arrest warrant will be refused if it is for political reasons.

It should also be noted that certain guarantees may be required by the issuing Member State in special cases laid down in Article 13 of Law 65/2003 and specifically in paragraph (b) thereof: when the offence for which the European arrest warrant is issued is punishable by a prison sentence or detention order for life, a decision to surrender will only be made if the legal system in the issuing Member State provides for a review of the sentence passed on request or at the latest within 20 years, or the application of clemency measures to which the wanted person has a right in accordance with the law or practice of the issuing Member State, with the aim of preventing the sentence being enforced.

SWEDEN

A. Questions regarding penal law

Question 4

Perhaps, question four can be formulated more general, for instance with the following wording:
“Are there any legal limitation in pursuing the offences described in response to the above questions?”

C. International co-operation

Question 1

The question is quite woolly formulated. It would be more useful if the states could give details about to what extent they can **not** co-operate. It would be more useful to have a **list of areas** where the states can **not** co-operate. At least, each state should answer the question if the state has any problem with the co-operation today.

UNITED KINGDOM

Further to the Presidency note 10694/04 (Droipen 34) of 28 July 2004 regarding the questionnaire on the prevention of terrorism, I am writing with the response of the United Kingdom.

Having already completed the G8 questionnaire, the UK would have no objection to its extension to other Member States if they were willing to participate. The questions contained within it are pertinent to the concerns of the US as described. However, the burden of completing such questionnaires can be considerable, and we wonder whether this is the most cost-effective means of addressing this issue. It might be preferable for the G8 to put forward a set of preliminary proposals and invite EU Member States to comment on them, including the extent to which they are already compliant and any legal or other impediments they foresee to their becoming compliant.

With regard to potentially relevant information available from other sources, we would mention questionnaires completed by EU Member States for the EU Peer Evaluation, the information requested pursuant to paragraph 6 of UN Security Council Resolution 1373 (2001) for receipt by its Counter Terrorism Committee, and more recently, proposals by the Council of Europe's Committee of Experts on Terrorism (CODEXTER) for country profiles on Member States legal and institutional frameworks.

COMMISSION

As suggested in document DROIPEN 34 limite, we would like to react to one of the proposed questions in relation to the Questionnaire on Prevention of Terrorism.

In particular, delegations are asked to reflect if there is already relevant information available from other sources. In this sense the Commission would like to draw attention precisely to Its Report on the Framework Decision of 13 June 2002 [COM(2004)409 final] and especially to the more detailed considerations made in the annexed Commission Staff Working Paper [SEC(2004)688].

These documents contain information that largely corresponds to most of the questions regarding penal law, which integrate the first part of the questionnaire. We feel that the analysis of Articles 2 (in particular 2.2(b) "participating in the activities of a terrorist group") and Article 4 ("inciting, aiding, abetting and attempting") could also provide relevant information in this sense.
