

EUROPEAN PARLIAMENT

1999



2004

Session document

FINAL
A5-0397/2001

14 November 2001

REPORT

1. on the Commission proposal for a Council framework decision on combating terrorism
(COM(2001) 521 – C5-0452/2001 – 2001/0217(CNS))

2. on the Commission proposal for a Council framework decision on the European arrest warrant and the surrender procedures between the Member States
(COM(2001) 522 – C5-0453/2001 – 2001/0215(CNS))

Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

Rapporteur: Graham R. Watson

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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PROCEDURAL PAGE

By letter of 28 September 2001 the Council consulted Parliament, pursuant to Article 39, paragraph 1 of the EU Treaty, on the Commission proposal for a Council framework decision on combating terrorism (COM(2001) 521 – 2001/0217(CNS)).

At the sitting of 4 October 2001 the President of Parliament announced that she had referred this proposal to the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs as the committee responsible and the Committee on Legal Affairs and the Internal Market for its opinion (C5-0452/2001).

By letter of 28 September 2001 the Council consulted Parliament, pursuant to Article 39, paragraph 1 of the EU Treaty, on the Commission proposal for a Council framework decision on the European arrest warrant and the surrender procedures between the Member States (COM(2001) 522 – 2001/0215(CNS)).

At the sitting of 4 October 2001 the President of Parliament announced that she had referred this proposal to the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs as the committee responsible and the Committee on Legal Affairs and the Internal Market for its opinion (C5-0453/2001).

The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs appointed Graham R. Watson rapporteur at its meeting of 10 October 2001.

It considered the Commission proposals and the draft report at its meetings of 9 October 2001, 10 October 2001, 15 October 2001 and 12 November 2001.

At the last of these meetings the committee adopted:

1. the draft legislative resolution on the Commission proposal for a Council framework decision on combating terrorism by 30 votes to 6.
2. the draft legislative resolution on the Commission proposal for a Council framework decision on the European arrest warrant and the surrender procedures between the Member States by 31 votes to 7, with 1 abstention.

The following were present for the vote on the first draft legislative resolution: Robert J.E. Evans, acting chairman; Bernd Posselt, vice-chairman; Graham R. Watson, rapporteur; Roberta Angelilli, Mario Borghezio (for Johan Van Hecke), Mogens N.J. Camre, Marco Cappato, Charlotte Cederschiöld, Carmen Cerdeira Morterero (for Ozan Ceyhun), Carlos Coelho, Thierry Cornillet, Gérard M.J. Deprez, Giuseppe Di Lello Finuoli, Gerardo Galeote Quecedo (for Mary Elizabeth Banotti), Evelyne Gebhardt (for Martin Schulz), Adeline Hazan, Jorge Salvador Hernández Mollar, Anna Karamanou, Margot Keßler, Timothy Kirkhope, Ole Krarup, Alain Krivine (for Fodé Sylla), Baroness Sarah Ludford, Elena Ornella Paciotti, Neil Parish (for Ewa Klant), Paolo Pastorelli, Hubert Pirker, Martine Roure (for Gerhard Schmid), Giacomo Santini (for Hartmut Nassauer, pursuant to Rule 153(2)), Patsy Sørensen, Sérgio Sousa Pinto, Joke Swiebel, Anna Terrón i Cusí, Anne E.M. Van Lancker (for Michael Cashman), Gianni Vattimo and Christian Ulrik von Boetticher.

The following were present for the vote on the second legislative resolution: Robert J.E. Evans, acting chairman; Bernd Posselt, vice-chairman; Graham R. Watson, rapporteur; Roberta Angelilli, Mario Borghezio (for Marco Cappato), Alima Boumediene-Thiery, Charlotte Cederschiöld, Carmen Cerdeira Morterero (for Michael Cashman), Carlos Coelho, Thierry Cornillet, Gérard M.J. Deprez, Giuseppe Di Lello Finuoli, Gerardo Galeote Quecedo (for Christian Ulrik von Boetticher), Evelyne Gebhardt (for Ozan Ceyhun), Adeline Hazan, Jorge Salvador Hernández Mollar, Anna Karamanou, Margot Keßler, Timothy Kirkhope, Ole Krarup, Alain Krivine (for Pernille Frahm), Lucio Manisco (for Fodé Sylla), Juan Andrés Naranjo Escobar (for Eva Klamt), William Francis Newton Dunn (for Baroness Sarah Ludford), Arie M. Oostlander (for Hartmut Nassauer), Elena Ornella Paciotti, Ana Palacio Vallelersundi (for Daniel J. Hannan), Neil Parish (for Enrico Ferri), Paolo Pastorelli, Hubert Pirker, Martine Roure (for Sérgio Sousa Pinto), Giacomo Santini (for Mary Elizabeth Banotti pursuant to Rule 153(2)), Martin Schulz, Patsy Sørensen, Joke Swiebel, Anna Terrón i Cusí, Maurizio Turco (for Johan Van Hecke), Anne E.M. Van Lancker (for Gerhard Schmid) and Gianni Vattimo.

The opinion of the Committee on Legal Affairs and the Internal Market concerning the first draft legislative resolution on the proposal for a Council framework decision on combating terrorism and the two minority opinions on behalf of Ole Krarup and Pernille Frahm are attached.

The report was tabled on 14 November 2001.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

LEGISLATIVE PROPOSAL

1. Proposal for a Council framework decision on combating terrorism (COM(2001)521 – C5-0452/2001 – 2001/0217(CNS))

The proposal is amended as follows:

Text proposed by the Commission¹

Amendments by Parliament

Amendment 1
Recital -1

(-1) The European Union is founded on the universal values of human dignity, liberty, equality, solidarity and respect for human rights and fundamental freedoms; it is based on the principles of democracy and the rule of law, which are common to the Member States.

Justification

These are the essential values on which the European Union is based. The individual accordingly has the right to respect for his human dignity, and is afforded guarantees to this effect by law.

Amendment 2
Recital -1a (new)

(-1a) The European Union respects fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950, and as they result from the constitutional traditions common to the Member States, as general principles of Community law.

¹ OJ not yet published.

Justification

Justification as for Amendment 1.

Amendment 3
Recital -1b (new)

(-1b) The Charter of Fundamental Rights of the European Union reaffirms the rights which result notably from the constitutional traditions and international obligations common to the Member States and from the Treaty on European Union, the Community Treaties, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Community and the Council of Europe, and the case law of the Court of Justice of the European Communities and the European Court of Human Rights.

Justification

Justification as for Amendment 1.

Amendment 4
Recital -1c (new)

(-1c) The European Union places people at the heart of its action by instituting citizenship of the Union and by creating an area of freedom, security and justice.

Justification

Article 2, fourth indent, of the Treaty on European Union stipulates that creating an area of freedom, security and justice is one of its essential objectives.

Amendment 5
Recital 1a (new)

(1a) The European Council declared at its extraordinary meeting on 21 September 2001 that terrorism is a real challenge to Europe and the world and that the fight against terrorism will be a priority objective of the European Union.

Justification

Combating terrorism is one of the greatest and most difficult challenges of the 21st century. The Council has indicated this and, accordingly, has begun to take the appropriate measures to tackle it.

Amendment 6
Recital 1b (new)

(1b) Terrorist groups as defined in this Framework Decision are distinct from groups in the European Union who resist totalitarian regimes and repression in third countries or who support such resistance.

Justification

Supporters of organisations that fight totalitarian regimes in third countries should not be defined as terrorists. This is without prejudice to the fact that they can be prosecuted and punished if they are involved in 'normal' criminal offences as defined by the criminal code of a Member State.

Amendment 7
Recital 2, first two sentences

(2) All or some Member States are party to a number of conventions relating to terrorism. The **European** Convention on the Suppression of Terrorism of 27 January 1977 establishes that terrorist offences cannot be regarded as political offences or as offences inspired by political motives.

(2) All or some Member States are party to a number of conventions relating to terrorism. The **Council of Europe** Convention on the Suppression of Terrorism of 27 January 1977 establishes that terrorist offences cannot be regarded as political offences or as offences inspired by political motives.

Justification

It is better to make it clear that the Convention was adopted by the Council of Europe in order to avoid any possible confusion with the EU's own conventions on the same subject.

Amendment 8
Recital 2a (new)

(2a) Any measures resulting from the Framework Decision on combating terrorism must be taken in full compliance with the provisions of the 1951 UN Convention of Geneva and the guidelines set out in the UNHCR handbook.

Justification

No justification.

Amendment 9

Recital 3

(3) At Union level, on 3 December 1998 the Council adopted the Action Plan of the Council and the Commission on how to best implement the provisions of the Treaty of Amsterdam on an area of freedom, security and justice. Terrorism was referred to in the conclusions of the Tampere European Council of 15 and 16 October 1999, and of the Santa María da Feira European Council of 19 and 20 June 2000. It was also mentioned in the Commission's Communication to the Council and the European Parliament on the biannual update of the scoreboard to review progress on the creation of an area of 'freedom, security and justice' in the European Union (second half of 2000). The La Gomera Declaration adopted at the Informal Council Meeting of 14 October 1995 affirmed that terrorism constitutes a threat to democracy, to the free exercise of human rights and to economic and social development.

(3) At Union level, ***on 18 April 1985, 11 September 1985, 10 March 1994, 30 January 1997 and 5 September 2001, the European Parliament adopted resolutions on combating terrorism;*** on 3 December 1998 the Council adopted the Action Plan of the Council and the Commission on how to best implement the provisions of the Treaty of Amsterdam on an area of freedom, security and justice. Terrorism was referred to in the conclusions of the Tampere European Council of 15 and 16 October 1999, and of the Santa María da Feira European Council of 19 and 20 June 2000. It was also mentioned in the Commission's Communication to the Council and the European Parliament on the biannual update of the scoreboard to review progress on the creation of an area of 'freedom, security and justice' in the European Union (second half of 2000). The La Gomera Declaration adopted at the Informal Council Meeting of 14 October 1995 affirmed that terrorism constitutes a threat to democracy, to the free exercise of human rights and to economic and social development.

Justification

The European Parliament has worked on combating terrorism at least as long as the Council and Commission. When mentioning the European Council conclusions, one should not forget to make reference to the various European Parliament resolutions since 1985.

Amendment 10
Recital 4

(4) On 30 July 1996, twenty-five measures to fight against terrorism were advocated by the leading industrialised countries (G7) and Russia meeting in Paris. Deleted

Justification

There is no need to mention G7 measures in connection with the framework decision.

Amendment 11
Recital 10

(10) It is necessary that the definition of the constituent elements of terrorism be common in all Member States, including those offences referred to terrorist groups. On the other hand, penalties and sanctions are provided for natural and legal persons **having committed or being liable for such offences**, which reflect the seriousness of such offences.

(10) It is necessary that the definition of the constituent elements of **criminal offences in the field of** terrorism be common in all Member States, including those offences referred to terrorist groups. On the other hand, penalties and sanctions are provided for **the** natural and legal persons **responsible**, which reflect the seriousness of such offences.

Justification

One of the purposes of the framework decision is to define the criminal offences committed in the context of terrorism.

Amendment 12
Recital 10a (new)

(10a) Terrorist groups are at the heart of terrorist offences. The constituent elements of the criminal offences and the penalties applicable to terrorist groups must be defined.

The number and seriousness of terrorist acts depend on the financial resources available to terrorists.

It is essential to draw up a list, which should be periodically updated, containing the names of terrorist groups and organisations in order to take measures to prevent the financing of terrorists or their organisations and groups.

Justification

Most of the terrorist offences committed are directed or financed by terrorist groups. It is therefore essential to distinguish between terrorist offences and offences relating to terrorist groups, and to provide for appropriate penalties.

Amendment 13
Recital 15

(15) In order to improve cooperation and in compliance with data protection rules, and in particular the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Data Processing of Personal Data, Member States should afford each other the widest judicial mutual assistance.

(15) In order to improve cooperation and in compliance with data protection rules, and in particular the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Data Processing of Personal Data, ***Council Directive 95/46 of 24 October 1995 on the protection of individuals with regard to the processing of personal data and Council Directive 97/66 of 15 December 1997 concerning the processing of personal data and the protection of privacy in the telecommunications sector***, Member States should afford each other the widest judicial mutual assistance.

Justification

It is essential to mention these two directives, which relate to the fundamental right to privacy within the EU.

Amendment 14
Recital 17

(17) This Framework Decision respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union, and notably Chapter VI thereof.

(17) This Framework Decision respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union, and notably Chapter VI thereof, ***which safeguards the rights of the individual by ensuring that a defendant is guaranteed the right to a fair trial, the right of defence, and the right not to be tried or punished twice in criminal proceedings for the same criminal offence.***

Justification

It is imperative that the rights of the defendant are not undermined and it is helpful to explicitly state what safeguards Chapter VI of the Charter of Fundamental Rights provides.

Amendment 15
Recital 17a (new)

(17a) When implementing and interpreting this Framework Decision, the appropriate institutions shall ensure that human rights and fundamental freedoms such as freedom of expression and conscience and freedom of assembly and association are fully observed.

Justification

No justification.

Amendment 16
Article 2, point (c)

(c) committed **for the benefit** of a legal person established in a Member State; or

(c) committed **on the instructions** of a legal person established in a Member State; or

Justification

An offence cannot be committed 'for the benefit of a legal person', but only on its instructions.

Amendment 17
Article 3, paragraph 1

1. Each Member State shall take the necessary measures to ensure that the following offences, defined according to its national law, which are intentionally committed by an individual or a group against one or more countries, their institutions or people with the aim of intimidating them and seriously altering or destroying **the political, economic, or social structures of a country**, will be punishable as terrorist offences:

1. Each Member State shall take the necessary measures to ensure that the following offences, defined according to its national law, which are intentionally committed by an individual or a group against one or more countries, their institutions or people with the aim of intimidating them and seriously altering or destroying **the fundamental freedoms, democracy, respect for human rights, civil liberties and rule of law on which our societies are based** will be punishable as terrorist offences:

Justification

This amendment aims to exclude minor offences.

Amendment 18
Article 3, paragraph 1, points (a) and (b)

- (a) *Murder*;
- (b) *Bodily injuries*;

- (a) *Offences against the life of a person*;
- (b) *Serious offences against the physical integrity of persons causing serious bodily harm*;

Justification

Amendment 19
Article 3, paragraph 1, point (d)

- (d) Extortion;

- (d) Extortion *intended to finance a terrorist group*;

Justification

The purpose which extortion is intended to serve needs to be specified.

Amendment 20
Article 3, paragraph 1, point (e)

- (e) *Theft or robbery*;

- (e) *Aggravated theft committed with a view to carrying out conduct listed in points (a) to (d) and (f) to (j)*;

Justification

Amendment 21
Article 3, paragraph 1, point (f)

(f) Unlawful seizure of or damage to state or government facilities, means of public transport, infrastructure facilities, places of public use, and property;

(f) Unlawful seizure of, or *serious* damage to, state or government facilities, means of public transport, infrastructure facilities, *information or communications networks*, places of public use, and property, *thereby seriously endangering public safety*;

Justification

The definition as it stands is too wide and threatens to encompass legitimate public protest within the constituent elements of a terrorist offence. The democratic right to peaceful protest should not be undermined. The suggested amendment aims to clarify this.

Amendment 22

Article 3, paragraph 1, point (f)a (new)

(fa) The hijacking of aircraft and ships;

Justification

Amendment 23

Article 3, paragraph 1, point (g)

(g) Fabrication, possession, acquisition, transport or supply of weapons or explosives;

(g) Fabrication, possession, acquisition, transport *or illicit use* or supply of weapons or explosives;

Justification

The act becomes an offence if the use or supply of weapons or explosives is not provided for by law.

Amendment 24

Article 3, paragraph 1, point (h)a (new)

(ha) Unlawful releasing or distributing of chemical or biological substances endangering people;

Justification

Amendment 25
Article 3, paragraph 1, point (i)

(i) Interfering with or ***disrupting*** the supply of water, power, or other fundamental resource;

(i) Interfering with or ***seriously damaging*** the supply of water, power, or ***any*** other fundamental ***natural*** resource;

Justification

The supply of services could simply be cut off as a 'normal' result of a protest demonstration or strike. To be classed as a terrorist offence, therefore, the action involved has to be of a serious nature, as proposed in the amendment.

Amendment 26
Article 3, paragraph 1, point (j)

(j) Attacks through interference with an information system;

(j) Destruction of, damage to or use of computerised or telecommunications systems with a view to destabilising the community;

Justification

Self-explanatory.

Amendment 27
Article 3, paragraph 1, point (k)

(k) Threatening to commit any of the offences listed above;

(k) Threatening to commit any of the offences listed above *except those referred to in point (d)*.

Justification

Amendment 28
Article 3, paragraph 1, points (l) and (m)

(l) Directing a terrorist group; **Deleted**

(m) Promoting of, supporting of or participating in a terrorist group.

Justification

These two subparagraphs concerning offences linked to terrorist groups should be transferred from Article 3 to a new separate article which also takes account of other offences committed in the context of the activities of terrorist groups.

Amendment 29
Article 3, paragraph 2

2. For the purpose of this Framework Decision, 'terrorist group' shall mean a structured organisation established over a period of time, of more than two persons, acting in concert to commit terrorist offences referred to in paragraph (1)(a) to (1)(k). **Deleted**

Justification

The justification given for Amendment 6 applies here "mutatis mutandis".

Amendment 30
Article 3a (new)

Article 3a

Offences relating to a terrorist group

1. For the purpose of this Framework Decision, 'terrorist group' shall mean a structured organisation established over a period of time, of more than two persons, acting in concert to commit terrorist offences.

2. Each Member State shall take the necessary measures to ensure that the following acts, if committed intentionally, are defined as criminal offences:

(a) directing a terrorist group;

(b) participating in the activities of a terrorist group;

(c) supporting a terrorist group with a view to the commission of terrorist offences by providing information or material means, including by financing its activities, and recruiting individuals for participation in the activities of a terrorist group,

(d) laundering the proceeds of terrorist offences or of other offences committed within the framework of a terrorist group.

Justification

It is important to distinguish terrorist offences from offences relating to terrorist groups, which comprise different elements.

On the other hand, offences relating to terrorist groups must be criminal offences in all Member States.

Amendment 31
Article 3b (new)

Article 3b

1. The Council acting unanimously on a proposal from the Commission or any Member State, having regard to the opinion of the European Parliament and Eurojust, shall adopt a list in the form of an annex, containing the names of natural or legal persons, entities or bodies involved in terrorist activities.

2. The Council shall amend the annex by means of the same procedure.

3. Each Member State shall adopt the necessary measures to identify, detect, freeze or seize all funds used or intended for use by the entities referred to in paragraph 1, with a view to their confiscation.

Justification

For the purposes referred to in Article 3a (new) it would be helpful to reach an agreement to draw up a completely justified list of organisations with terrorist objectives.

This list should be updated as and when the established facts so require.

On the other hand, the assets of organisations listed should be frozen in order to prevent the financing of terrorist acts.

Amendment 32
Article 4

1. Member States shall ensure that instigating, aiding, abetting **or attempting to commit a terrorist offence is** punishable.

1. Member States shall **take the necessary measures to** ensure that instigating, **incitement,** aiding **or** abetting **to commit any of the offences described in Article 3, paragraph 1** are punishable.

2. Member States shall take the necessary measures to ensure that attempts to commit a terrorist offence, with the

exception of preparatory offences such as the possession as provided for in Article 3, paragraph 1, point (g) and the offence referred to in Article 3, paragraph 1, point (k), are punishable.

Justification

Technical amendment which aims to give more legal certainty. Attention: Spanish version should say "inducción" for "instigation".

Amendment 33
Article 5, paragraph 3a (new)

3a. The criminal law of the Member States relating to young offenders shall remain unaffected.

Justification

The rule of law imperatively requires that the age of a young offender be taken into account when meting out punishment.

Amendment 34
Article 5, paragraph 4

4. Member States shall ensure that fines can also be imposed for terrorist offences and conduct referred to in Articles 3 and 4.

4. Member States shall ensure that fines can also be imposed for terrorist offences and conduct referred to in Articles 3 and 4. ***This shall not apply to terrorist offences punishable by a maximum term of deprivation of liberty not less than ten years.***

Justification

It must be ensured that fines cannot be deemed an adequate response to murder or offences constituting a danger to the public.

Amendment 35
Article 5, paragraph 4a (new)

4a. Throughout all proceedings held pursuant to this Framework Decision, Member States shall ensure that the defendant is accorded all rights recognised by the Charter of Fundamental Rights, especially the right to a fair trial, the right of defence, and the right not to be tried or punished twice in criminal proceedings for the same criminal offence.

Justification

Enhanced judicial cooperation must not be at the expense of the rights of the defendant.

Amendment 36
Article 6

Without prejudice to any other aggravating circumstances defined in their national legislation, Member States shall ensure that the penalties and sanctions referred to in Article 5 may be increased if the terrorist offence:

- (a) is committed with particular ruthlessness; or***
- (b) affects a large number of persons or is of a particular serious and persistent nature; or***
- (c) is committed against* Heads of State, Government Ministers, any other internationally protected person, elected members of parliamentary chambers, members of regional or local governments, judges, magistrates, judicial or prison civil servants ***and*** police forces.**

Each Member State shall take the necessary measures to ensure that the penalties referred to in Article 5 may be increased, save where the sentences imposable are already the maximum sentences possible under national law, where criminal offences referred to in Article 3 and 4, inasmuch as they relate to terrorist offences, are committed under the following circumstances:

- (a) the offence is of a particularly cruel nature;***
- (b) the offence is intended or committed against a number of persons, with the use of serious violence or with particularly serious harm caused to the victims;***
- (c) the offence is intended or committed against persons who are qualified as public authorities, on account of their public office or duties, in particular* Heads of State, Government Ministers, any other internationally protected person, elected members of parliamentary chambers,**

servants **and** police forces.

members of regional or local governments, judges, magistrates, judicial or prison civil servants, police forces **and members of the armed forces**.

Justification

Technical amendment: it does not change the philosophy of the Commission's proposal and follows the results achieved so far in the Article 36 Committee's discussions, aimed at clarifying legal concepts.

Amendment 37 Article 7

Article 7 – Mitigating Circumstances

Member States **shall ensure that** the penalties and sanctions referred to in Article 5 **may be reduced** if the offender:

- (a) renounces terrorist activity, and
- (b) provides the administrative or judicial authorities with information helping them to:
 - (i) prevent or mitigate the effects of the offence,
 - (ii) identify or bring to justice the other offenders,
 - (iii) find evidence
 - (iv) prevent further terrorist offences

Article 7 – Mitigating Circumstances

Member States **may reduce** the penalties and sanctions referred to in Article 5 if the offender:

- (a) renounces terrorist activity, and
- (b) provides the administrative or judicial authorities with information **that has been shown to be reliable and truthful**, 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 terrorist offences.

Justification

No justification.

Amendment 38
Article 8

1. Member States shall ***ensure that legal persons can be held liable for terrorist offences or conduct referred to in Articles 3 and 4 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, or
- (b) ***an*** authority to take decisions on behalf of the legal person, or
- (c) ***an*** authority to exercise control within the legal person.

1. Member States shall ***take the necessary measures to ensure that legal persons can be held liable under criminal or administrative law for those criminal offences referred to in Articles 3 and 4 committed, under their responsibility or on their account or for their benefit, by any person having de facto or de jure power to take decisions or exercise control within the legal person, in particular when the person has:***

- (a) power of representation of the legal person, or
- (b) authority to take decisions on behalf of the legal person, or
- (c) authority to exercise control within the legal person.

For the purposes of this Framework Decision ‘legal person’ shall mean:

- (a) any entity having such status under the applicable national law, except for States or other public bodies in the exercise of State authority and for public international organisations, and***
- (b) any structured organisation which has an activity de facto, in which independent rights and obligations are vested.***

Justification

The Commission’s proposal (as incorporated by the Council) on liability of legal persons is the standard text always used in similar cases, for example the proposal for a framework decision laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking or in the proposal for a Council framework decision on combating the sexual exploitation of children and child pornography.

However, in the field of terrorism it is appropriate to use wording that fits in better with the differences of treatment which liability of legal persons receives under Member States’ criminal law.

Amendment 39
Article 10, paragraph 1

1. *Member States shall establish its jurisdiction with regard to **terrorist offences or conduct** referred to in Articles 3 and 4 **where the offence or conduct has been committed:***

(a) in whole or in part within *its* territory;

(b) *by one of its nationals, provided that the law of that Member State may require the conduct to be punishable also in the country where it occurred; or*

(c) for the benefit of a legal person *that has its head office* in the territory of *that Member State*;

(d) against its institutions or people.

1. *Each Member State shall adopt the necessary measures to establish its jurisdiction with regard to **the** offences referred to in Articles 3, **3a** and 4 **in the following cases:***

(a) *where the offence has been committed, in whole or in part, within **the** territory of a Member State of the European Union;*

(aa) *where the offence has been committed on board a ship or aircraft registered in a Member State of the European Union;*

(b) *where the offender is a national or resident of a Member State of the European Union;*

(c) *where the offence has been committed for the benefit of a legal person **established** in the territory of a Member State;*

(d) *where the offence has been committed against its institutions or people, **or against an institution of the European Union or of a body set up pursuant to the Treaties establishing the European Community and the Treaty on European Union which has its seat in the Member State concerned.***

Justification

It is essential to take all possible measures to attain the objective of creating an area of freedom, security and justice which is set in Article 2 of the TEU. By extending the jurisdiction of each Member State to the whole territory of the Union and to all its nationals and residents and the European institutions, this concept of a single European area presupposes major progress.

Each Member State must have jurisdiction in cases where terrorist offences are committed against those institutions or bodies of the EU which have seats within its territory.

Amendment 40
Article 12, paragraph 2a (new)

2a. Where more than one Member State has jurisdiction over an offence and any of the States concerned could validly prosecute suspects for the offence, the Member States concerned shall waive their jurisdiction in favour of one of them, according to the order of the criteria for jurisdiction listed in paragraph one. If this does not enable the conflicts to be resolved, the Member States concerned shall cooperate in deciding which of them is to prosecute the suspects with the aim of centralising the prosecution, if possible, in a single Member State. To this end, Member States may:
-ask Eurojust to coordinate the actions of the competent authorities in accordance with the decision instituting Eurojust, or
- ask the Court of Justice to settle the dispute between them.

Justification

It is essential to have a procedure for resolving the cases of conflict of jurisdiction which will inevitably arise and to provide for the option of settling disputes by referring cases either to Eurojust or to the Court of Justice.

Amendment 41
Article 14, paragraph 2a (new)

2a Each Member State shall take all possible measures to provide appropriate assistance to the victim and his family. In particular, where necessary and possible, each Member State shall apply to the family Article 4 of the Framework Decision on the Status of Victims in Connection with Criminal Proceedings.

Justification

The distress suffered by the families of victims of terrorist offences must not be forgotten.

Amendment 42
Article 14 a (new)

Article 14a

***The Court of Justice shall be responsible
for interpretation and the proper
implementation of this Framework
Decision.***

Justification

No justification.

DRAFT LEGISLATIVE RESOLUTION

European Parliament legislative resolution on the Commission proposal for a Council framework decision on combating terrorism (COM(2001) 521 – C5-0452/2001 – 2001/0217(CNS))

(Consultation procedure)

The European Parliament,

- having regard to the Commission proposal for a Council framework decision on combating terrorism (COM(2001) 521¹),
 - having regard to Article 29, Article 31, subparagraph (e), and Article 34, paragraph 2, subparagraph (b), of the EU Treaty,
 - having been consulted by the Council pursuant to Article 39, paragraph 1, of the EU Treaty (C5-0452/2001),
 - having regard to Rules 67 and 106 of its Rules of Procedure,
 - having regard to the report of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs and the opinion of the Committee on Legal Affairs and the Internal Market (A5-0397/2001),
1. Approves the Commission proposal as amended;
 2. Calls on the Council to notify Parliament should it intend to depart from the text approved by Parliament;
 3. Calls for the conciliation procedure to be initiated should the Council intend to depart from the text approved by Parliament;
 4. Asks to be consulted again if the Council intends to amend the Commission proposal substantially;
 5. Instructs its President to forward its position to the Council and Commission.

¹ OJ not yet published.

LEGISLATIVE PROPOSAL

2. Proposal for a Council framework decision on the European arrest warrant and the surrender procedures between the Member States (COM(2001) 522 – C5-0453/2001 - 2001/0215(CNS))

The proposal is amended as follows:

Text proposed by the Commission¹

Amendments by Parliament

Amendment 43
Recital 12 (new)

(12) Any actions resulting from the execution of a European arrest warrant should be in full compliance with the 1951 UN Convention of Geneva and the guidelines of the UNHCR handbook.

Justification

No justification.

Amendment 44
Recital 14

A consequence of the application of the principle of mutual recognition is that the double criminality condition must be abolished as well as the rule of speciality. However, where the execution of a warrant for certain conduct would run counter to the fundamental principles of the legal system of a Member State, it must have a possibility to opt out for those offences. This can be done by giving each Member State the possibility of establishing a 'negative' list of offences for which the execution of the European arrest warrant would be excluded.

A consequence of the application of the principle of mutual recognition is that the double criminality condition must be abolished as well as the ***limitation on other criminal proceedings in the issuing Member State*** (rule of speciality). However, where the execution of a warrant for certain conduct would run counter to the fundamental principles of the legal system of a Member State, it must have a possibility to opt out for those offences. This can be done by giving each Member State the possibility of establishing a 'negative' list of offences for which the

¹ OJ not yet published.

execution of the European arrest warrant would be excluded.

Justification

It is preferable not to refer to the "rule of speciality" as it may not be easily understood.

Amendment 45
Recital 20

This Framework Decision must respect the fundamental rights and observe the principles recognised in particular by the Charter of Fundamental Rights of the European Union, and notably Chapter VI thereof.

This Framework Decision ***and the measures taken by the Member States in the implementation of this Framework Decision*** must respect the fundamental rights and observe the principles recognised in particular by the Charter of Fundamental Rights of the European Union, and notably Chapter VI ***which safeguards the rights of the individual by ensuring that a defendant is guaranteed the right to a fair trial, the right of defence, and the right not to be tried or punished twice in criminal proceedings for the same criminal offence.***

Justification

It is also important that the measures taken in implementation of the framework decision should respect fundamental rights.

Amendment 46
Article 1

The purpose of this Framework Decision is to establish the rules under which a Member State shall execute in its territory a European arrest warrant issued by a judicial authority in another Member State.

The purpose of this Framework Decision is to establish the rules under which, ***on the basis of the principle of mutual recognition***, a Member State shall execute in its territory a European arrest warrant issued by a judicial authority in another Member State.

Justification

The purpose of the framework decision is also to implement the principle of mutual recognition.

Amendment 47
Article 2, point (a)

(a) final judgements in criminal proceedings, and judgements in absentia, ***which involve deprivation of liberty or a detention order of at least four months in the issuing Member State;***

(a) final judgements in criminal proceedings, and judgements in absentia, ***in cases where the offence is punishable by deprivation of liberty or a detention order for a maximum period of at least twelve months in the issuing Member State and the punishment which has been awarded is for a period of at least four months;***

Justification

This text has been amended to correspond more closely to the Council of Europe Convention on Extradition 1957 which includes this double condition of the maximum period and the period actually awarded. The Commission proposal, although simpler (as based on the period actually awarded), raises concerns that relatively minor offences could be included.

Amendment 48
Article 5, paragraph 4

4. Each Member State may indicate that its central authority may decide on matters covered by Articles 31, 37 and 38. The Member State shall ensure that the requested person is given the opportunity to express his or her views on the question which will be decided by the central authority. The executing judicial authority shall decide on the execution of the European arrest warrant on the basis of the central authority's decision.

Deleted

Justification

This last paragraph is covered by Article 4 and the rest of this paragraph seems unnecessary.

Amendment 49
Article 6, point (d)

(d) whether the European arrest warrant results from a judgement *in absentia*, and if so, a statement as to the right to lodge an opposition and on the applicable procedure in conformity with the second subparagraph of Article 35(1),

(d) whether the European arrest warrant results from a judgement *in absentia*, and if so, ***proof that the person was effectively served with a summons in time to enable him or her to appear and to prepare a defence and*** a statement as to the right to lodge an opposition and on the applicable procedure in conformity with the second subparagraph of Article 35(1),

Justification

Proof should be provided with the arrest warrant that the person was effectively informed of the proceedings in time to prepare his defence.

Amendment 50
Article 6, point (f)

(f) a description of the circumstances in which the offence was committed, including the time, place and degree of participation in the offence by the requested person,

(f) a description of the circumstances in which the offence was committed, including the time, place and degree of participation in the offence by the requested person, ***and a description of the evidence on which the above is based,***

Justification

A reference to the evidence in the text of the European arrest warrant proper is a prerequisite for transparency and legal certainty.

Amendment 51
Article 9

1. Insofar as an executing Member State considers that the alert is covered by **Article 27, 28, 30 or 31** or if provisional release has been granted according to Article 14, it may subsequently add a flag in the SIS to the effect that the execution of the European arrest warrant will not take place in its territory. Prior consultations must be held in this connection with the other Member States.

1. Insofar as an executing Member State considers that the alert is covered by **Articles 22, 27 to 31 or 32(b)** or if provisional release has been granted according to Article 14, it may subsequently add a flag in the SIS to the effect that the execution of the European arrest warrant will not take place in its territory. Prior consultations must be held in this connection with the other Member States.

Justification

It should be possible for a Member State to include an alert in the system if it appears that the person has already been prosecuted for the offences in the arrest warrant or if the State has concerns about correctly ascertaining the identity of the requested person. The Member States should also indicate where they have taken a decision not to execute an arrest warrant (see Article 22).

Amendment 52
Article 10

Coercive measures

An executing Member State may take necessary and proportionate coercive measures against a requested person according to the conditions laid down by its national law, **including the provisions on judicial review that are applicable when a person is arrested with a view to extradition.**

Coercive measures

An executing Member State may take necessary and proportionate coercive measures against a requested person according to the conditions laid down by its national law, **provided that they respect relevant human rights instruments.**

Justification

If the aim of the European arrest warrant is to abolish the system of extradition, there is no point in referring to it any more.

Amendment 53
Article 11(1)

1. When a requested person is arrested on the territory of another Member State, the competent authority of the latter state shall, ***in accordance with its national law***, inform that person of the warrant and of its content, and of the possibility of consenting to surrender to the issuing judicial authority.

1. When a requested person is arrested on the territory of another Member State, the competent authority of the latter state shall ***as quickly as possible and in any case within three calendar days*** inform that person of the warrant and of its content ***and provide a copy of the warrant in a language understood by the requested person***, and of the possibility of consenting to surrender to the issuing judicial authority.

Justification

The requested person should be informed as soon as possible in order to make submissions under Article 15 and should also receive a copy of the arrest warrant.

Amendment 54
Article 11, paragraph 2

2. From the moment a requested person is arrested for the purpose of the execution of a European arrest warrant, that person shall have a right to be assisted by a legal counsel, and, if necessary by an interpreter.

2. From the moment a requested person is arrested for the purpose of the execution of a European arrest warrant, that person shall have a right to be assisted by a legal counsel and, if necessary by an interpreter. ***Where the requested person does not have the means to pay them, he or she shall be entitled to be assisted free of charge.***

Justification

No justification.

Amendment 55
Article 11, paragraph 2a (new)

2a. Throughout all proceedings held pursuant to this Framework Decision, Member States shall ensure that the defendant is accorded all rights recognised by the Charter of Fundamental Rights, especially the right to a fair trial, the right of defence, and the right not to be tried or punished twice in criminal proceedings for the same criminal offence.

Justification

Enhanced judicial cooperation must not be at the expense of the rights of the defendant.

Amendment 56
Article 13, paragraph 3a (new)

3a. Exceptionally, in the cases referred to in Article 38 of this Framework Decision, the judicial authority of the executing Member State, instead of ordering detention, may take such measures as it might deem appropriate in the light of the circumstances involved.

Justification

The amendment is intended to ensure that where there are special circumstances such as those referred to in Article 38, it will be permissible to enforce ad hoc measures such as house arrest and the like.

Amendment 57
Article 14, paragraph 1

1. When a person is arrested on the basis of a European arrest warrant, the executing judicial authority shall take a decision on whether the requested person shall remain in detention.

1. When a person is arrested on the basis of a European arrest warrant, the executing judicial authority shall take a decision on whether the requested person shall remain in detention, ***and it may take into account any more favourable conditions in the issuing Member State.***

Justification

To the extent that the judge has some discretion, the judge could take into account any more favourable conditions for granting release in the issuing Member State.

Amendment 58
Article 15

The European arrest warrant shall be examined by the executing judicial authority as quickly as possible and in any case no later than ten calendar days after the arrest.

The European arrest warrant shall be examined by the executing judicial authority as quickly as possible and in any case no later than ten calendar days after the arrest.
The arrested person may be represented at that examination by his or her counsel.

Justification

Addition required in order to improve the legal protection accorded to an arrested person.

Amendment 59
Article 16, paragraph 3

3. The ***consent shall be established in such a way as to show*** that the person concerned has expressed it voluntarily and in full awareness of the consequences.

3. The ***executing Member State shall apply procedures aimed to verify*** that the person concerned ***is capable of giving his consent and*** has expressed it voluntarily and in full awareness of the consequences.

Justification

Given that the person concerned will not be able to revoke the consent, the executing Member State must ensure that adequate safeguards are included when the consent is given.

Amendment 60 Article 17, paragraph 2

2. If the executing judicial authority has reason to believe that the requested person referred to in paragraph 1 is in one of the circumstances referred to in Articles 27 to **34**, it shall submit the matter for a hearing by a court in accordance with Article 18.

2. If the executing judicial authority has reason to believe that the requested person referred to in paragraph 1 is in one of the circumstances referred to in Articles 27 to **40**, it shall submit the matter for a hearing by a court in accordance with Article 18.

Justification

The commentary on Article 18 stipulates that a judicial authority must, should the eventuality arise, rule on the special cases referred to in Articles 35 to 40. Article 17 should likewise apply to those cases so as to improve the legal protection accorded to an arrested person.

Amendment 61 Article 18

A court in the executing Member State shall decide on whether the European arrest warrant shall be executed after a hearing, held in accordance with the national rules of criminal procedure:

- (a) if the requested person does not consent to his or her surrender;
- (b) in cases referred to in Articles 17(2) and (3).

The issuing Member State may be represented or submit its observations before the court.

A court in the executing Member State shall decide on whether the European arrest warrant shall be executed after a hearing, held in accordance with the national rules of criminal procedure, ***which must afford legal safeguards to the defendant.***

- (a) if the requested person does not consent to his or her surrender;
- (b) in cases referred to in Articles 17(2) and (3) ***and Articles 36 to 39.***

The issuing Member State may be represented or submit its observations before the court. ***The requested person shall have the right to respond to the observations of the issuing Member State.***

Justification

The requested person should have the right to a hearing when circumstances referred to in Articles 36 to 39 arise. The requested person must also be able to respond to the observations of the issuing Member State.

Amendment 62 Article 19

If the executing judicial authority finds the information communicated by the issuing Member State to be insufficient to allow it to decide on the execution of a European arrest warrant, it shall request the necessary supplementary information urgently and may fix a time-limit for the receipt thereof.

If the executing judicial authority finds the information communicated by the issuing Member State to be insufficient to allow it to decide on the execution of a European arrest warrant, it shall request the necessary supplementary information urgently and may fix a time-limit for the receipt thereof. ***The supplementary information provided shall be communicated to the requested person.***

Justification

The supplementary information received from the issuing Member State should be provided to the requested person.

Amendment 63 Article 21, paragraph 2

2. Reasons shall be given for any refusal to execute a European arrest warrant or on the reason of expiry of the time limit provided for in Article 20 without a decision.

2. Reasons shall be given for any refusal to execute a European arrest warrant or on the reason of expiry of the time limit provided for in Article 20 without a decision. ***The arrested person shall immediately be informed of these reasons in writing.***

Justification

Additions required in order to improve the legal protection accorded to an arrested person.

Amendment 64
Article 22

The executing judicial authority shall immediately notify the decision on whether to execute the European arrest warrant to the issuing judicial authority.

The executing judicial authority shall immediately notify the ***reasoned*** decision on whether to execute the European arrest warrant to the issuing judicial authority ***and to the requested person.***

A decision not to execute the European arrest warrant shall be included as a flag in the SIS pursuant to Article 9.

Justification

The requested person should be informed of the decision (which should state reasons) on whether to execute the arrest warrant. If a Member State decides not to execute an arrest warrant this information should be available to the other Member States in the SIS (see also Article 9).

Amendment 65
Article 24, paragraph 1

1. The issuing Member State shall deduct from the total period of deprivation of liberty which ***is*** imposed any period of deprivation of liberty arising from the execution of a European arrest warrant.

1. The issuing Member State shall deduct from the total period of deprivation of liberty which ***may be*** imposed any period of deprivation of liberty arising from the execution of a European arrest warrant, ***including the period of detention during transit.***

Justification

It should not be assumed that a period of detention will be imposed. The period of detention arising from the arrest warrant to be deducted from the total period should include any period of detention during transit.

Amendment 66
Article 24 paragraph 2a (new)

2a. For the purposes of paying compensation in the event that the requested person is not convicted, the issuing Member State shall add to the total period of deprivation of liberty the period of deprivation of liberty in the executing Member State which arose from the execution of a European arrest warrant.

Justification

Where the requested person is not convicted the period of detention in the executing Member State should be taken into consideration for the purposes of calculating compensation.

Amendment 67
Article 25

The issuing judicial authority shall ensure that the European arrest warrant shall cease to have effect as from the date of the surrender and ***where necessary***.

The issuing judicial authority shall ensure that the European arrest warrant shall cease to have effect as from the date of the surrender and ***that any alert entered in the SIS pursuant to Article 8 is cancelled***.

Justification

Once the arrest warrant has been executed, the alert in the SIS system must be cancelled.

Amendment 68
Article 27

Without prejudice to the objectives of article 29 TEU, each Member State may establish an exhaustive list of conduct which might be considered as offences in some Member States, but in respect of which its judicial authorities shall refuse to execute a European arrest warrant on the grounds that ***it would be contrary to fundamental principles of the legal system*** in that State.

The list and any change to it shall be published in the *Official Journal of the European Communities* at least three months before a Member State may invoke the first paragraph in respect of the conduct concerned.

Excluding the crimes referred to in article 29 TEU ***and crimes which have been harmonised at European Union level,*** each Member State may establish an exhaustive list of conduct which might be considered as offences in some Member States, but in respect of which its judicial authorities shall refuse to execute a European arrest warrant on the grounds that ***the activities in question are not considered criminal offences*** in that State. The list and any change to it shall be published ***by the General Secretariat of the Council*** in the *Official Journal of the European Communities* at least three months before a Member State may invoke the first paragraph in respect of the conduct concerned.

Justification

The list should not include crimes in Article 29 nor crimes which have been harmonised, but otherwise the Member States should be able to include in their list any activity which they do not consider to be a criminal offence.

Amendment 69
Article 28

The executing judicial authority may refuse to execute a European arrest warrant issued in respect of an act which is not considered an offence under the law of the executing Member State and which did not occur, at least in part, on the territory of the issuing Member State.

Excluding the crimes referred to in Article 29 TEU and crimes which have been harmonised at European Union level, the executing judicial authority may refuse to execute a European arrest warrant issued in respect of an act which is not considered an offence under the law of the executing Member State and which did not occur, at least in part, on the territory of the issuing Member State.

Justification

This rule should not apply to the crimes in Article 29 nor crimes which have been harmonised.

Amendment 70
Article 29, paragraph 1

1. ***The executing judicial authority shall refuse to execute a European arrest warrant, if a judicial authority in the executing Member State has passed final judgement upon the requested person in respect of the offence for which the European arrest warrant has been issued.***

1. ***The European arrest warrant shall not be issued in respect of an offence of which a requested person has already been finally convicted or acquitted within the Union in accordance with the law.***

Justification

See Article 50 of the Union Charter of Fundamental Rights.

Amendment 71
Article 29, paragraphs 2 and 2a (new)

Ne bis in idem

2. The execution of a European arrest warrant ***shall*** be refused if the judicial authorities of the executing Member State have decided ***either not to institute or*** to terminate proceedings in respect of the offence for which the European arrest warrant has been issued.

Ne bis in idem

2. The execution of a European arrest warrant ***may*** be refused if the judicial authorities of the executing Member State have decided to terminate proceedings in respect of the offence ***or offences*** for which the European arrest warrant has been issued.

2a. The executing judicial authority may refuse to execute a European arrest warrant if the requested person has been the subject of legal proceedings in the executing Member State in respect of the offences for which the warrant has been issued, unless the executing judicial authority decides to waive jurisdiction in favour of the State that issued the European arrest warrant.

Justification

The ne bis in idem principle needs to be set out in fuller detail in order to distinguish between the different kinds of status arising in connection with legal proceedings, that is to say: a person already convicted (who should be covered by the additional safeguard that a European arrest warrant will not be executed if he is serving or has served his sentence); a person who has been discharged or who was the subject of proceedings in which the case has been closed (removing the possibility of a failure to prosecute on the grounds of expediency, as opposed to legality, which must not serve to prevent other courts having jurisdiction from trying the person); and a person who is the subject of criminal proceedings in the executing State (this situation is covered implicitly in cases where an arrest warrant coincides with other criminal proceedings in progress but should be spelt out more clearly in this part of the text so as to make it possible to acknowledge that the State which issued the European arrest warrant might be in a better position to prosecute the person).

Amendment 72 Article 30

The executing judicial authority **may** refuse to execute a European arrest warrant in respect of an offence covered by an amnesty in the executing Member State where that Member State was competent to prosecute the offence under its own criminal law.

The executing judicial authority **shall** refuse to execute a European arrest warrant in respect of an offence covered by an amnesty in the executing Member State where that Member State was competent to prosecute the offence under its own criminal law.

Justification

This ground for refusal is likewise mandatory in law and not a matter of choice.

Amendment 73
Article 30a (new)

Article 30a

The executing judicial authority may refuse to execute a European arrest warrant in respect of a person who, according to the criminal law of the executing Member State, is considered to be below the age of criminal responsibility.

Justification

Where the requested person is considered to be a minor in the executing Member State, the state should have the possibility to refuse to execute the arrest warrant.

Amendment 74
Article 30b (new)

Article 30b

The executing judicial authority shall refuse to execute a European arrest warrant if the requested person raises an objection to the effect that, according to the rules of the issuing Member State, his or her right to be assisted by a counsel for the defence and/or an interpreter and, where necessary, with legal aid was infringed in the course of the proceedings and the issuing Member State fails to furnish the complete information and evidence required to shed light on and remove the objection.

Justification

Paragraph 21 of the resolution of 17 May 2001 on mutual recognition of final decisions in criminal matters explicitly states that additional safeguard provisions should be laid down regarding respect for the rights of the defence, which should be exactly defined so as to avert the need to review decisions on the merits of cases.

Amendment 75
Article 32, introductory part

The executing judicial authority **may** refuse to execute a European arrest warrant, if:

The executing judicial authority **shall** refuse to execute a European arrest warrant, if:

Justification

This ground for refusal is likewise mandatory in law and not a matter of choice.

Amendment 76
Article 32a (new)

Article 32a

Infringement of the principles of a fair hearing

The executing judicial authority may refuse to execute a European arrest warrant if:

- the information in its possession gives it reason to believe that the principles of a fair hearing have been infringed in connection with the proceedings, or***
- if, in the light, for example, of consistent rulings against it by the European Court of Human Rights, the issuing Member State does not offer sufficient guarantees as regards a fair hearing, the rights of the defence, the proper operation of the judicial system, and reasonable duration of the proceedings.***

Justification

No justification.

Amendment 77
Article 35, paragraph 1

1. If the European arrest warrant has been issued on the basis of a judgement *in absentia*, a new hearing of the case shall take place in the issuing Member State after the surrender.

The executing judicial authority shall inform the arrested person of his or her right to lodge an opposition to the judgement and **on** the procedure for lodging it.

1. If the European arrest warrant has been issued on the basis of a judgement *in absentia* **and the issuing Member State fails to produce evidence that the requested person was legally informed that the proceedings had been instituted and that he or she deliberately neglected to appoint a counsel for the defence**, a new hearing of the case shall take place in the issuing Member State after the surrender.

The executing judicial authority shall inform the arrested person of his or her right to lodge an opposition to the judgement and **of** the procedure for lodging it.

Justification

In the case referred to in Article 35(1), a retrial would be justifiable only when the basic rights of the defence had been violated but not when the requested person had deliberately neglected to concern himself with the investigation or decision of which he was the subject.

Amendment 78
Article 37

If the offence on the basis of which the European arrest warrant has been issued is punishable by life sentence or life time detention order, the execution of the European arrest warrant may be subject to the condition that the issuing Member State undertakes to encourage the application of any measures of clemency to which the person is entitled under its national law and practice.

If the offence on the basis of which the European arrest warrant has been issued is punishable by life sentence or life time detention order, the execution of the European arrest warrant may be subject to the condition that the issuing Member State undertakes to encourage the application of any measures of clemency to which the person is entitled under its national law and practice **and that whatever the sentence imposed by the issuing Member State in accordance with its national law, the actual sentence served will not exceed the maximum applicable in the executing Member State.**

Justification

The issuing Member State must take the decision on the sentence in accordance with its national law. However, the executing Member State could require that the period to be served does not exceed the maximum that can be imposed in that State.

Amendment 79
Article 37a (new)

Article 37a
Death Penalty

The execution of a European arrest warrant may be subject to the condition that the issuing Member State undertakes that the requested person will not be extradited to a third country where he would face the risk of being sentenced to death.

Justification

Although the death penalty has been abolished in the Member States it is important to have a provision allowing the executing Member State to execute the arrest warrant subject to the condition that the issuing Member State undertakes not to subsequently extradite the person to a third state where he/she might face the death penalty.

Amendment 80
Article 38

Deferment of **execution** on humanitarian grounds

1. The **execution** of a European *Arrest Warrant* may exceptionally be deferred, if there are substantial grounds for believing that the execution would manifestly endanger the **requested** person's life or health because of his or her age or state of health or because of other peremptory humanitarian reasons.

Deferment of **surrender** on humanitarian grounds

1. The **surrender** of **an arrested person** **under** a European *arrest warrant* may exceptionally be deferred, if there are substantial grounds for believing that the execution would manifestly endanger the **arrested** person's life or health because of his or her age or state of health or because of other peremptory humanitarian reasons.

Justification

In cases affected to some extent by the circumstances mentioned in the above article, the 'surrender' of the person in question might need to be deferred. 'Execution' of the warrant, however, should never be deferred, because this would be inconsistent with the spirit of the new Article 13(4).

Amendment 81 Article 40, paragraph 2

2. If multiple requests are made, they may be submitted to Eurojust, which shall deliver its opinion as soon as possible.

2. Without prejudice to article 35 TEU, if multiple requests are made, they may be submitted to Eurojust, which shall deliver its opinion as soon as possible.

Justification

The possibility of seeking an opinion from Eurojust should not limit a Member State's ability to take action under Article 35 TEU; in particular, Article 35, paragraph 7, provides a procedure for Member States to bring a dispute to the Council and to the ECJ.

Amendment 82 Article 41

A person who has been surrendered pursuant to a European arrest warrant may, in the issuing Member State, be prosecuted, sentenced or detained for an offence other than that for which the European arrest warrant was issued, except where that offence has been entered by the executing Member State in the list referred to in Article 27, or ***with respect*** to Articles 28 ***or*** 30.

A person who has been surrendered pursuant to a European arrest warrant may, in the issuing Member State, be prosecuted, sentenced or detained for an offence other than that for which the European arrest warrant was issued, except where that offence has been entered by the executing Member State in the list referred to in Article 27, or ***where the executing Member State could refuse to execute an arrest warrant pursuant*** to Articles 28, ***29(1), 30 and 31.***

Justification

Although the limitation on the criminal proceedings in the issuing Member State will be abolished (rule of speciality), the issuing Member State should not be able to prosecute a requested person for offences for which extradition could be refused. (Such cases should have been included in the arrest warrant.)

Amendment 83

Article 46

1. The issuing Member State may transmit the European arrest warrant by any secure means ***capable of producing written records*** under conditions allowing the executing Member State to establish the authenticity of transmission.

1. The issuing Member State may transmit the European arrest warrant by any secure means under conditions allowing the executing Member State to establish the authenticity of transmission. ***A secure means of transmission can be a written procedure as well as a secure electronic process, on condition that both Member States agree, or on the basis of a technical standard agreed at European level.***

Justification

The Member States could agree between themselves or in some other way on a secure means of transmission which would then be accepted in all cases.

Amendment 84
Article 51a (new)

Article 51a

The Court of Justice shall be responsible for interpretation and the proper implementation of this Framework Decision.

Justification

No justification.

Amendment 85
Article 52

1. Member States shall take the necessary measures to comply with this Framework Decision by [31 December 2002]. They shall communicate to the General Secretariat of the Council and to the Commission the text of any provisions they adopt and information on any other measures they take to comply with this Framework Decision

2. On that basis the Commission shall, **by [31 December 2003]**, submit a report to the European Parliament and to the Council on the operation of this Framework Decision, accompanied, where necessary, by legislative proposals.

3. The Council shall assess the extent to which Member States have complied with this Framework Decision.

1. Member States shall take the necessary measures to comply with this Framework Decision by [31 December 2002]. They shall communicate to the General Secretariat of the Council and to the Commission the text of any provisions they adopt and information on any other measures they take to comply with this Framework Decision.

2. On that basis **by [31 December 2003]**, the Commission shall, **having consulted Eurojust for its opinion**, submit a report to the European Parliament and to the Council on the operation of this Framework Decision, **including in particular, the procedural safeguards provided to the requested person during the execution of European arrest warrants**, accompanied, where necessary, by legislative proposals.

3. The Council shall assess the extent to which Member States have complied with this Framework Decision **and shall inform the European Parliament of its assessment in the context of the annual debate pursuant to Article 39(3) TEU.**

Justification

Eurojust should be given an opportunity to provide its opinion on the operation of this Framework Decision. The report should examine in particular the procedural safeguards applied in respect of the requested person. The Parliament should be informed of the compliance by the Member States during its annual debate on an area of freedom, security and justice.

Amendment 86
Annex

(d) Has the judgement has been rendered *in absentia* in accordance with Article 3(e) of the Framework Decision [date] on the European arrest warrant and the surrender procedures between the Member States of the European Union?

Yes No
(Mark the appropriate answer with “x”)

If the answer is “yes” a statement as to the legal means available to prepare his or her defence or to have the case retried in his or her presence should be provided here:

(d) Has the judgement has been rendered *in absentia* in accordance with Article 3(e) of the Framework Decision [date] on the European arrest warrant and the surrender procedures between the Member States of the European Union?

Yes No
(Mark the appropriate answer with “x”)

If the answer is “yes”

(i) ***proof that the person was effectively served with a summons in time to enable him or her to appear and to prepare his or her defence should be attached, and***

(ii) a statement as to the legal means available to prepare his or her defence or to have the case retried in his or her presence should be provided here:

Justification

Proof that the person has effectively been informed should be provided with the European arrest warrant.

DRAFT LEGISLATIVE RESOLUTION

European Parliament legislative resolution on the Commission proposal for a Council framework decision on the European arrest warrant and the surrender procedures between the Member States (COM(2001) 522 – C5-0453/2001 - 2001/0215(CNS))

(Consultation procedure)

The European Parliament,

- having regard to the Commission proposal for a Council framework decision on the European arrest warrant and the surrender procedures between the Member States (COM(2001) 522¹),
 - having regard to Article 29, Article 31, subparagraphs (a) and (b), and Article 34, paragraph 2, subparagraph (b), of the EU Treaty,
 - having been consulted by the Council pursuant to Article 39, paragraph 1, of the EU Treaty (C5-0453/2001),
 - having regard to Rules 67 and 106 of its Rules of Procedure,
 - having regard to the report of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs (A5-0397/2001),
1. Approves the Commission proposal as amended;
 2. Calls on the Council to notify Parliament should it intend to depart from the text approved by Parliament;
 3. Calls for the conciliation procedure to be initiated should the Council intend to depart from the text approved by Parliament;
 4. Asks to be consulted again if the Council intends to amend the Commission proposal substantially;
 5. Instructs its President to forward its position to the Council and Commission.

¹ OJ not yet published.

MINORITY OPINION

1. on the proposal for a Council framework decision on combating terrorism (COM(2001) 521 – C5-0452/2001 – 2001/0217(CNS))

The framework decision which a majority of the committee members have approved is an alarming violation of fundamental principles of the rule of law. Moreover, it is being adopted in a manner which makes a mockery of the democratic decision-making process: under unprecedented pressure of time and on the basis of totally inadequate preparations, the EU proposes to compel Member States to accept a definition of terrorism which will open the door to completely arbitrary law enforcement. The decision entails first and foremost (1) criminalisation of lawful democratic actions, (2) extensions of powers of police surveillance and secret investigation of unpredictable scope, contrary to basic principles of protection which apply to the administration of the criminal law in the Nordic countries.

The EU initiative is not only an expression of impotence, it is a legal catastrophe.

MINORITY OPINION

2. on the proposal for a Council framework decision on the European arrest warrant and the surrender procedures between the Member States (COM(2001) 522 – C5-0453/2001 – 2001/0215(CNS))

winding up the debate on the proposal for a Council framework decision on the European arrest warrant and the surrender procedures between the Member States (COM(2001) 522 – 2001/0215(CNS))

The European Parliament,

- whereas framework decisions taken pursuant to Article 34 TEU leave to the Member States the choice of form and methods for implementation; noting also that the Commission's proposal contains such detailed stipulations that the Member States are left with no freedom of choice,
- assuming, in the light of the doubts concerning the compatibility of the proposal with Article 34 TEU, that the legal basis cited will be subjected to closer analysis,
- noting that neither the present proposal nor the simultaneously submitted proposal for a framework decision on combating terrorism contains an adequate analysis of the supposed need to amend the extradition rules or a satisfactory explanation of the underlying principles and consequences of the proposal,
- regretting that the extraordinary Council meeting of 20 September 2001 concluded that negotiations on the framework decision should be brought forward with a view to adoption at the Council meeting of 6-7 December 2001, as such a hasty procedure does not allow scope for anything approaching serious consideration of the proposal and a measured assessment of its particularly wide-ranging implications for the rules of criminal procedure,
- stressing that the proposal – in conjunction with the simultaneously submitted proposal for a framework decision on combating terrorism – encroaches significantly on the Member States' rules of criminal procedure, which entails a significant risk of undermining legal certainty,
- noting that the real political reason for submitting the proposal and requesting the urgent procedure – the attack on the USA on 11 September 2001 – does not constitute genuine grounds for urgent procedure, (a) because the proposed legislation covers numerous criminal acts which have no connection with anti-terrorism measures, and (b) because there is no assessment of the scope for making the existing legal instruments, including the extradition conventions of 10 March 1996 and 27 September 1997, more effective,
- regretting that the Commission's proposal allows only limited scope for refusing to execute a European arrest warrant,

- whereas the proposal for a framework decision must allow scope for Member States' reservations concerning extradition of their own nationals,
- stressing that references to scales of penalties do not give a full picture of the criminal circumstances since policies on crime and scales of penalties vary widely between the Member States,

wishes, in the light of the foregoing, to consider the proposal in accordance with a procedure which ensures all due preparation.

6 November 2001

OPINION OF THE COMMITTEE ON LEGAL AFFAIRS AND THE INTERNAL MARKET

for the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

on the proposal for a Council framework decision on combating terrorism
(COM(2001) 521 – C5-0452/2001 – 2001/0217(CNS))

Draftsman: Ana Palacio Vallelersundi

PROCEDURE

The Committee on Legal Affairs and the Internal Market appointed Ana Palacio Vallelersundi draftsman at its meeting of 15 October 2001.

It considered the draft opinion at its meeting of 5/6 November 2001.

At this meeting it adopted the following amendments by 20 votes to 0, with 4 abstentions.

The following were present for the vote: Ana Palacio Vallelersundi, chairman; Willi Rothley, vice-chairman; Ward Beysen, vice-chairman; Paolo Bartolozzi, Luis Berenguer Fuster, Raina A. Mercedes Echerer, Janelly Fourtou, Marie-Françoise Garaud, Gerhard Hager, Malcolm Harbour, Heidi Anneli Hautala, Kurt Lechner, Klaus-Heiner Lehne, Neil MacCormick, Toine Manders, Luís Marinho, Arlene McCarthy, Manuel Medina Ortega, Bill Miller, Angelika Niebler, Diana Wallis, Joachim Wuermeling and Stefano Zappalà, Pedro Aparicio Sánchez (for Enrico Boselli) and José María Mendiluce Pereiro (for Carlos Candal, pursuant to Rule 153(2)).

AMENDMENTS

The Committee on Legal Affairs and the Internal Market calls on the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission¹

Amendments by Parliament

Amendment 1

Article 3, paragraph 1, 1st part

1. Each Member State shall take the necessary measures to ensure that the following offences, defined according to its national law, which are intentionally committed by an individual or a group against one or more ***countries, their institutions or people*** with the aim of intimidating them and seriously altering or destroying the political, economic, or social structures of a country, will be punishable as terrorist offences:

1. Each Member State shall take the necessary measures to ensure that the following offences, defined according to its national law, which are intentionally committed by an individual or a group against one or more ***states, one or more territorial authorities of a state or an organisation of states, or against the institutions of those entities or against the people living in those entities***, with the aim of intimidating them and seriously altering or destroying the political, economic, social ***or cultural*** structures of ***those entities***, will be punishable as terrorist offences:

Justification

This amendment is intended to cover the possibility of acts of terrorism committed for example, against the institutions of the European Union or constituent entities of states, such as regional authorities.

¹ OJ C Not yet published.

Amendment 2
Article 3, paragraph 1, 2nd part

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| (a) Murder; | (a) Offences against the life of a person; |
| (b) Bodily injuries; | (b) Serious offences against the physical integrity of persons causing serious bodily harm; |
| (c) Kidnapping or hostage taking; | (c) Kidnapping or hostage taking; |
| (d) Extortion; | (d) Extortion; |
| (e) Theft or robbery; | (e) Aggravated theft committed with a view to carrying out conduct listed in points (a) to (d) and (f) to (k); |
| (f) Unlawful seizure of or damage to state or government facilities, means of public transport, infrastructure facilities, places of public use, and property; | (f) Seizure of or serious damage to state or government facilities, means of public transport, infrastructure facilities, information or communications networks , places of public use, or property through the use of weapons or dangerous acts as set out in point (h); |
| (g) Fabrication, possession, acquisition, transport or supply of weapons or explosives; | (g) The hijacking of aircraft and ships; |
| (h) Releasing contaminating substances, or causing fires, explosions or floods, endangering people, property, animals or the environment; | (h) Fabrication, possession, acquisition, transport, supply or use of weapons or explosives; |
| (i) Interfering with or disrupting the supply of water, power, or other fundamental resource; | (i) Releasing contaminating substances, or causing fires, explosions or floods, endangering people, property, animals or the environment; |
| (j) Attacks through interference with an information system; | (j) Interfering seriously and in an indiscriminate way with or disrupting the supply of water, power, or other fundamental natural resource; |
| (k) Threatening to commit any of the offences listed above; | (k) Destruction of, damage to or use of computerised or telecommunications systems with a view to destabilising the Community; |
| | (l) Threatening to commit any of the offences listed above except those referred to in point (d); |

(l) Directing a terrorist group;

(m) Promoting of, supporting of or participating in a terrorist group.

to in point (d);

delete.

delete.

Justification

Self-explanatory.

Amendment 3
Article 4

1. Member States shall ensure that instigating, aiding, abetting ***or attempting to commit a terrorist offence*** is punishable.

1. Member States shall ***take the necessary measures to*** ensure that instigating, ***incitement,*** aiding ***or*** abetting ***to commit any of the offences described in Article 3, paragraph 1*** are punishable.

2. ***Member States shall take the necessary measures to ensure that attempts to commit a terrorist offence, with the exception of preparatory offences such as the possession as provided for in Article 3, paragraph 1, point (g) and the offence referred to in Article 3, paragraph 1, point (k), are punishable.***

Justification

Technical amendment which aims to give more legal certainty. Attention: Spanish version should say "inducción" for "instigation".

Amendment 4
Article 8

1. Member States *shall ensure that legal persons can be held liable for terrorist offences or conduct referred to in Articles 3 and 4 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, or
- (b) *an* authority to take decisions on behalf of the legal person, or
- (c) *an* authority to exercise control within the legal person.

1. Member States shall *take the necessary measures to ensure that legal persons can be held liable under criminal or administrative law for those criminal offences referred to in Article 3 and 4 committed, under their responsibility or on their account or for their benefit, by any person having de facto or de jure power to take decisions or exercise control within the legal person, in particular when the person has:*

- (a) power of representation of the legal person, or
- (b) authority to take decisions on behalf of the legal person, or
- (c) authority to exercise control within the legal person.

For the purposes of this framework decision "legal person" shall mean:

- (a) *any entity having such status under the applicable national law, except for States or other public bodies in the exercise of State authority and for public international organisations, and*
- (b) *any enterprise which has an activity de facto, in which independent rights and obligations are vested.*

Justification

The Commission's proposal (as incorporated by the Council) on liability of legal persons is the standard text always used in similar cases, for example, the proposal of the framework decision laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking or in the proposal of Council framework decision on combating the sexual exploitation of children and child pornography.

However, in the field of terrorism it is convenient to use a formulation that fits better to the differences of treatment which liability of legal persons receives under Member States' criminal law.