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NOTE

from : Presidency

to : COREPER/COUNCIL

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

Subject: Proposal for a Council Framework Decision on combating terrorism

1. Introduction

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

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

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

II. Questions submitted to Coreper/Council

The Article 36 Committee examined the Commission proposal at its meetings on 1 and 2 October and 8 to 10 October. Broad consensus was reached on the Commission's approach, which was that terrorist offences should be defined with reference to national law, adding an element of specific terrorist intent (see Article 3 of the Commission proposal). It was also agreed to specify offences committed as part of a terrorist group and to modify the approach on penalties and jurisdiction.

The Presidency proposed a new text which is set out in the Annex to this note. At this point in the proceedings, there are two questions that require a political decision to be taken.

Penalties

Article 5 of the Commission proposal contains a system of penalties and sanctions for the various proposed offences, ranging from 2 to 20 years of deprivation of liberty.

Following the Article 36 Committee's discussions, several delegations felt that that system was too complicated. Many delegations also felt that a strong political signal needed to be given on this point. In order to accommodate these views, the Presidency proposed a simpler system with a maximum penalty of at least 20 years' deprivation of liberty for directing a terrorist group and of 8 years for the other offences relating to terrorist groups set out in Article 2 (see Annex, Article 4(3) and Article 2). For other terrorist offences, the Presidency text proposes more severe penalties than those provided for the corresponding ordinary law offences under the national law of the Member States (Article 4(2) and Article 1).

Coreper/Council is asked to endorse the solution proposed by the Presidency.

Jurisdiction and prosecution

The Commission proposal (see Article 10) provided for compulsory jurisdiction only in respect of offences committed in whole or in part within the territory of a Member State and optional jurisdiction in other cases (see Article 10(2) of the Commission proposal).

During discussions in the Article 36 Committee, it became clear that several delegations wanted a more ambitious approach to the matter.

The Presidency responded to the wishes of those delegations (see Annex, Article 9) by

- i. rendering jurisdiction in the various possible situations compulsory,
- ii. extending jurisdiction to the entire territory of the Union and to all its nationals, residents and institutions, thereby giving a new dimension to the concept of the area of freedom, security and justice referred to in the Treaty, and
- iii. establishing a system of coordination between the competent authorities with the assistance of Eurojust.

Coreper/Council is asked to endorse this approach.

Article 1 – Terrorist offences

1. Each Member State shall take the necessary steps to ensure that terrorist offences shall include [at least] ¹ the following offences, as defined under national law, where unlawfully committed with the aim of seriously ² affecting, in particular by the intimidation of the population, or destroying the political, economic or social structures of a country or of an international organisation:

- (a) murder and homicide;
- (b) serious bodily injury;
- (c) kidnapping or hostage taking;
- (d) extortion;
- (e) aggravated robbery;
- (f) seizure of or serious damage to state or government facilities, means of public transport, infrastructure facilities, places of public use and property;
- (g) fabrication, possession, acquisition, transport or supply of weapons or explosives;
- (h) releasing contaminating substances, or causing fires, explosions or floods, endangering people, property, animals or the environment;

¹ It should be decided at a later date whether these words should be retained.

² IRL and UK propose the deletion of this word.

- (i) interfering with or disrupting the supply of water, power or any other fundamental natural resource;
- (j) interfering with an information system.
- (k) threatening to commit any of the offences listed above except those referred to in points (d) and (g).

2. For the purpose of this Framework Decision, an act shall be regarded as "unlawful" if it is committed without any justification laid down in national law or in international public law.

Article 2 – Offences relating to a terrorist group

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

2. Each Member State shall take the necessary measures to ensure that the following intentional and unlawful acts are punishable [where committed with the aim of seriously affecting or destroying the political, economic or social structures of a country or of an international organisation] ¹:

- (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 supplying it with information or material resources, including funding for its activities;
- (d) laundering the proceeds of terrorist or other offences committed as part of a terrorist group.

¹ Several delegations considered this part to be superfluous.

Article 3 – Instigating, aiding or abetting, and attempting

1. Each Member State shall take the necessary measures to ensure that instigating or aiding or abetting a terrorist offence or any of the offences described in Article 2 is punishable.
2. Each Member State shall take the necessary measures to ensure that attempting to commit a terrorist offence, with the exception of possession as provided for in Article 1(g) and the offence stipulated in Article 1(k) is punishable.

Article 4 – Penalties

1. Each Member State shall take the necessary measures to ensure that [...] the offences referred to in Articles 1 to 3 are punishable by effective, proportionate and dissuasive criminal penalties, which may entail extradition.
2. Each Member State shall take the necessary measures to ensure that terrorist offences and [...] those referred to in Article 3, inasmuch as they relate to terrorist offences, are punishable by sentences involving deprivation of liberty which are heavier than those imposable under national law for such offences in the absence of the special intent required pursuant to Article 1(1), save where the sentences imposable are already the maximum sentences possible under national law.
3. Each Member State shall take the necessary measures to ensure that offences referred to in Article 2 and in Article 3(1) inasmuch as they relate to the offences listed in Article 2, are punishable by sentences involving deprivation of liberty, with a maximum sentence of not less than twenty years for the offences listed in Article 2(2)(a) and eight years for the other offences listed in Article 2.

Article 5 – Aggravating circumstances

Each Member State shall take the necessary measures to ensure that the penalties referred to in Article 4 may be increased, save where the sentences imposable are already the maximum sentences possible under national law, where terrorist offences and offences referred to in Articles 2 and 3 are committed under the following circumstances:

- an offence of a particularly cruel nature;
- an offence committed against a number of persons, with the use of serious violence or with particularly serious harm caused to the victims;
- an offence committed against one or more persons particularly exposed to any of the terrorist offences or of the offences referred to in Article [...] 3 related to them on account of their public office ¹.

Article 6 – Reduction of penalties ²

Each Member State shall take the necessary measures to ensure that the penalties referred to in Article 4 may be reduced if the offender:

- (a) renounces terrorist activity, and
- (b) provides the administrative or judicial authorities with information which they would not otherwise have been able to obtain helping them to:
 - (i) prevent or mitigate the effects of the offence;
 - (ii) identify or bring to justice the other offenders;
 - (iii) find evidence, or
 - (iv) prevent further offences referred to in Articles 2 and 3.

¹ Several delegations wanted an extension of those covered.

² Several delegations wanted to delete this paragraph.

*Article 7 – Liability of legal persons*¹

1. Each Member State shall take the necessary measures to ensure that legal persons can be held liable for any of the offences referred to in Articles 2 and 3 committed for their benefit by any person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on:

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

2. Apart from the cases already provided for in paragraph 1, each Member State shall take the necessary measures to ensure that legal persons can be held liable where the lack of supervision or control by a person referred to in paragraph 1 has made possible the commission of any of the offences referred to in Articles 2 and 3 for the benefit of that legal person by a person under its authority.

3. Liability of legal persons under paragraphs 1 and 2 shall not exclude criminal proceedings against natural persons who are perpetrators, instigators or accessories in any of the offences referred to in Articles 2 and 3.

¹ The Presidency would point out to delegations that other instruments containing such a provision limit the scope of liability of legal persons, in particular Article 4(4) of the Framework Decision on trafficking in human beings: "For the purpose of this Framework Decision, legal person shall mean any entity having such status under the applicable law, except for States or other public bodies in the exercise of State authority and for public international organisations".

Article 8 – Sanctions for legal persons

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

- (a) exclusion from entitlement to public benefits or aid;
- (b) temporary or permanent disqualification from the practice of commercial activities;
- (c) placing under judicial supervision;
- (d) a judicial winding-up order;
- (e) temporary or permanent closure of establishments which have been used for committing the offence.

Article 9 – Jurisdiction and prosecution

1. Each Member State shall take the necessary measures to establish its jurisdiction over the offences referred to in Articles 1 to 3 where:

- (a) the offence has been committed in whole or in part within the territory of a Member State of the European Union;
- (b) the offence has been committed on board a ship or aircraft registered in or flying the flag of a Member State of the European Union ¹;
- (c) the offender is a national or resident of a Member State of the European Union;
- (d) the offence has been committed for the benefit of a legal person established in the territory of a Member State;
- (e) the offence has been committed against the institutions or people of the Member State in question or against an institution of the European Union or a body set up in accordance with the Treaties establishing the European Communities and the Treaty on European Union and based in that Member State.

¹ Presidency proposal, incorporating Article 9(1)(b) of the draft Framework Decision on the protection of the environment through criminal law.

2. When an offence falls within the jurisdiction of more than one Member State and when any of the States concerned can validly prosecute on the basis of the same facts, the Member States concerned shall cooperate in order to decide which of them will prosecute the offenders with the aim, if possible, of centralising proceedings in a single Member State. To this end, the Member States may call on Eurojust to coordinate the action of the competent authorities in accordance with the Decision setting up Eurojust.¹

3. Each Member State shall take the necessary measures also to establish its jurisdiction over the offences referred to in Articles 1 to 3 in cases where it refuses to hand over or extradite a person suspected or convicted of such an offence to another Member State or to a third country, unless such refusal is based on the fact that the request for the person to be handed over or extradited was not presented in due form.²

4. Each Member State shall ensure that its jurisdiction covers cases in which any of the offences referred to in Articles 2 and 3 has been committed in whole or in part within its territory, wherever the terrorist group is based or pursues its criminal activities³.

*Article 10 – Protection of and assistance to victims*⁴

1. Member States shall ensure that investigations into or prosecution of offences covered by this Framework Decision are not dependent on the report or accusation made by a person subjected to the offence.

¹ Presidency proposal following discussions.

² Proposal by the Council Legal Service.

³ Presidency proposal, incorporating Article 4(1) of the Joint Action of 21 December 1998 on making it a criminal offence to participate in a criminal organisation.

⁴ Presidency proposal, incorporating Article 7 of the draft Framework Decision on trafficking in human beings.

2. Each Member State shall take all measures possible to ensure appropriate assistance for victims' families. In particular, each Member State shall, where necessary and possible, apply to such families Article 4 of the Framework Decision on the standing of victims in criminal proceedings.

Article 11 – Implementation and reports

1. Member States shall take the necessary measures to comply with this Framework Decision by 31 December 2002.

2. By the same date, Member States shall transmit to the General Secretariat of the Council and to the Commission the text of the provisions transposing into their national law the obligations imposed on them under this Framework Decision. On the basis of a report drawn up from that information and a written report from the Commission, the Council shall assess, by 31 December 2003, whether Member States have taken the necessary measures to comply with this Framework Decision.

Article 12 – Entry into force

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

Done at Brussels, [...]

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