



COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

COUNCIL FRAMEWORK DECISION

on combating terrorism

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. INTRODUCTION

Terrorism constitutes one of the most serious threats to democracy, to the free exercise of human rights and to economic and social development. Terrorism can never be justified, whatever the target and the place where the offence is prepared or committed.

This has never been clearer than in the terrible aftermath of the unprecedented, tragic and murderous terrorist attacks against the people of the United States of America on 11 September 2001. These cowardly attacks highlight the need for an effective response to terrorism at the level of the European Union.

The European Union has set itself an objective in the Treaty on European Union to provide citizens with a high level of safety within an Area of Freedom, Security and Justice. This proposal, combined with the proposal to replace extradition within the European Union with a European Arrest Warrant, is a key element of the Commission's contribution to achieving this objective in the context of the fight against terrorism. It is vitally important that Member States of the European Union have effective criminal laws in place to tackle terrorism, and that measures are taken to enhance international co-operation against terrorism.

This proposal does not relate only to acts of terrorism directed at Member States. It also applies to conduct on the territory of the European Union which can contribute to acts of terrorism in third countries. This reflects the Commission's commitment to tackle terrorism at a global as well as European Union level. Indeed, the Commission is working closely with Member States and third countries to combat international terrorism within the framework of international organisations and existing international co-operation mechanisms, particularly the United Nations and the G8, with a view to ensuring the full implementation of all relevant international instruments.

The European Union and its Member States are founded on respect for human rights, fundamental freedoms, the guarantee of the dignity of the human being, and the protection of these rights, both as regards individuals and institutions. Furthermore, the right to life, the right to physical integrity, the right to liberty and security and the right to freedom of thought, of expression and information are included in Articles 2, 3, 6, 10 and 11 of the Charter of Fundamental Rights of the European Union¹ (Nice, 7 December 2000).

Terrorism threatens these fundamental rights. There is hardly a country in Europe which has not been affected, either directly or indirectly, by terrorism. Terrorist actions are liable to undermine the rule of law and the fundamental principles on which the constitutional traditions and legislation of Member States' democracies are based. They are committed 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 those countries.

Terrorism takes different forms, ranging from murder, through bodily harm and threats to people's lives and kidnappings and on to destruction of property and damage to public or private facilities. Terrorism causes suffering to the victims and those around them. It destroys

¹ OJ C 364, 18.12.2000, p.1.

their personal hopes and expectations and the material basis of their livelihood, injuring them, inflicting psychological torture and causing death.

Terrorism has a long history behind it, but what makes modern-day terrorism particularly dangerous is that, unlike terrorist acts in the past, the actual or potential impact of armed attacks is increasingly devastating and lethal. This can result from the growing sophistication and ruthless ambition of the terrorists themselves, as demonstrated most recently by the horrific events in the United States on 11 September. Alternatively, it can result from technological developments (and easy access to information about these developments), whether in the traditional arms and explosives areas or in the even more terrifying fields of chemical, biological and nuclear weapons. In addition, new forms of terrorism are emerging. There have been several recent occasions where tensions in international relations have led to a spate of attacks against information systems. More serious attacks could lead not only to serious damage but even, in some cases, to loss of life.

The profound changes in the nature of terrorist offences highlight the inadequacy of traditional forms of judicial and police cooperation in combating it. Increasingly, terrorism stems from the activities of networks operating at international level, which are based in several countries and exploit legal loopholes arising from the geographical limits of investigations, sometimes enjoying extensive logistical and financial support. Given that there are no borders within the European Union and that the right of free movements of people is guaranteed, new measures in the fight against terrorism must be taken.

Terrorists might otherwise take advantage of any differences in legal treatment in the different Member States. Today, more than ever, steps are needed to combat terrorism by drawing up legislative proposals aimed at punishing such acts and strengthening police and judicial cooperation.

The objective of this Communication is to reinforce criminal law measures to combat terrorism. For that purpose, a proposal for a Framework Decision is submitted. Its objective is the approximation of the laws of the Member States regarding terrorist offences in accordance with Article 34(2)(b) of the Treaty on European Union (TEU).

2. INTERNATIONAL AND EU LEGAL INSTRUMENTS

The first steps in the fight against terrorism were made under the auspices of the **United Nations**, which promoted the Convention on offences and certain other acts committed on board aircraft (Tokyo, 14-9-1963). After this Convention some other conventions and protocols relating to terrorist acts were promulgated. The following are worth mentioning:

- Convention for the Suppression of Unlawful Seizure of Aircraft [Hijacking Convention] (The Hague, 16-12-1970);
- Convention for the Suppression of Unlawful Acts against the Safety of Aircraft (Montreal, 23-9-1971);
- Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (New York, 14-12-1973);
- Convention against the Taking of Hostages (New York, 17-12-1979);
- Convention on the Physical Protection of Nuclear Materials (Vienna, 3-3-1980);

- Protocol for the Suppression of Unlawful Acts of Violence at Airports serving International Aviation, complementary to the Convention for the Suppression of Unlawful Acts against the Safety of Aircraft (Montreal, 24-2-1988);
- Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (Rome, 10-3-1988);
- Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (Rome, 10-3-1988);
- UN Convention for the Suppression of Terrorist Bombings (New York, 15-12-1997);
- UN Convention for the Suppression of Financing Terrorism (New York, 9-12-1999).

These two last Conventions are particularly important. Article 2 of the Convention for the Suppression of Terrorist Bombings provides that any person commits an offence if that person unlawfully and intentionally delivers, places, discharges or detonates an explosive or other lethal device in, into or against a place of public use, a State or government facility, a public transportation system or an infrastructure facility with the intent to cause death or serious bodily injuries; or with the intent to cause extensive destruction of such a place, facility or system, where such destruction results in or is likely to result in major economic loss. The Convention for the Suppression of Financing Terrorism states that is an offence to provide or collect funds, directly or indirectly, unlawfully and intentionally, with the intent to use them or knowing that they will be used to commit any act included within the scope of the previously mentioned Conventions (apart from the Convention on offences and certain other offences committed on board aircraft, which is not included). This means that, even though in most of those conventions the words “terrorism” or “terrorist acts” are not mentioned, they are related to terrorist offences .

However, with regard to existing international Conventions, the most significant effort in the fight against terrorism, has been the European Convention on the Suppression of Terrorism (Strasbourg, 27-1-1977) under the mandate of the **Council of Europe**.² This is the first Convention in which terrorism is treated generically, at least in the sense that it gives a list of terrorist acts. This convention does not consider this kind of offence as political offences, or as offences connected with a political offence, or as offences inspired by political motives. This is important for the purpose of the application of the conventions on extradition.

Articles 1 and 2 contain a list of offences considered to be terrorist acts. Article 1 refers to offences within the scope of the Convention for the Suppression of Unlawful Seizure of Aircraft (The Hague, 1970) and the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (Montreal, 1971), which refer to certain terrorist acts. Furthermore, offences involving an attack against the life, physical integrity or liberty of internationally protected persons (including diplomatic agents), offences involving kidnapping, taking of a hostage, serious unlawful detention, use of a bomb, grenade, rocket, automatic firearm or letter or parcel bomb, if this use endangers persons appear in the same list. Article 2 extends the concept of terrorist act to other offences such as those which involve an act of violence, other than one covered by Article 1, against the life, physical integrity or liberty of a person (paragraph 1); and against property if the act created a collective danger for persons (paragraph 2).

² STE n° 90.

Most of these conventions have been signed and ratified by the majority of Member States, which means that they have to apply them. This proposal will facilitate the implementation of those conventions as far as they concern penal law since they refer to the same issue: terrorist offences .

At **European Union** level, Article 29 of the Treaty on European Union specifically refers to terrorism as one of the serious forms of crime to be prevented and combated by developing common action in three different ways: closer cooperation between police forces, customs authorities and other competent authorities, including Europol; closer cooperation between judicial and other competent authorities of the Member States; approximation, where necessary, of rules on criminal matters.

Regarding police cooperation (Article 30 of the TEU), it is worth mentioning Article 2 (1) of the Convention on the establishment of a European Police Office,³ in which terrorism is included within its field of competence, and the Council Decision of 3 December 1998⁴ instructing Europol to deal with crimes committed or likely to be committed in the course of terrorist activities against life, limb, personal freedom or property, which implements Article 2 (2) of that Convention. Furthermore, the Council Joint Action of 15 October 1996⁵ decided the creation and maintenance of a Directory of specialised counter-terrorism competences, skills and expertise to facilitate counter-terrorism cooperation between the MS of the EU.

Concerning judicial cooperation Article 31 of the TUE states that common action on judicial cooperation is to include facilitating and accelerating cooperation between competent ministries and judicial or equivalent authorities of the Member States in relation to proceedings and the enforcement of decisions (Paragraph A) and facilitating extradition between Member States (Paragraph B). In this field there are two important legal instruments: the Convention on simplified extradition procedure between the Member States of the EU⁶ (10 March 1995) and the Convention relating to extradition between Member States of the EU⁷ (27 September 1996), where Article 1 establishes that one of the purposes of that Convention is to facilitate the application between the Member States of the EU of the European Convention on the Suppression of Terrorism. Furthermore, the Joint Action of 21 December 1998 on making it a criminal offence to participate in a criminal organisation in the Member States of the EU⁸ refers to terrorist offences in Article 2 (2).

However, it seemed necessary to improve these legal instruments in order to fight against terrorism in a more effective and efficient way. The conclusions of the Tampere European Council⁹ meeting of 15 and 16 October 1999 therefore established that formal extradition procedures should be abolished among the Member States as regards persons who are fleeing from justice after having been finally sentenced, and replaced by a simple transfer of such persons (Conclusion 35).

The European Parliament adopted (5 September 2001) a resolution concerning the role of the EU in combating terrorism, calling on the Council to adopt a framework decision to abolish formal extradition procedures, to adopt the principle of mutual recognition of decisions on

³ OJ C 316, 27.11.1995, p.1.

⁴ OJ C 26, 30.01.1999, p.22.

⁵ OJ L 273, 25.10.1996, p.1.

⁶ OJ C 78, 30.03.1995, p.1.

⁷ OJ C 373, 23.10.1996, p.11.

⁸ OJ L 351, 29.12.1998, p.1.

⁹ <http://ue.eu.int/en/Info/eurocouncil/index.htm>

criminal matters including pre-judgement decisions in criminal matters relating to terrorist offences and the implementation of the “European search and arrest warrant”, and to approximate legislative provisions establishing minimum rules at European level relating to the constituent elements and penalties in the field of terrorism.

Finally, regarding approximation of rules on criminal matters in the Member States, Article 31 (e)¹⁰ of the TEU calls for the adoption of measures establishing minimum rules relating to the constituent elements of criminal acts and to penalties in the field of terrorism, which is also mentioned in Paragraph 46 of the Action Plan of the Council and the Commission on how best to implement the provisions of the Treaty of Amsterdam on an area of freedom, security and justice¹¹ (3 December 1998). This is the aim of this Framework Decision: implementing Article 31 (e) of the TEU by approximating Member States’ legislation concerning terrorist offences .

Additionally to Title IV of the TEU establishing the appropriate instruments for the fighting of terrorism at the Union’s level and to coordinate action on an international level, the Union’s commitment to contribute towards the emergence of a strong, sustained and global action against terrorism may require a political dialogue with or an action in relation to a non-member State as well as co-ordination of Member States in international organisations and on international conferences. Without prejudice to the measures undertaken in the field of police and judicial cooperation, the addressing of all security aspects may call for complementary actions under, for example, the Common Foreign and Security Policy in order to enhance impact and ensure consistency of the Union’s external relations.

3. MEMBER STATES LEGISLATION CONCERNING TERRORISM

In the European Union there are different situations in Member States in relation to legislation related to terrorism. Some have no specific regulations on terrorism. In these states, terrorist actions are punished as common offences. In other member States there are specific laws or legal instruments concerning terrorism where the words “terrorism” or “terrorist” are expressly mentioned and where some terrorist offences are expressly typified. This is the case in France, Germany, Italy, Portugal, Spain and the United Kingdom.

Most terrorist acts are basically ordinary offences which become terrorist offences because of the motivations of the offender. If the motivation is to alter seriously or to destroy the fundamental principles and pillars of the state, intimidating people, there is a terrorist offence. This point of view has been incorporated in Member States legislation concerning terrorism. Although the wording is different, they are essentially synonymous with each other.

The Criminal Code and the Code of Criminal Procedure in Greece have been substantially reshaped following the recent adoption of law no. 2928 of 27 June 2001. The French

¹⁰ In this Article organised crime and illicit drug trafficking are also mentioned and the Union is dealing with both of them. Concerning organised crime we should take into account the Joint Action 21 December 1998 on making it a criminal offences to participate in a criminal organisation in the MS of the EU. Regarding illicit drug trafficking the Commission presented a proposal for a Council Framework Decision laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking (COM (2001) 259 final, 23 May 2001).

¹¹ OJ C 19, 23.01.1999, p.1.

Criminal Code¹² refers to terrorist acts as those that can alter seriously public order through threat or terror. The Portuguese Criminal Code¹³ mentions prejudice to national interests, to alter or to disturb State's institutions, to force public authorities to do or not to do something, and to threaten individuals or groups. The Spanish Criminal Code¹⁴, as in France and Portugal, alludes to the aim of subverting the constitutional order and altering seriously public peace. A similar statement, to subvert the democratic order, is also mentioned in the Italian Criminal Code¹⁵.

The UK legislation, Terrorism Act 2000,¹⁶ is the largest piece of terrorist legislation in the EU Member States. Terrorism is defined as meaning the use or threat of action where “the use or threat is designed to influence the government or to intimidate the public or a section of the public” and “the use or threat is made for the purpose of advancing a political, religious or ideological cause”; and that the action includes, among others, “serious violence against a person”, “serious damage to property” or “creating a serious risk to the health or safety of the public or a section of the public”.

4. A PROPOSAL FOR A FRAMEWORK DECISION

In view of Article 31 (e) of the TEU, the legal background previously mentioned, and the fact that only six Member States have legal instruments covering terrorism, the present proposal for a Framework Decision for the approximation of the substantive laws of the Member States is clearly necessary. It concerns constituent elements and penalties in the field of terrorism, ensuring that terrorist offences will be punished by effective, proportionate and dissuasive criminal penalties. As a direct result, it will also facilitate police and judicial cooperation, since common definitions of offences should overcome the obstacles of double criminality requirement as long as it is a prerequisite for certain forms of judicial assistance. Furthermore, the existence of a common framework in the fight against terrorism in the EU will facilitate closer cooperation with third countries.

The key concept on which this proposal is based is the concept of a terrorist offence. Terrorist offences can be defined as offences 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. The implication is that legal rights affected by this kind of offence are not the same as legal rights affected by common offences. The reasoning here is that the motivation of the offender is different, even though terrorist offences can usually be equated in terms of their practical effect with ordinary criminal offences and, consequently, other legal rights are also affected. In fact, terrorist acts usually damage the physical or psychological integrity of individuals or groups, their property or their freedom, in the same way that ordinary offences do, but terrorist offences go further in undermining the structures previously mentioned. For

¹² Art. 421-1 : « Constituent des acts de terrorism, lorsqu'elles sont intentionnellement en relation avec une entreprise individuelle ou collective ayant pour but de troubler gravement l'ordre public par l'intimidation ou la terreur... ».

¹³ Art. 300 : « ...visem prejudicar a integridade ou a independência nacionais, impedir, alterar ou subverter o funcionamento das instituições do Estado previstas na Constituição, forçar a autoridade pública a praticar um acto, a abster-se de o praticar ou a tolerar que se pratique, ou ainda intimidar certas pessoas, grupo de pessoas ou a população em geral... ».

¹⁴ Art. 571 : « ...cuya finalidad sea la de subvertir el orden constitucional o alterar gravemente la paz pública... ».

¹⁵ Arts. 270 bis, 280, 289 bis : « eversione dell'ordine democratico ».

¹⁶ Terrorism Act 2000 : www.uk-legislation.hmso.gov.uk/acts/acts2000/20000011.htm

this reason, terrorist offences and ordinary offences are different and affect different legal rights. Therefore it seems appropriate to have different and specific constituent elements and penalties for such particularly serious offences.

On the other hand, directing, creating, supporting or participating to a terrorist group must be considered independent criminal acts and must be dealt with as terrorist offences. In order to define the concept of a terrorist group we have to take into account the Joint Action of 21.12.1998 making it a criminal offence to participate in a criminal organisation in the Member States of the European Union, where terrorism is expressly mentioned.¹⁷ Article 1 defines the criminal organisation as a structured association, established over a period of time, of more than two persons, acting in concert with a view to committing certain types of offence, which are subject to the penalties specified in the mentioned article. Consequently, and following that definition, we can say that a terrorist group is a structured organisation, established over a period of time, of more than two persons acting in concert to commit terrorist acts.

This Framework Decision covers all terrorist offences prepared or committed within the borders of the European Union, whatever their target, including terrorist acts against interests of non EU Member States located in the EU.

Common definitions of offences and penalties are proposed. The proposal also contains provisions on liability and penalties for legal persons, jurisdiction, victims and exchange of information between Member States.

5. LEGAL BASIS

Article 29 of the TEU establishes that the Union's objective shall be to provide citizens with a level of safety within an area of freedom, security and justice by developing common action among the Member States in the fields of police and judicial cooperation, and by preventing and combating terrorism. The same Article provides for approximation, where necessary, of rules on criminal matters in the Member States, in accordance with Article 31(e). This Article states that common action on judicial cooperation in criminal matters shall include progressively adopting measures establishing minimum rules relating to the constituent elements of criminal acts and to penalties in the field, among other offences, of terrorism.

Article 34(2)(b) of the TEU refers to framework decisions as the instruments to be used for the purpose of approximation of the laws and regulations of the Member States. Framework decisions are binding on the Member States as to the result to be achieved but leave to the national authorities the choice of the form and methods. This proposal will not entail financial implications for the budget of the European Community.

6. THE FRAMEWORK DECISION: ARTICLES

Article 1 (Subject matter)

¹⁷ OJ L 351, 29.12.1998, p.1: "Whereas the Council considers that the seriousness and development of certain forms of organised crime require strengthening of cooperation between the MS of the EU, particularly as regards the following offences: drug trafficking, trafficking in human beings, terrorism..."

The subject of this Framework Decision is to implement Article 31(e) TEU, which provides that common action on judicial cooperation in criminal matters shall include adopting measures establishing minimum rules relating to the constituent elements of criminal acts and to penalties in the field of terrorism.

This will help to achieve the Union's objective, expressed in Article 29 TEU, of providing citizens with a high level of safety within an area of freedom, security and justice.

Article 2 (Scope)

Article 2 provides four criteria to limit the scope of this Framework Decision. Apart from the territoriality principle (the offence is committed or prepared in whole or in part within a Member State) and active personality principle (the offence is committed by a national of a Member State or for the benefit of a legal person established in a Member State), offences also fall under this Framework Decision when they are committed against institutions or people of a Member State.

Article 3 (Terrorist Offences)

Article 3 provides a broad list of terrorist offences, indicating when they are to be regarded as terrorist offences and terrorist offences related to terrorist groups. Article 3 puts on the Member States an obligation to ensure that these offences will be punishable as terrorist offences .

Paragraph 1 contains a list of the most serious terrorist offences. Many of them will probably be regulated as common offences in the Member States' criminal codes. The Framework Decision requests that when they are intentionally committed by an individual or a group against one or more countries, their institutions or people (people refers to all persons, including minorities), with the aim of intimidating them and seriously altering or destroying the political, economic, or social structures of those countries; they must be qualified as terrorist offences. It is worth mentioning, among them, murder; bodily injuries; kidnapping; hostage taking; threats; extortion; theft; robbery; fabrication, possession, acquisition, transport or supply of weapons or explosives; unlawful seizure of or damage to state or government facilities, means of public transport, infrastructure facilities, places of public use, and property (both private and public). This could include, for instance, acts of urban violence.

Although terrorist offences committed by computer or electronic devices are apparently less violent they can be as threatening as the offences previously mentioned, endangering not only life, health or safety of people but the environment as well. Their main characteristic is that their effect is intentionally produced at a distance from the perpetrators, but their consequences may also be much more far reaching. Therefore, terrorist offences covering the release of contaminating substances or causing fires, floods or explosions; interfering with or disrupting the supply of water, power or other fundamental resource; and interference with an information system are included under paragraphs 1 (h),(i) and (j).

For the purpose of this Framework Decision, "means of public transport" shall mean all facilities, conveyances and instrumentalities, whether publicly or privately owned, that are used in or for publicly available services for the transportation of persons or cargo. This is also the definition of public transportation system in Article 1(6) of the 1998 UN Convention for the Suppression of Terrorist Bombing. "Information system" shall mean computers and

electronic communication networks, as well as computer data stored, processed, retrieved or transmitted by them for the purposes of their operation, use, protection and maintenance.

Finally, paragraphs 1(l) and (m) refer to those terrorist acts committed in relation to terrorist groups, such as directing, promoting of, supporting of and participating in a terrorist group which are considered terrorist offences.

Paragraph 2 contains the definition of “terrorist group” as a structured organisation, established over a period of time, of more than two persons, acting in concert to commit the terrorist offences referred to in paragraph 1 (a) to (k).

The wording of this Article allows Member States decide how to introduce the precise definition of the offences in order to implement this Framework Decision.

Article 4 (Instigating, aiding, abetting and attempting)

Article 4 puts an obligation on Member States to ensure that instigating, aiding, abetting and attempting to commit terrorist offences are punishable.

Article 5 (Penalties and sanctions)

Article 5 concerns penalties. Paragraph 1 indicates that the offences and conduct referred to in Articles 3 and 4 shall be punishable by effective, proportionate and dissuasive penalties.

The scope of the penalties (paragraph 2) is rather broad in view of the different terrorist offences and penalties for terrorism existing in the Member States. The highest penalty is a period of deprivation of liberty of no less than twenty years (murder) and the lowest is a period of no less than two years (extortion, theft, robbery and threatening to commit some offences) The possibility of imposing ancillary or alternative sanctions such as community service, limitation of certain civil or political rights or publication of all or part of a sentence as regards to offences and conduct referred to in Articles 3 and 4 is also made available in paragraph 3.

Paragraph 4 indicates that fines could also be imposed.

Article 6 (Aggravating circumstances)

Article 6 establishes aggravating circumstances in case the offence is committed with particular ruthlessness, affects a large number of persons or is of a particular serious and persistent nature, or 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. Internationally protected persons shall have the same meaning as Article 1 of the 1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents.

Article 7 (Mitigating circumstances)

Article 7, taking into account the Council Resolution of 20 December 1996 on individuals who cooperate with the judicial process in the fight against international organised crime,¹⁸

¹⁸ OJ C 10, 11.01.1997, p.1.

refers to mitigating circumstances when the offender renounces his or her criminal activity and provides administrative or judicial authorities with information, helping them to prevent the effects of the offence in time, so that crime, the planning of which he is aware, may still be prevented; to identify or to bring to justice other terrorist offenders, to find evidence concerning terrorist crimes or to prevent further terrorist offences.

Article 8 (Liability of legal persons)

In line with the approach taken in a number of legal instruments adopted at EU level to combat different types of criminality, it is necessary also to cover the situation in which legal persons are involved in terrorist offences. Article 8 therefore contains provisions for holding a legal person liable for the offences or conduct envisaged by Articles 3 and 4, committed for their benefit by any person with certain leading positions, acting either individually or as a part of the organ of the legal person. The term liability should be construed so as to include either criminal or civil liability.

In addition, according to standard practice, paragraph 2 provides that a legal person can also be held liable when the lack of supervision or control by a person in a position to exercise control, has rendered possible the commission of the offences for its benefit. Paragraph 3 indicates that legal proceedings against a legal person do not preclude parallel legal proceedings against a natural person.

Article 9 (Sanctions for legal persons)

Article 9 sets out a requirement for penalties for legal persons held liable for the offences or conduct referred to in Articles 3 and 4. It requires effective, proportionate and dissuasive penalties, where the minimum obligation is to impose criminal or non-criminal fines. Other penalties that typically could apply to legal persons are also indicated.

Article 10 (Jurisdiction)

Article 10 contains procedural provisions on jurisdiction.

Paragraph 1 establishes a series of criteria conferring jurisdiction to prosecute and investigate cases involving the offences or conduct referred to in this Framework Decision. A Member State shall establish its jurisdiction in four situations:

- a) where the offence is committed in whole or in part on its territory, irrespective of the status or the nationality of the person involved (territoriality principle),
- b) where the offender is a national of that Member State (active personality principle),
- c) where the offence is committed for the benefit of a legal person established in the territory of that Member State,
- d) when the offence is committed against its institutions or people.

Given that not all Member States' legal traditions recognise extraterritorial jurisdiction for all types of criminal offences, paragraph 2 allows them not to apply the rules on jurisdiction set out in paragraph 1 as regards the situations covered by paragraph 1(b), (c) and (d).

Paragraph 3 states that the Member States shall inform the Council's General Secretariat where they decide to apply Paragraph 2.

Article 11 (Extradition and prosecution)

This article shall no longer be applicable as soon as the Commission's proposal for a European arrest warrant is adopted, which will replace extradition within the EU. In particular, the European arrest warrant proposal does not foresee that nationality be a ground for refusal.

Article 11 takes account of the fact that some Member States do not extradite their own nationals and seeks to ensure that persons suspected of having committed terrorist offences do not evade prosecution because extradition is refused on the grounds that they are nationals of that State.

A Member State which does not extradite its own nationals must take the necessary measures to establish its jurisdiction over and, where appropriate, prosecute the offences concerned when committed by its own nationals on the territory of another Member State or against another Member State's institutions or people. This article does not regulate relations between Member States and third countries, which could be dealt with in international instruments.

Article 12 (Cooperation between Member States)

The purpose of Article 12 is to take advantage of the international instruments on judicial cooperation to which Member States are parties and which should apply to the matters covered in this Framework Decision. For instance, arrangements on mutual legal assistance and extradition are contained in a number of bilateral and multilateral agreements as well as conventions of the European Union.

Paragraph 1 requires the Member States to lend each other every possible assistance in matters of judicial and police procedure relating to offences covered by this Framework Decision. Paragraph 2 states that if several Member States have jurisdiction, they will consult one another with a view to coordinating action and, where appropriate, to bringing effective prosecutions. The paragraph also requires full use to be made of existing cooperation mechanisms, judicial or otherwise, such as Europol, the exchange of liaison magistrates, the European Judicial Network and the Provisional Judicial Cooperation Unit.

Article 13 (Exchange of information)

Article 13 (1) stresses the importance of having appointed points of contact for the purpose of exchanging information between Member States. Paragraph 2 provides for the circulation of information on which points of contact have been appointed for the purpose of exchanging information pertaining to these offences.

Paragraph 3 provides for the exchange of information between Member States relating to the future commission of a terrorist offence to enable the adoption of appropriate measures to prevent the commission of the offence.

Article 14 (Protection and assistance to victims)

In the European Union's approach against terrorism special importance has been attached to the protection of and assistance to the victims. A Framework Decision was adopted by the Council on 15 March 2001 on the standing of victims in criminal proceedings. In addition, the Commission is working on a Green Paper concerning compensation to crime victims.

Victims of certain kind of terrorist offences (e.g. threats, extortion) are vulnerable. Therefore, it is appropriate for each Member State to ensure that investigation or prosecution not be dependent of the report or accusation made by a person subject to the offence.

Article 15 (Implementation and reports)

Article 15 concerns the implementation and follow-up of this Framework Decision.

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

Paragraph 2 requires the Member States to transmit by that date to the General Secretariat of the Council and to the Commission the provisions transposing the obligations imposed on them under this Framework Decision into national law. On that basis the Commission has to submit a report to the European Parliament and to the Council on the operation of this Framework Decision. Finally, the Council shall assess the extent to which Member States have complied with the obligations imposed by the Framework Decision.

Article 16 (Entry into force)

Article 16 provides that this Framework Decision will enter into force on the third day following that of its publication in the Official Journal of the European Communities.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Union, and in particular Article 29, Article 31(e) and Article 34(2)(b) thereof,

Having regard to the proposal from the Commission,¹

Having regard to the opinion of the European Parliament,²

Whereas:

- (1) Terrorism constitutes one of the most serious violations of the principles of human dignity, liberty, democracy, respect for human rights and fundamental freedoms and the rule of law, principles on which the European Union is founded and which are common to the Member States.
- (2) All or some Member States are party to a number of conventions relating to terrorism. The European Convention on the Suppression of Terrorism³ of 27 January 1977 establishes that terrorist offences cannot be regarded as political offences or as offences connected with political offences or as offences inspired by political motives. That Convention was the subject of Recommendation 1170 (1991) adopted by the Standing Committee, acting on behalf of the Parliamentary Assembly of the Council of Europe, on 25 November 1991. The United Nations has adopted the Convention for the suppression of terrorist bombings of 15 December 1997 and the Convention for the suppression of financing terrorism of 9 December 1999.
- (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 justice⁴. Terrorism was referred to in the conclusions of the Tampere European Council of 15 and 16 October 1999⁵, and of the Santa María da Feira European Council of 19 and 20 June 2000⁶. 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

¹ OJ C , , p. .

² OJ C , , p. .

³ ETS No 90.

⁴ OJ C 19, 23.01.1999, p.1.

⁵ <http://ue.eu.int/en/Info/eurocouncil/index.htm>

⁶ <http://ue.eu.int/en/Info/eurocouncil/index.htm>

2000)⁷. 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.

- (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.
- (5) The Convention based on Article K.3 of the Treaty on European Union, on the establishment of a European Police Office (Europol convention)⁸ refers in particular in Article 2 to improving the effectiveness and cooperation of the competent authorities in the Member States in preventing and combating terrorism.
- (6) Other measures having an impact on terrorism adopted by the European Union are as follows: the Council Decision of 3 December 1998 instructing Europol to deal with crimes committed or likely to be committed in the course of terrorist activities against the life, limb, personal freedom or property⁹; Joint Action 96/610/JHA of 15 October 1996 adopted by the Council on the basis of Article K.3 of the Treaty on European Union concerning the creation and maintenance of a Directory of specialised counter-terrorist competences, skills and expertise to facilitate counter-terrorism-cooperation between the Member States of the European Union¹⁰; Joint Action 98/428/JHA of 29 June 1998 adopted by the Council on the basis of Article K.3 of the Treaty on European Union on the creation of a European Judicial Network¹¹, with responsibilities in terrorist offences, in particular Article 2; Joint Action 98/733/JHA of 21 December 1998 adopted by the Council on the basis of Article K.3 of the Treaty on European Union on making it a criminal offence to participate in a criminal organisation in the Member States of the European Union¹²; and the Council Recommendation of 9 December 1999 on cooperation in combating the financing of terrorism¹³.
- (7) The important work performed by international organisations, in particular the UN and the Council of Europe, must be complemented with a view to closer approximation within the European Union. The profound change in the nature of terrorism, the inadequacy of traditional forms of judicial and police cooperation in combating it and the existing legal loopholes must be combated with new measures, namely, establishing minimum rules relating to the constituent elements and penalties in the field of terrorism.
- (8) Since these objectives of the proposed action cannot be sufficiently achieved by the Member States unilaterally, and can therefore, because of the need for reciprocity, be better achieved at the level of the Union, the Union may adopt measures, in accordance with the principle of subsidiarity as referred to in Article 2 of the EU Treaty and as set out in Article 5 of the EC Treaty. In accordance with the principle of proportionality, as set out in the latter Article, this Framework Decision does not go beyond what is necessary in order to achieve those objectives.

⁷ COM (2000) 782 final.

⁸ OJ C 316, 27.11.1995, p.1.

⁹ OJ C 26, 30.1.1999, p.22.

¹⁰ OJ L 273, 25.10.1996.

¹¹ OJ L 191, 7.7.1998, p. 4.

¹² OJ L 351, 29.12.1998, p.1.

¹³ OJ C 373, 23.12.1999, p.1.

- (9) Measures should be adopted applying not only to terrorist acts committed within the Member States but also to those which otherwise affect Member States. While police and judicial cooperation measures are the appropriate way to combat terrorism in the Union and on an international level, complementary actions may be adopted in order to enhance the impact in the fight against terrorist acts and ensure consistency of the Union's external relations.
- (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.
- (11) The circumstances should be considered aggravated where the offence is committed with particular ruthlessness, affects a large number of persons or is of a particular serious and persistent nature; or committed against persons whose representative position, including internationally protected person, as members of an executive or legislature or their work, dealing with terrorists, makes them terrorist targets.
- (12) The circumstances must be mitigating if terrorists, renouncing their terrorist activity, provide the administrative or judicial authorities with some relevant information helping them to fight against terrorism.
- (13) Jurisdictional rules must be established to ensure that the offence may be prosecuted.
- (14) The European Convention on Extradition of 13 December 1957 is taken into account in order to facilitate prosecution when the offence is committed in a Member State which does not extradite its own nationals.
- (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 Processing of Personal Data¹⁴, Member States should afford each other the widest judicial mutual assistance. Operational contact points should be established for the exchange of information or adequate use should be made of existing cooperation mechanism for that purpose.
- (16) Victims of certain kind of terrorist offences, such as threats, extortion, can be rather vulnerable. Each Member State should accordingly ensure that investigation or prosecution not be dependent on the report or accusation made by a person subject to the offence.
- (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.

¹⁴ ETS No 108.

HAS DECIDED AS FOLLOWS :

Article 1- Subject matter

The purpose of this Framework Decision is to establish minimum rules relating to the constituent elements of criminal acts and to penalties for natural and legal persons who have committed or are liable for terrorist offences which reflect the seriousness of such offences.

Article 2 – Scope

This Framework Decision shall apply to terrorist offences:

- (a) committed or prepared in whole or in part within a Member State; or
- (b) committed by a national of a Member State; or
- (c) committed for the benefit of a legal person established in a Member State; or
- (d) committed against the institutions or people of a Member State.

Article 3 – 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 political, economic, or social structures of a country, will be punishable as terrorist offences :
 - (a) Murder;
 - (b) Bodily injuries;
 - (c) Kidnapping or hostage taking;
 - (d) Extortion;
 - (e) Theft or robbery;
 - (f) Unlawful seizure of or 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;
 - (i) Interfering with or disrupting the supply of water, power, or other fundamental resource;
 - (j) Attacks through interference with an information system;

- (k) Threatening to commit any of the offences listed above;
 - (l) Directing a terrorist group;
 - (m) Promoting of, supporting of or participating in a terrorist group.
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).

Article 4 - Instigating, aiding, abetting and attempting

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

Article 5 - Penalties and sanctions

1. Member States shall ensure that terrorist offences and conducts referred to in Articles 3 and 4 are punishable by effective, proportionate and dissuasive penalties.
2. Member States shall ensure that terrorist offences referred to in Article 3 are punishable by terms of deprivation of liberty with a maximum penalty that is no less than the following:
 - (a) the offence referred to in Article 3(1)(a): Twenty years
 - (b) the offence referred to in Article 3(1)(l): Fifteen years
 - (c) the offences referred to in Article 3(1)(c), (g), (h) and (i): Ten years
 - (d) the offence referred to in Article 3(1)(m): Seven years
 - (e) the offences referred to in Article 3(1) (f)and (j): Five years
 - (f) the offence referred to in Article 3(1)(b): Four years
 - (g) the offences referred to in Article 3(1)(d), (e), and (k) : Two years.
3. Member States shall ensure that ancillary or alternative sanctions such as community service, limitation of certain civil or political rights or publication of all or part of a sentence may 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.

Article 6 - Aggravating circumstances

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.

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, or
 - (iv) prevent further terrorist offences.

Article 8 - Liability of legal persons

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.
2. Apart from the cases provided for in paragraph 1, Member States shall ensure that a legal person 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 terrorist offences or conduct referred to in Articles 3 and 4 for the benefit of that legal person by a person under its authority.
3. Liability of a legal person under paragraphs 1 and 2 shall not exclude criminal proceedings against natural persons who commit terrorist offences or engage in the conducts referred to in Articles 3 and 4.

Article 9 – Sanctions for legal persons

1. Member States shall ensure that a legal person held liable pursuant to Article 8(1) 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 establishment which have been used for committing the offence.
2. Member States shall ensure that a legal person held liable pursuant to Article 8(2) is punishable by effective, proportionate and dissuasive sanctions or measures.

Article 10 - Jurisdiction

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; or
 - (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; or
 - (d) against its institutions or people.
2. A Member State may decide that it will not apply, or that it will apply only in specific cases or circumstances, a jurisdiction rule set out in paragraph 1(b), (c) or (d).
3. Member States shall inform the General Secretariat of the Council and the Commission accordingly, where appropriate with an indication of the specific cases or circumstances in which the decision applies.

Article 11 - Extradition and prosecution

1. A Member State which, under its law, does not extradite its own nationals shall establish its jurisdiction over terrorist offences or conduct referred to in Articles 3 and 4 when committed by its own nationals on the territory of another Member State or against another Member State's institutions or people.

2. A Member State shall, when one of its nationals is alleged to have committed, in another Member State, an terrorist offence or conduct referred to in Articles 3 and 4, and it does not extradite that person to that other Member State solely on the ground of his nationality, submit the case to its competent authorities for the purpose of prosecution if appropriate.

In order to enable prosecution to take place, the Member State in which the offence or conduct was committed shall forward to the competent authorities of the other State all the relevant files, information and exhibits in accordance with the procedures laid down in Article 6(2) of the European Convention on Extradition of 13 December 1957. The requesting Member State shall be informed of the initiation and outcome of any prosecution.

3. For the purpose of this Article, a "national" of a Member State shall be construed in accordance with any declaration made by that State under Article 6(1)(b) and (c) of the European Convention on Extradition.

Article 12 - Cooperation between Member States

1. In accordance with the applicable conventions, multilateral or bilateral agreements or arrangements, Member States shall afford each other the widest measure of mutual assistance in respect of proceedings relating to terrorist offences or conduct referred to in Articles 3 and 4.
2. Where several Member States have jurisdiction in respect of such offences, they shall consult one another with a view to coordinating their action in order to prosecute effectively. They shall make full use of judicial cooperation and other mechanisms.

Article 13 - Exchange of information

1. Each Member State shall designate operational contact points, which may be an existing operational structures or one newly established for this purpose, for the exchange of information and for other contacts between Member States for the purposes of applying this Framework Decision.
2. Each Member State shall inform the General Secretariat of the Council and the Commission of its operational contact point as referred to in paragraph 1. The General Secretariat shall notify that information to the other Member States.
3. Where a Member State has information relating to the future commission of a terrorist offence affecting another Member State, it shall provide that information to the other Member State. For that purpose operational contact points referred to in paragraph 1 may be used.

Article 14 - Protection and assistance to victims

Each Member State shall provide that investigations into or prosecution of terrorist offences over which it has jurisdiction shall not be dependent on the report or accusation made by a victim of the offence, at least in cases where Article 8(1)(a) applies.

Article 15 - Implementation and reports

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.

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.

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

Article 16 - Entry into force

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

Done at Brussels,

*For the Council
The President*