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

PROVISIONAL
2001/0217(CNS)

31 October 2001

*

DRAFT REPORT

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

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)

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 26 October 2001 the Council consulted Parliament, pursuant to Article 39, paragraph 1 of the EU Treaty, on the proposal for a Council decision on combating terrorism (COM(2001) 521 – 2001/0217(CNS)).

At the sitting of 26 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 the Council consulted Parliament, pursuant to Article 39, paragraph 1 of the EU Treaty, on the 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 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 for its opinion (C5-.....).

[ANNONCE1YES]

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

the Commission proposal and the draft report at its ##.

At the ## it adopted the draft legislative resolution ##.

The following were present for the vote: #####

#####.

The report was tabled on ##.

##

1. LEGISLATIVE PROPOSAL

Proposal for a framework Council 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 C ##.

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 1

(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.

(1) Terrorism constitutes the most serious **violation** 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.

Justification

In today's EU, there can be no question that terrorism constitutes the most serious violation of human rights, because it is an assault on the most fundamental human right of all, the right to life.

Amendment 6

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 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 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.

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.

On the other hand, there is no need to mention either the communication from the Commission or the La Gomera Declaration in connection with the framework decision.

Amendment 9
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

"Mutatis mutandis", the reasons stated for Amendment 8 apply here.

Amendment 10
Recital 5

(5) The Convention based on Article K.3 of the Treaty on European Union, on the establishment of a European Police Office (Europol convention) 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.

(5) The Convention based on Article K.3 of the Treaty on European Union, on the establishment of a European Police Office (Europol convention), ***signed in Brussels on 26 July 1995***, 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.

Justification

It is important to indicate the date of signature of the convention.

Amendment 11
Recital 6, last phrase

... and the Council Recommendation of 9 December 1999 on cooperation in combating the financing of terrorism. Deleted

Justification

It may be an exaggeration to say that the Council recommendation can have an impact on terrorism.

Amendment 12

Recital 7

(7) The important work performed by international organisations, in particular the UN and the Council of Europe, must be completed 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.

(7) The change in the nature of terrorism, the inadequacy of traditional forms of judicial and police cooperation in combating it and the existing legal ***shortcomings of territoriality*** must be combated ***by approximating the legislation of the Member States,*** establishing minimum rules relating to the constituent elements ***of criminal offences*** and penalties in the field of terrorism.

Justification

It is the recent change in the nature of terrorism and the creation of an area of freedom, security and justice that justify adopting legislative measures as provided for in letter (e) of Article 31 of the TEU.

The amendment also seeks to organise the provision more clearly.

Amendment 13
Recital 9

(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.

(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 *must* be adopted in order to enhance the impact in the fight against terrorist acts and ensure consistency of the Union's external relations.

Justification

It is essential to adopt all measures necessary to combat terrorism.

Amendment 14
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 15
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 16
Recital 11

(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 persons, as members of an executive ***or*** legislature or their work, dealing with terrorists, makes them terrorist targets.

(11) The circumstances should be considered aggravated where the offence is committed with ruthlessness, affects a large number of persons or is of a serious and persistent nature; or committed against persons whose representative position, including internationally protected persons, as members of an executive, legislature ***or judiciary*** or their work, dealing with terrorists, makes them terrorist targets.

Justification

It is sufficient that the offence should be serious or ruthless.

On the other hand, members of the judiciary are also very exposed to the risk of terrorist attack.

It goes without saying that members of the army form part of the executive.

Amendment 17

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 18
Article 3, paragraph 1, letter (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 <i>of control</i> of, <i>thereby endangering persons</i> , or <i>serious</i> damage to state or government facilities, means of public transport, infrastructure facilities, places of public use, and <i>public or private</i> property <i>by means of arms or dangerous acts</i> ; |
|--|---|

Justification

It is necessary to state clearly the elements which constitute the terrorist offence, in order not to confuse it with unlawful occupation, which may constitute a form of protest which is tolerated in the context of public demonstrations.

Amendment 19
Article 3, paragraph 1, letter (g)

- | | |
|---|---|
| (g) Fabrication, possession, acquisition, transport or supply of weapons or explosives; | (g) Fabrication, possession, acquisition, transport <i>or illicit use</i> 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 20
Article 3, paragraph 1, letter (h)

(h) Releasing contaminating substances, or causing fires, explosions or floods, endangering people, property, animals or the environment;

(h) Releasing contaminating substances, ***illegally spreading or distributing chemical or biological substances, thereby endangering people***, or causing fires, explosions or floods, endangering people, property, animals or the environment, ***provided that these are serious***;

Justification

It is necessary to indicate that the release of substances must endanger people and that the other acts referred to in letter (h) must be of a serious nature.

Amendment 21
Article 3, paragraph 1, letter (j)

(j) ***Attacks through interference with an information system***;

(j) ***Indiscriminate disruption of a computer system such as to endanger people or to cause major and serious damage to property***;

Justification

The offence referred to here becomes an act of terrorism, irrespective of the issue of intent, if it endangers people or causes serious damage to property.

Amendment 22
Article 3, paragraph 1, letter (k)

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

(k) ***Seriously and credibly*** threatening to commit any of the offences listed above;

Justification

The threat must be serious and a person exercising all reasonable and usual care, skill and forethought should have well-founded reasons for believing that it will be carried out.

Amendment 23
Article 3, paragraph 1, letters (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 24
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 25
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 and unlawfully, 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,

(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 26 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, listing 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 27
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*;

(a)a *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 28
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 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 29
Article 14, paragraph 2a (new)

2a. Each Member State shall take all possible measures to provide appropriate assistance to the family of the victim. 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.

DRAFT LEGISLATIVE RESOLUTION

European Parliament legislative resolution on the 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 proposal for a Council framework decision on combating terrorism (COM(2001)521¹),
 - having been consulted by the Council pursuant to Article 39, paragraph 1 of the EU Treaty (C5-0452/2001),
 - having regard to Rule 67 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 (A5-0000/2001),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to alter its proposal accordingly, pursuant to ##;
 3. Calls on the Council to notify Parliament should it intend to depart from the text approved by Parliament;
 4. Calls for the conciliation procedure to be initiated should the Council intend to depart from the text approved by Parliament;
 5. Asks to be consulted again if the Council intends to amend the Commission proposal substantially;
 6. Instructs its President to forward its position to the Council and Commission.

¹ OJ C ##.

LEGISLATIVE PROPOSAL

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

The proposal is amended as follows:

Text proposed by the Commission¹

Amendments by Parliament

Amendment 30 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 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.

¹ OJ C ##.

Amendment 31
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 (***Justice***) thereof ***which requires inter alia that individuals are 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 32
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 33

Article 2, paragraph (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 34
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 35
Article 6, paragraph (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 36
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 37
Article 10

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.

Any coercive measures taken by the executing Member State 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, **must be necessary and proportionate and respect relevant instruments on human rights.**

Justification

It should be clear that any coercive measures taken by the Member States in the implementation of the European arrest warrant must respect human rights.

Amendment 38
Article 11, paragraph (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 39
Article 11, paragraph (3)

3. ***The requested person shall have the right to seek legal aid under the same conditions as nationals of the executing Member State.***

Justification

The requested person should also be entitled to receive legal aid under the same conditions as nationals of the executing Member State.

Amendment 40
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 41
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 requested person shall have the possibility to make submissions to the executing judicial authority before the decision is taken.

Justification

The requested person should have the right to make submissions to the authority which will decide on the arrest warrant as it may be necessary to inform the executing authority of circumstances referred to in Articles 27 to 39.

Amendment 42
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 43
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 ***contested*** hearing, held in accordance with the national rules of criminal procedure ***which shall respect the right of defence of the requested person***:

- (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 44
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 45 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 46 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 47

Article 24, paragraph (3) (new)

3. 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 48

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 49
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 as 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 50
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 51
Article 29

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| <p>1. The executing judicial authority shall refuse to execute a European arrest warrant, if a judicial authority in the <i>executing</i> Member <i>State</i> has passed final judgement upon the requested person in respect of the offence for which the European arrest warrant has been issued.</p> <p>2. The execution of a European arrest warrant <i>shall</i> be refused if the judicial authorities of the <i>executing</i> Member <i>State</i> have decided either not to institute or to terminate proceedings in respect of the offence for which the European arrest warrant has been issued.</p> | <p>1. The executing judicial authority shall refuse to execute a European arrest warrant, if a judicial authority in <i>one of</i> the Member <i>States</i> has passed final judgement upon the requested person in respect of the offence for which the European arrest warrant has been issued.</p> <p>2. The execution of a European arrest warrant <i>may</i> be refused if the judicial authorities of <i>one of</i> the Member <i>States</i> have decided either not to institute or to terminate proceedings in respect of the offence for which the European arrest warrant has been issued.</p> |
|---|---|

Justification

In accordance with the Charter of Fundamental Rights, the principle of non bis in idem should apply whenever a decision has been taken in any of the Member States. However, if the requested person has not been prosecuted, for example for lack of proof, this does not necessarily mean that the executing Member State should refuse to execute the arrest warrant.

Amendment 52
Article 30a (new)

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 53 Article 35

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 did not provide 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**, 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.

Justification

The issuing Member State must provide proof that the person was adequately informed.

Amendment 54 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

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.

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 55 Article 37a (new)

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 56

Article 40, paragraph (2)

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

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 refer a dispute to the Council and to the ECJ.

Amendment 57
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 58
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 alternatively on a secure means of transmission which would then be accepted in all cases.

Amendment 59 Article 49

3. ***If a Member State considers that there is a serious risk that a breach or violation of fundamental human rights has taken place in a particular case, it may suspend the execution of the European arrest warrant pending a preliminary ruling on the validity of the arrest warrant pursuant to Article 35(1) TEU or a referral of a dispute to the Council and Court pursuant to Article 35(7) TEU.***

Justification

In the case of a serious violation of human rights in a single case, the executing Member State should be able to suspend the enforcement of the European Arrest warrant while it seeks a ruling on the validity of the arrest warrant from the ECJ or it invokes the procedure in Article 35(7).

Amendment 60
Article 52

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 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 61
Annex

(d) Has the judgement 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 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

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

(Consultation procedure)

The European Parliament,

- having regard to the Council framework decision on the European arrest warrant and the surrender procedures between the Member States (COM(2001)522¹),
 - having been consulted by the Council pursuant to Article 39, paragraph 1 of the EU Treaty (C5-00453/2001),
 - having regard to Rule 67 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 (A5-0000/2001),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to alter its proposal accordingly, pursuant to [ARTEG];
 3. Calls on the Council to notify Parliament should it 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 C ##.

EXPLANATORY STATEMENT