

Proposal for a Council Framework Decision on combating terrorism

(2001/C 332 E/17)

COM(2001) 521 final — 2001/0217(CNS)

(Submitted by the Commission on 19 September 2001)

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,

Having regard to the opinion of the European Parliament,

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 Terrorism⁽¹⁾ of 27 January 1977 establishes that terrorist offences cannot be regarded as a 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 justice⁽²⁾. Terrorism was referred to in the conclusions of the Tampere European Council of 15 and 16 October 1999⁽³⁾, and of the Santa Maria da Feira European Council of 19 and 20 June 2000⁽³⁾. 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)⁽⁴⁾. 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)⁽⁵⁾ 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 property⁽⁶⁾; 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 Union⁽⁷⁾; 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 Network⁽⁸⁾, 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 Union⁽⁹⁾; and the Council Recommendation of 9 December 1999 on cooperation in combating the financing of terrorism⁽¹⁰⁾.

⁽⁴⁾ COM(2000) 782 final.

⁽⁵⁾ OJ C 316, 27.11.1995, p. 1.

⁽⁶⁾ OJ C 26, 30.1.1999, p. 22.

⁽⁷⁾ OJ L 273, 25.10.1996.

⁽⁸⁾ OJ L 191, 7.7.1998, p. 4.

⁽⁹⁾ OJ L 351, 29.12.1998, p. 1.

⁽¹⁰⁾ OJ C 373, 23.12.1999, p. 1.

⁽¹⁾ ETS No 90.

⁽²⁾ OJ C 19, 23.1.1999, p. 1.

⁽³⁾ <http://ue.eu.int/en/Info/eurocouncil/index.htm>

- (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.
- (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 Data ⁽¹⁾, 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,

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

⁽¹⁾ ETS No 108.

(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, a 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, multi-lateral 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*.