



**COUNCIL OF
THE EUROPEAN UNION**

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LIMITE

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NOTE

from : Presidency
to : Working Party on Substantive Criminal Law

Subject : Proposal for a Council Framework Decision on certain procedural rights in
 criminal proceedings throughout the European Union

Please find attached the German Presidency compromise proposal on the abovementioned proposal for a Council Framework Decision, to be discussed during the next meeting of the Working Party on Substantive Criminal Law on 19 January 2007.

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 31(1)(c) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas:

- (1) The European Union has set itself the objective of developing an area of freedom, security and justice. This presupposes an understanding of freedom, security and justice on the part of all the Member States which is identical in its essential elements, and is based on the principles of democracy, respect for human rights and fundamental freedoms, as well as the rule of law.
- (2) Police and judicial cooperation in the European Union must provide a high degree of security for all citizens. One of the cornerstones for this is the principle of mutual recognition of judicial decisions, established in the conclusions of the Tampere European Council and reaffirmed in The Hague Programme of 2004.
- (3) Mutual recognition is contingent on trust. Recognition of decisions in criminal matters hence presupposes that Member States have trust in each other's criminal justice systems. Adherence to the minimum standards set out in the European Convention for the Protection of Human Rights and Fundamental Freedoms, in arrests as well as in criminal proceedings, forms the basis for such trust. This Framework Decision, to the concrete form of which the Council of Europe has also contributed with its proposals, is intended to reaffirm and carefully expand the minimum standards described in the said Convention – as interpreted and refined in the case-law of the European Court of Human Rights – which are recognised by all Member States. No Member State of the European Union may however fail to meet the standards of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

- (4) Over and above the provisions of the said Convention, this Framework Decision additionally confers
- the right to information concerning fundamental procedural rights, including the rights established by this Framework Decision,
 - the extension of the rights established by this Framework Decision to proceedings for the execution of a European Arrest Warrant or for the extradition or transfer of an arrested person to an international court.
- (5) Without prejudice to Article 7, the provisions of the Framework Decision are not intended to affect special measures based on national legal provisions to combat crime which is aimed at destroying the foundations of the rule of law. Prosecution of these serious and complex forms of crime, in particular terrorism, may justify restrictions on procedural standards, provided that such restrictions are strictly necessary and proportionate and that the procedural rights are not drained of their substance.
- (6) Notwithstanding that the European Convention for the Protection of Human Rights and Fundamental Freedoms establishes more extensive protective rights, this Framework Decision should initially include only certain areas in which specific joint minimum guarantees and practical action for that purpose are to be agreed on:
- the right to legal assistance,
 - the guarantee of legal assistance free of charge for persons who are unable to meet the costs,
 - [¹ the right to obtain the attendance and examination of witnesses,]
 - the right to free interpretation and translation of documents,
 - the provision, to the individuals concerned, of information on their fundamental procedural rights.

¹ This topic is new, but corresponds to Article 6(3)(d) of the ECHR.

The practical measures agreed upon in order to implement these minimum guarantees are listed in the Annex to this Framework Decision,

HAS ADOPTED THIS FRAMEWORK DECISION:

FRAMEWORK DECISION ON CERTAIN PROCEDURAL RIGHTS IN CRIMINAL PROCEEDINGS THROUGHOUT THE EUROPEAN UNION

Article 1

Subject matter and scope

1. With a view to facilitating the mutual recognition of judicial decisions between the Member States of the European Union and to safeguarding the fairness of proceedings against persons charged with a criminal offence or arrested in connection with a criminal offence, this instrument establishes minimum standards to be respected by all the Member States of the European Union with respect to certain rights of such persons.
2. "Charged with a criminal offence" and "arrested" shall be interpreted in accordance with the case law of the European Court of Human Rights relating to Articles 5 and 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
3. The minimum rights for persons arrested in connection with a criminal offence shall also apply in proceedings to review the legality of the arrest.
4. Unless otherwise provided in this Framework Decision, the meaning and scope of provisions of this Framework Decision which correspond to rights guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms shall be the same as those laid down by the said Convention and as developed in the relevant case-law of the European Court of Human Rights.

5. Insofar as individual Member States have made reservations with regard to individual provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms, in conformity with Article 57 of the said Convention, these shall also apply with regard to the scope of this Framework Decision and to the rights provided for therein.

Article 2

Right to information

1. Member States shall ensure that any person charged with a criminal offence is informed promptly, in a language which he or she understands and in detail, of the nature and cause of the accusation against him or her and of the procedural rights that he or she has.
2. Member States shall ensure that any person who is charged with a criminal offence and therefore arrested shall, in addition to the right referred to in paragraph 1, be informed promptly, in a language which he or she understands, of the reasons for his or her arrest and of the procedural rights that he or she has.
3. The information to be given in accordance with paragraphs 1 and 2 shall include in particular information on the rights laid down in this Framework Decision of defence, to legal assistance, free of charge and to free interpretation and translation of procedural documents.

Article 3
Right of defence

Member States shall ensure that:

- 1) every person charged with a criminal offence
 - (a) has adequate time and opportunity to prepare his or her defence;
 - (b) is able to defend himself or herself in person or through legal assistance of his or her own choosing or, if he or she does not have sufficient means to pay for legal assistance, is given such assistance free of charge when the interests of justice so require;
 - [(c)¹ is able to examine witnesses against him or her, or have them examined, and can obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her,]

- 2) every person who is charged with a criminal offence and arrested in that connection
 - (a) is able to contact a legal representative [immediately] after his or her arrest, consult with such a representative and have such a representative present during his examination,
 - (b) is able to consult with his or her legal representative out of hearing of third parties and without the content of this consultation being monitored by any other means,
 - (c) is able to obtain legal assistance of his or her own choosing or, if he or she does not have sufficient means to pay for legal assistance, is given such assistance free of charge when the interests of justice so require.

Article 4
Right to interpretation

Member States shall ensure that any person charged with a criminal offence or arrested in that connection is provided with the free assistance of an interpreter if he or she does not understand or speak the language used in court.

¹ This topic is new, but corresponds word-for-word to Article 6(3)(d) of the ECHR.

Article 5

Right to translation of documents

Member States shall ensure that any person charged with a criminal offence or arrested in that connection receives, free of charge, a translation of the documents necessary to ensure a fair trial if the person concerned does not understand the language in which those documents are drawn up. In the case of an arrest, at least those documents which are essential in order to review its legality shall be translated.

Article 6

Evaluating the effectiveness of the Framework Decision

1. The effectiveness of this Framework Decision shall be evaluated in accordance with the mechanisms to be established under the Treaty on European Union.
2. In order to facilitate an evaluation, Member States shall ensure due cooperation and the provision of information.

Article 7

Non-regression clause

Nothing in this Framework Decision shall be construed as limiting or derogating from any of the rights and procedural safeguards that may be ensured under the European Convention for the Protection of Fundamental Rights and Freedoms or the laws of any Member States and which provide a higher level of protection.

Article 8
Implementation

1. Member States shall take the necessary measures to comply with the provisions of this Framework Decision by [...].
2. By the same date Member States shall transmit to the General Secretariat of the Council and to the Commission the text of the provisions transposing into their national law the obligations imposed on them under this Framework Decision.
3. The Commission shall, by [...], submit a report to the European Parliament and to the Council, assessing the extent to which the Member States have taken the necessary measures in order to comply with this Framework Decision, accompanied, if necessary, by legislative proposals.
4. On the basis of the Commission's report the Council shall assess the extent to which the Member States have complied with this Framework Decision as regards implementation.
5. Regular evaluation and monitoring of the operation of the provisions of this Framework Decision shall be carried out in accordance with Article 6 above.

Article 9
Entry into force

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

Done at Brussels, [...]

For the Council
The President
[...]

Member States will take the following practical action in order to ensure compliance with the fundamental rights in criminal proceedings established both in this Framework Decision and in the European Convention for the Protection of Human Rights and Fundamental Freedoms:

I. On general information concerning existing rights in criminal proceedings

To inform citizens and legal practitioners in the Member States of the European Union of the existing fundamental rights in criminal proceedings, the Member States shall, within their national competence, endeavour to

- refer, particularly on the Internet homepages of the police and judicial authorities, to judgments of the European Court of Justice in Luxembourg and of the European Court of Human Rights in Strasbourg concerning minimum standards of procedural rights in criminal proceedings,
- translate suitable judgments of the Strasbourg Court concerning minimum standards of procedural rights in criminal proceedings into their official languages, publish and disseminate them, in particular on the Internet homepages of the police and judicial authorities, to increase awareness of the European Convention for the Protection of Human Rights and Fundamental Freedoms,
- organise further training events for police officers, judges and public prosecutors on joint minimum standards in criminal procedure in the European Union.

II. On the right to information

To guarantee the right to information under this Framework Decision, Member States shall, within their national competence, endeavour to

- have available, and use, in their police stations, a "letter concerning rights" drafted in all the languages of the European Union, listing the essential rights of a person concerned.

III. On the right of defence

To guarantee the right of defence, Member States shall, within their national competence, endeavour to

- have available, in their police stations, a list of lawyers who can offer prompt initial legal advice and assistance to the person concerned following arrest,
- provide for undisturbed contact between the person concerned and their legal counsel,
- propose to local lawyers' associations the establishment of 24-hour emergency services.

IV. On the right to interpretation and translation of documents

To guarantee the right to interpretation and the translation of documents, Member States shall, within their national competence, endeavour to

- develop suitable, effective national standards for interpretation services (including sign language interpretation) in the field of criminal prosecution,
- organise training for court interpreters in appropriate institutions.

The Commission is invited to provide suitable support, including financial assistance, for projects of the Member States of the European Union and of the Council of Europe which would serve to implement the objectives of this Framework Decision.

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