

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 Member States which is essentially the same, 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 helps provide a high degree of security for all citizens. The cornerstone of the area of freedom, security and justice is the principle of mutual recognition of judicial decisions, as established in the conclusions of the 1999 Tampere European Council and reaffirmed in The Hague Programme of 2004.
- (3) Mutual recognition is contingent on trust. Recognition of decisions in criminal matters 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 respect of 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 advice, is intended to reaffirm and carefully to 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 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 provides for the application of rules defining rights to proceedings for the execution of a European Arrest Warrant (EAW), and
 - confers the right to information concerning fundamental procedural rights, including , for those Member States making a Declaration to opt in to the scope set out in Article XX, rules defining certain rights of persons arrested in connection with or charged with

a criminal offence in order to safeguard the fairness of criminal proceedings throughout the European Union,

(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.

Or (5) "The imperatives of the fight against certain serious forms of crime in particular terrorism may justify certain restrictions to the rights of defence. The proposed provisions are not intended to affect specific measures in force in national legislation insofar as they are strictly proportionate to their purpose; compensatory measures to protect the interests of the accused so as to maintain the fairness of the proceedings and to ensure that procedural rights set out in Articles 2 to 6 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 [...] includes, for those Member States making a Declaration to opt in to the scope set out in Article XX, only certain areas in which specific joint minimum guarantees and practical action for that purpose are to be agreed on:

- the provision, to the individuals concerned, of information on their fundamental procedural rights,
- the right to legal assistance,
- the guarantee of legal assistance free of charge for persons who are unable to meet the costs,
- the right to obtain the attendance and examination of witnesses,
- the right to free interpretation and translation of documents,

(6a) The provisions laid down in this Framework Decision which correspond to rights guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms shall be interpreted in accordance with the case-law of the European Court of Human Rights, *inter alia*

- the right of a person who has been charged with a criminal offence, to defend himself in person can be overridden when there are relevant and sufficient grounds for holding that this is necessary in the interests of justice, including where mandatory assistance by counsel at some or all stages of the proceedings is required,
- the right of a person to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him, as covered by Article 3 (2) c) can be restricted if this is necessary in the interests of justice

(6b) The mechanism provided for in Article XX has been construed so as to take into account Member States' practical considerations as regards what may be necessary to improve judicial cooperation with a view to ensuring compatibility in rules applicable in Member States.

(7) This Framework Decision sets common minimum standards. Nothing in it should be interpreted so as to prevent Member States from adopting measures that further enhance individuals' rights in criminal proceedings.

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 judicial co-operation in criminal matters and in particular mutual recognition of judicial decisions between Member States of the European Union by virtue of Article 31 TEU, this Framework Decision establishes rules defining certain rights of persons arrested in execution of a European Arrest Warrant. *or* [persons arrested in execution of a mutual recognition instrument] *or* [person arrested in connection with a criminal offence of a cross border character, including persons arrested in execution of a European Arrest Warrant]

2. Where a Member State has made a Declaration in accordance with Article XX (Article 1(4)?), this Framework Decision applies the rules defining the rights it establishes under Articles 2a, 3a, 4a and 5a to persons arrested in connection with or charged with a criminal offence in order to safeguard the fairness of criminal proceedings throughout the European Union. "Criminal proceedings" shall mean any proceedings which could lead to a criminal penalty ordered by a criminal court. "Criminal proceedings" shall not include proceedings for the execution of a European Arrest Warrant.
3. Articles 1, 2, 3, 4, 5 and 6-9 apply to all Member States.
4. Each Member State may, either when this Framework Decision is adopted or at a later date, notify the General Secretariat of the Council that it intends to apply Articles 2a, 3a, 4a and 5a of the Framework Decision [to criminal proceedings in that Member State].
5. No later than 3 years after the entry into force of this Framework Decision, the Commission shall establish a report on the basis of the information received in accordance with Articles 6 and 8 of this Framework Decision. The Council shall on the basis of the report review this Framework Decision with a view to considering whether Articles 1(2), (3) and 1(4) *or* [the provisions of this Framework Decision] should be repealed or modified.
6. "Arrested" and "charged with a criminal offence" shall be interpreted in accordance with the case-law of the European Court of Human Rights relating to Articles 5 (1) (c) and 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
7. [...]. Unless otherwise provided in this Framework Decision, the meaning of the provisions of Articles 2 to 5 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.
8. This Framework Decision does not cover
 - proceedings for violation of professional duties (disciplinary proceedings);
 - proceedings for military offences or other offences subject to military jurisdiction insofar as individual Member States have made reservations under section 57 of the

European Convention for the Protection of Human Rights and Fundamental Freedoms;

- proceedings for acts punishable by administrative authorities as offences against legislative provisions, other than proceedings before a criminal court to which an appeal is made, against a decision in this area by an administrative authority.

Article 2

Right to information in European Arrest Warrant cases

1. In proceedings for the execution of an EAW, Member States shall ensure that **the** executing competent [...] authority shall inform any person subject to such proceedings promptly after **his presentation before this authority** in a language which he understands of the EAW and its contents, and also of the relevant procedural rights he may exercise in accordance with Articles 3, 4 and 5 and of the possibility of consenting to surrender.

Article 2a

Right to information on arrest in criminal proceedings

1. Member States shall ensure that any person arrested in connection with a criminal offence is informed promptly, in a language which he or she understands, of the reasons for his arrest, of any charge against him and of the relevant procedural rights that he may exercise at this stage of the proceedings.
2. Member States shall ensure that any person charged with a criminal offence is informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him and of the relevant procedural rights that he may exercise at this stage of the proceedings.
3. [...]

Article 3

Right to legal assistance in EAW proceedings

Member States shall ensure that every person arrested in execution of a European Arrest Warrant:

- (a) is able to have a legal representative contacted after his arrest,
- (b) has adequate opportunity to consult with his legal representative out of hearing of third parties and without the content of this consultation being monitored by any other means;

monitoring may in exceptional circumstances be justified, if and as far as the fight against serious and complex forms of crime, in particular terrorism, so requires and subject to the presence of adequate and sufficient safeguards

- (c) is generally able to obtain legal assistance of his own choosing,
- (d) is given legal assistance free of charge when the interests of justice so require, if he or she has not sufficient means to pay for legal assistance.

Article 3a

Right to defence in criminal proceedings

Member States shall ensure that:

1. every person arrested in connection with a criminal offence:
 - (a) is able to have a legal representative contacted after his arrest,
 - (b) has adequate opportunity to consult with his legal representative out of hearing of third parties and without the content of this consultation being monitored by any other means;
monitoring may in exceptional circumstances be justified, if and as far as the fight against serious and complex forms of crime, in particular terrorism, so requires and subject to the presence of adequate and sufficient safeguards
 - (c) is generally able to obtain legal assistance of his own choosing,
 - (d) is given legal assistance free of charge when the interests of justice so require, if he has not sufficient means to pay for legal assistance.
2. every person charged with a criminal offence:
 - (a) has adequate time and facilities to prepare his defence,
 - (b) is able to defend himself in person or through legal assistance of his own choosing or, if he 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) is able to examine witnesses against him, or have them examined, and can obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him.

Article 4

Right to interpretation in EAW proceedings

Member States shall ensure that any person arrested in execution of a European Arrest Warrant is provided with the free assistance of an interpreter if he does not understand or speak the language used in court.

Article 4a

Right to interpretation in criminal proceedings

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

Article 5

Right to translation in EAW proceedings

With regard to proceedings for the execution of a European Arrest Warrant, Member States shall ensure that the person who is the subject of the EAW is entitled to receive, free of charge, a translation or interpretation of the said document if he or she does not understand the language in which it is drawn up. In exceptional circumstances an oral summary may suffice, provided that this does not affect the fairness of the criminal proceedings as a whole.]

Article 5a

Right to translation of documents in criminal proceedings

Member States shall ensure that any person arrested in connection with, or charged with, a criminal offence is entitled to receive, free of charge, a translation, or interpretation of the detention order, the indictment and the judgment, where those documents exist, if the person concerned does not understand the language in which those documents are drawn up. In exceptional circumstances an oral summary may suffice, provided that this does not affect the fairness of the criminal proceedings as a whole.

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

[...]