

# Irish lead resistance to draft EU law on suspects' rights

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**European diary:** Irish opposition to a draft EU law to guarantee a minimum level of rights to criminal suspects risks provoking an angry dispute between EU justice ministers tomorrow.

Ireland, supported by Britain, Malta, Cyprus, Slovakia and the Czech Republic, has waged a three-year campaign against the so-called framework decision on procedural safeguards in criminal proceedings. The draft legislation proposed by the European Commission would set a minimum standard of rights for suspects such as the right to access a lawyer, legal aid, interpretation and translation. It would also extend these rights to intra-EU extradition cases organised under the European arrest warrant.

EU Justice Commissioner Franco Frattini says the draft legislation is necessary as a "trust-building measure" as states move towards mutual recognition of their legal systems. Germany, the current holder of the six-month rotating EU presidency, is a strong proponent of minimum safeguards, arguing there is a need to protect citizens' rights, particularly as individual states and the EU have introduced tough anti-terrorism laws.

The measure has the support of most EU states but a "coalition of the unwilling" led by Ireland outlined to EU ambassadors last week its intention to block the measure.

Ireland has articulated three main arguments against the draft legislation since it was formally proposed in April 2004: it already has the proposed procedural rights in place for suspects; bringing procedural rights within the EU legal ambit risks introducing potential jurisdictional clashes with the European Court of Human Rights; and these types of decisions should be taken nationally under the concept of subsidiarity.

Justice Minister Michael McDowell has consistently argued that there is no need to tamper with rights already provided in the European Convention on Human Rights.

Britain, Ireland's key ally in the battle against the proposed EU measure, has also warned Brussels that it could undermine its existing common law legal system.

"We have a very different legal system to many other EU states and the concern is once you allow the EU to legislate on domestic procedural rights this will come under pressure," said one British government source, who did not want to be identified.

Yet proponents of the framework decision on procedural rights strongly disagree.

"It is ironic that when the EU wants to bring in repressive measures to fight terrorism or money laundering, we are perfectly happy to go along with them. But when the EU

proposes safeguards, these are rejected," says James MacGuill, an Irish solicitor and member of the executive committee of the European Criminal Bar Association.

Ireland's opposition to the minimum rights proposal also risks leaving Irish citizens exposed when they travel abroad in EU countries that have fewer procedural rights, according to MacGuill, who believes that certain measures in the new Criminal Justice Act 2007 threaten to limit the procedural rights of suspects in the Republic.

Prof Taru Sponken of the University of Maastricht, who has conducted an EU-wide survey on the procedural rights available to suspects in all EU states, also highlights the paradox whereby proposals at EU level for enhanced security are often approved by the council of ministers while those dealing with extra rights are held up.

She also disputes Ireland's contention that it already has enough procedural rights.

"Ireland doesn't allow a lawyer to sit in during police interrogation, which was proposed in the earlier drafts of the framework decision," says Prof Sponken.

Over the past three years, in an attempt to sign up recalcitrant states such as Ireland and Britain, the draft law has been watered down by successive EU presidencies. For example the German presidency compromise proposal included only two new elements that are not in the European Convention on Human Rights (ECHR) to meet concerns expressed by Ireland and Britain of potential jurisdictional clashes between the European Court of Human Rights and the European Court of Justice over rights.

The German proposal provides only for additional rights for suspects in restricted areas such as interpretation and translation and extending these rights in intra-EU extradition requests under the European arrest warrant. Suspects currently do not have any legally guaranteed right to representation when they are the subject of intra-EU extradition proceedings under the European Convention on Human Rights.

But Ireland, Britain and a few other member states refused to back the compromise at last week's meeting of EU ambassadors in Brussels, provoking an angry reaction from German ambassador Wilhelm Schönfelder. He took the unusual step of asking for a show of hands to see which states would move ahead without the opposing minority.

Invoking "enhanced co-operation" - a process where eight or more member states agree to move ahead with an EU proposal on their own - is politically sensitive and there was little appetite for it even among the supporters of the German proposal.

But the question is sure to re-emerge if a negotiated deal on a new EU treaty does not remove the existing national veto over justice decisions at European level. Britain is already gearing up to defend its veto in the area while Ireland has yet to show its card in the run-up to the tough negotiations expected at the EU leaders' summit next week.

Perhaps an early indication of Irish strategy may be given when EU justice ministers debate the framework decision on procedural rights in Luxembourg tomorrow. Mr Schönfelder has ordered a public debate to force EU states to justify their opposition.