



Strasbourg, 9 October 2006

**Observations by the Council of Europe Secretariat on the
Proposal for a EU Council Framework Decision on certain procedural rights in
criminal proceedings throughout the European Union¹**

Executive Summary

The Council of Europe fully recognises the importance of common minimum standards in procedural rights as a necessary precondition for mutual trust in the legal systems of EU member States. The European Convention on Human Rights ("ECHR") and its Protocols contain important guarantees in this respect. Improving the fairness of criminal proceedings is a goal shared by the Council of Europe and the European Union.

In order to avoid legal uncertainty, it will be essential to ensure coherence and consistency between the proposed framework decision and the European Convention on Human Rights, as interpreted by the European Court of Human Rights. To achieve this purpose:

- the framework decision should base itself on the existing ECHR standards, as developed in the case-law of the European Court of Human Rights, and follow their wording as closely as possible;
- there should be specific provisions ensuring consistency with the ECHR in the interpretation of the framework decision; its application must never lead to a level of protection lower than that guaranteed by the ECHR;
- where the framework decision goes beyond the ECHR, it should be clearly stated whether its provisions are intended to set a higher standard than the ECHR, either in meaning or scope of application, or whether they merely set out ways of complying with existing ECHR standards.

In its present shape, the framework decision calls for further improvements in the definition of its scope and wording. Doubts about the framework decision's exact scope of application remain. While some provisions appear to set higher standards than the ECHR, others refer back to domestic law, thereby suggesting a degree of flexibility which does not exist under the ECHR.

Finally, the Council of Europe would welcome practical measures to improve compliance with ECHR standards which would strengthen mutual trust, thereby enhancing the operation of mutual recognition and judicial cooperation in criminal matters, not only within the European Union, but all over Europe.

¹ EU Council document DROIPEN 60 of 27 September 2006.

A INTRODUCTION

1. The proposal for a Framework Decision "on certain procedural rights in criminal proceedings throughout the European Union" ("the Framework Decision") was originally adopted by the Commission on 28 April 2004² and submitted to the Council on 3 May 2005. The proposal is part of a series of legislative initiatives taken with a view to fixing minimum standards common to the member States, so as to facilitate mutual recognition of judgments throughout the European Union.³ They raise a number of important issues in respect of their relationship with the European Convention on Human Rights ("ECHR").
2. On 8 September 2006, the Finnish EU Presidency submitted the proposal for the Framework Decision as it was agreed in July 2006⁴ to the Council of Europe for comments. A more recent draft dated 27 September was submitted on that same day.⁵ The following comments are based on this latter version.
3. The Council of Europe Secretariat is grateful for this opportunity to give comments on a draft legal instrument of the European Union that will directly affect the way in which the European Convention on Human Rights is applied by EU member States. The Council of Europe Secretariat had already previously indicated its readiness to contribute to discussions on the text of this framework decision.
4. The Council of Europe fully recognises the importance of common minimum standards in procedural rights as a necessary precondition for mutual trust in the legal systems of EU member States. It is indeed our common goal to ensure the fairness of criminal proceedings all over Europe.
5. The Council of Europe's interest is to seek to ensure that new legal instruments by the European Union are fully consistent with ECHR standards and provide real added value in respect of the rights guaranteed with respect to existing Council of Europe instruments. Efforts aiming at improving standards are to be warmly welcomed.

B GENERAL REMARKS

The need to ensure consistency with the ECHR

6. Both the Convention and EU framework decisions formulate standards with which the domestic law of member States must comply. The rights and freedoms of the Convention apply directly in the domestic law of States Parties. As an instrument of subsidiary protection, the ECHR may be implemented into domestic legislation in a manner which incorporates higher standards.⁶ The same applies, *mutatis mutandis*, to

² COM(2004) 328 final.

³ See the Explanatory Memorandum to the Framework decision, §§ 1-7.

⁴ EU Council document DROIPE 45 of 19 July 2006.

⁵ EU Council document DROIPE 60 of 27 September 2006.

⁶ See Article 53 of the Convention: "Nothing in [the] Convention shall be construed as limiting or derogating from any of the human rights and fundamental freedoms which may be ensured

framework decisions, which by definition need to be transposed into the domestic legislation of EU member States. In order to avoid that States are faced with conflicting obligations, it is essential to ensure coherence and consistency between the Convention and EU legislation. This requires a high level of precision as regards the scope and wording of the framework decision, allowing for an exact comparison with the corresponding ECHR provisions.

7. The multiplication of instruments from differing legal sources dealing with the same fundamental rights entails the risk of jeopardising legal certainty. Any new framework decision will be authoritatively interpreted by the Court of Justice of the European Communities ("ECJ"). Under Article 35 EU Treaty, the ECJ has jurisdiction to give preliminary rulings on the interpretation of framework decisions, which are binding on national authorities. However, after a preliminary ruling, the case returns to the competent national courts for decision and, following the final domestic judgment, the case can, under the terms of the *Bosphorus*-jurisprudence,⁷ be brought before the European Court of Human Rights. This Court might then give a binding judgment on the interpretation of the applicable Convention provisions, which must be executed by the respondent State. It is therefore perfectly possible to have two judgments on the same case, one from the Luxembourg and the other from the Strasbourg Court. Both their interpretations of the meaning, scope of application and limits of the procedural rights in question will be binding on national courts. Everything should therefore be done to avoid that national authorities be faced with conflicting obligations.
8. First and foremost, EU legislation must in no way restrict or adversely affect the level of protection guaranteed by the ECHR and its protocols, both at present and in the future, as a consequence of the Strasbourg Court's evolving case-law. The Convention should remain the basic reference point for minimum standards. EU instruments in the field of criminal justice are implemented by the member States through national legislation, which in turn must be in conformity with the ECHR.
9. EU instruments on fundamental rights should use the existing Convention standards and follow their wording as closely as possible, including, wherever appropriate, principles established in the Court's case-law. Following the example of the EU Charter of Fundamental Rights,⁸ the framework decision should enunciate the principle that, insofar rights contained therein correspond to rights guaranteed by the ECHR, the meaning and scope of those rights are the same as those laid down by the ECHR (see paragraph framework decision). This is even more important since the framework decision will not cover procedural rights exhaustively.

under the laws of any High Contracting Party or under any other agreement to which it is a Party."

⁷ *Bosphorus v. Ireland* [GC], no. 45036/98, 30.6.2005.

⁸ Article 52 § 3 of the Charter of Fundamental Rights = Article II-112 § 3 of the EU Constitutional Treaty.

10. Provisions widening the scope of application of Convention rights or conferring new, additional rights should be clearly identified and distinguished from those provisions that reiterate Convention rights or "merely set out common ways of complying with"⁹ them.
11. If the above conditions are not met, EU instruments are bound to create confusion among legal practitioners and citizens, thus putting at risk legal certainty and, ultimately, the goal of enhancing mutual trust between the authorities in the member States. Yet the above conditions are necessary, but not necessarily sufficient safeguards. It should be kept in mind that the ECJ itself recognised in its opinion on the first agreement on the creation of a European Economic Area that an identical interpretation cannot be ensured if identically worded provisions are applied in different contexts.¹⁰ Ultimately, only accession by the European Union to the European Convention on Human Rights can ensure the indispensable coherence of human rights law all over Europe.

Procedural rights under the European Convention on Human Rights

12. The European Convention on Human Rights guarantees a number of fundamental rights and freedoms that apply to criminal proceedings, many of which can be characterised as "procedural rights", such as the right to liberty and security (Article 5 of the ECHR), the right to a fair trial (Article 6 of the ECHR), the right of appeal in criminal matters (Article 2 of Protocol No. 7) and the right not be tried or punished twice (Article 4 of Protocol No. 7).
13. The European Court of Human Rights frequently emphasised "the prominent place which the right to a fair trial holds in a democratic society."¹¹ It has applied the above-mentioned provisions in numerous cases, establishing the scope of application of the guarantees and their limits. They cannot be understood without reference to the Strasbourg Court's case-law, which has influenced domestic court decisions. The Strasbourg judgments are regarded by the governments and courts of member States as binding precedents for the interpretation of the Convention or even as interpretational aids in defining the content and reach of corresponding constitutional rights and principles.
14. Convention standards are also directly applied by the ECJ. ECJ rulings on questions of fundamental rights have so far followed the ECHR and the Strasbourg Court's case-law in exemplary fashion. Indeed, the ECJ has repeatedly referred explicitly to both when determining the content and scope of EC fundamental rights. This applies, in particular, to the procedural guarantees under Article 6 of the ECHR, on which the ECJ rulings on effective legal protection under Community law are based.¹² In its *Pupino* judgment, the Court of Justice underscored the necessity to ensure that the application of measures

⁹ Preamble recital (12).

¹⁰ ECJ, Opinion 1/91 of 14 December 1991, EEA, ECR (1991) I-6079, recitals 14 and 22.

¹¹ *Moreira de Azevedo v Portugal* (1990) A 189 § 66; *Delcourt v Belgium* (1970) A 11 § 25.

¹² E.g. ECJ judgment of 17 December 1998, Case C-185/95 P, *Baustahlgewebe*, ECR (1998) I-8417; judgment of 28 March 2000, Case C-7/98, *Krombach*, HRLJ 21 (2000) 247. The latter case was also brought before the European Court of Human Rights, *Krombach v. France* judgment of 13 February 2001 (Application No. 29731/96).

adopted in the field of police and judicial cooperation in criminal matters (the “third pillar”) does not lead to results which would make criminal proceedings unfair within the meaning of Article 6 of the ECHR as interpreted by the Strasbourg Court.¹³ All this contributed to a measure of coherence in European fundamental rights standards.

¹³ ECJ of 16 June 2005, C-105/03, Pupino, recital 59.

The importance of effective implementation of the ECHR in domestic law

15. The reach and limits of the Convention's procedural rights have been comprehensively defined in the Court's case-law. The relevant standards are well known, but not always fully implemented at national level. Evidence for this can not only be found in the Commission's preparatory work for this framework decision. Indeed, some 65 % of the violations found by the Court occur in so-called repetitive cases, i.e. cases identical to previous ones in which the Court has already made clear determinations which only need to be applied as such in follow-up cases. In these cases the problem is not so much a lack of standards or their visibility, but rather shortcomings in the implementation of Convention standards and execution of already delivered judgments by national authorities.
16. What is required are practical measures to improve compliance with existing ECHR standards. The Council of Europe has already adopted a series of measures to ensure the effectiveness of the implementation of the ECHR at national level. Reference can be made to a series of recommendations by the Committee of Ministers¹⁴, to the Declaration of the Committee of Ministers on sustained action to ensure the effectiveness of the implementation of the European Convention on Human Rights at national and European levels of May 2006,¹⁵ to the reports on which it is based,¹⁶ as well as to the recently launched European Programme of Human Rights Education for Legal Professionals (HELP Programme). A strong commitment by the European Union in support of these actions would be most welcome.

C. THE DRAFT FRAMEWORK DECISION

Its scope of application

17. The draft framework decision is intended to confer a number of safeguards on persons subject to three different categories of procedures, being "criminal proceedings", the

¹⁴ Committee of Ministers' Recommendations:

- Rec(2000)2 on the re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights;
- Rec(2002)13 on the publication and dissemination in the member states of the text of the European Convention on Human Rights and of the case-law of the European Court of Human Rights;
- Rec(2004)4 on the European Convention on Human Rights in university education and professional training;
- Rec(2004)5 on the verification of the compatibility of draft laws, existing laws and administrative practice with the standards laid down in the European Convention on Human Rights;
- Rec(2004)6 on the improvement of domestic remedies.

¹⁵ Adopted by the Committee of Ministers on 19 May 2006 at its 116th Session.

¹⁶ CM(2006)39 Addendum, 13 April 2006, CDDH Activity Report: Reform of the European Convention on Human Rights – Declaration of the Committee of Ministers "Ensuring the effectiveness of the implementation of the European Convention on Human rights at national and European levels" and CM(2006)39 Final, 12 May 2006, Ministers' Deputies Report : Ensuring the continued effectiveness of the European Convention on Human Rights – The implementation of the reform measures adopted by the Committee of Ministers at its 114th Session (12 May 2004).

procedures under the European Arrest Warrant and "extradition or other surrender procedures". As far as the latter type of procedures is concerned, this involves – as regards fairness of procedures - a standard higher than the ECHR, since in the present state of the case-law Article 6 of the ECHR does not apply to extradition proceedings,¹⁷ which are covered by Article 5 of the ECHR.

18. The applicability of the framework decision to persons subject to a European Arrest Warrant, for its part, raises two questions. The first one relates to whether the framework decision is intended to also apply to proceedings, provided for under Article 12 of the framework decision on the European Arrest Warrant, aimed at determining whether such persons are to be kept in detention. The references to Article 5 of the Convention¹⁸ suggest this to be the case. Such proceedings, however, instituted for the purpose of challenging *the lawfulness of the detention as such (habeas corpus)*, including in an extradition context,¹⁹ are different from those governed by Article 6 of the ECHR, which deal with *the merits of an accusation*. They pursue a different purpose and are therefore subject to different standards under the Convention.²⁰ It should therefore be clarified whether both or only one of these categories is intended to be covered by the framework decision. For this purpose, it might be useful to bear in mind that under the Convention, Article 6 starts applying from the moment when the applicant has been "charged" within the autonomous meaning of this provision, irrespective of whether (s)he is detained or not, even though a person's arrest can be one of the circumstances potentially entailing such a "charge".²¹ As a consequence, Article 6 applies to some pre-trial proceedings, such as a police interrogation.²²
19. Secondly, in case the framework decision is intended to cover the detention aspects related to a European Arrest Warrant, the question arises, given that the scope of the framework decision does not appear to be restricted to cross-border situations and/or procedures, whether persons arrested on the basis of purely domestic legislation are entitled to the same rights under the framework decision.

¹⁷ See among many others Penafiel Salgado v. Spain (dec.), no. 65964/01, 16.4.2002; Olaechea Cahuas v. Spain, no. 24668/03, 10.8.2006.

¹⁸ See Article 1 § 3 of the framework decision and the wording of Article 2 § 1 ("the reasons for his or her arrest and any charge against him or her").

¹⁹ See Article 5 § 1 f) of the ECHR which deals *inter alia* with "the lawful arrest or detention ... of a person against whom action is being taken with a view to deportation or extradition".

²⁰ On Article 5 standards, see among many others Van der Leer v. the Netherlands, 21.2.1990; Murray v. United Kingdom, 28.10.1994; Schöps v. Germany, no. 25116/94, 13.2.2001.

²¹ See among many others Deweer v. Belgium, 27.2.1980; Foti v. Italy, 10.12.1982.

²² See Imbrioscia v. Switzerland, A 275, 24.11.1993.

Relationship with the ECHR (Articles 1 § 3 and 8)

20. In the light of the above considerations on the need to ensure consistency between the framework decision and the ECHR (see paragraphs 6-11 above) and taking into account similar wording used in the EU Charter of Fundamental Rights, it is proposed to amend Article 1 § 3 and 8 as follows (additions in bold, deletions in strikethrough):

Article 1 § 3

*"Unless otherwise provided, the **meaning and scope of provisions of this framework decision, which correspond to rights guaranteed by** ~~minimum standards referred to in this instrument shall be interpreted in full compliance with the European Convention for the Protection of Human Rights and Fundamental Freedoms, in particular Articles 5 and 6 thereof,~~ **shall be the same as those laid down by the said Convention,** as developed in the case law of the European Court of Human Rights."*

Article 8

"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 **European Convention for the Protection of Fundamental Rights and Freedoms** or the laws of any Member State and which provide a higher level of protection."*

The content of the rights

21. It is to be welcomed that the wording of most provisions of the draft framework decision now follows more closely the wording used in the ECHR than in previous drafts. There remains, however, some ambiguity about the exact scope of application of several of the framework decision's provisions (see also paragraphs 17-19 above). Some provisions appear to go beyond ECHR standards. The precise scope or meaning of additional safeguards is, however, not always clear. Are the provisions intended to confer new rights or are they merely setting out common ways of complying with existing Convention standards (see paragraph 10 above)?
- **Articles 1 to 6:** framework decision safeguards shall also apply to "other surrender procedures". The scope of this notion seems rather vague. For instance, is it intended to encompass expulsion and deportation procedures? If so, several other ECHR standards would apply, including those contained in Protocols Nos. 4 and 7.
 - Unlike **Articles 2 and 4 to 6**, which refer to persons "subject to criminal proceedings", **Article 3 § 1** speaks of a "person charged with a criminal offence" (which is the notion used by Article 6 of the ECHR). The purpose of this difference in terminology remains unclear.

- **Article 2 § 3** (right to be informed of one's rights) would appear to fix a higher standard regarding information to be provided than under the current case-law of the Court.²³
 - **Article 5 § 2** states the principle of effectiveness, which applies to all fundamental rights.²⁴ It might be more appropriate to include it under Article 1.
22. The **provisions on the right to legal assistance (Articles 3 and 4)** are formulated in a way which could be understood to imply a different approach to that of the ECHR, with a scope of application going beyond ECHR standards²⁵ while at the same time omitting an important safeguard:
- Under Article 6 § 3 c) of the ECHR, legal assistance must be provided free of charge if the accused lacks sufficient means to pay for it and when the interests of justice require it. Legal assistance free of charge is not a distinct right under the Convention. Under certain circumstances, gratuity is an inherent requirement of the right to legal assistance. It might therefore be more appropriate to include the provisions of **Article 4** under Article 3.
 - The combined effect of **§§ 3 and 4 of Article 3** seems to imply that a person, who is subject either "to deprivation of liberty prior to trial" or "to a European Arrest Warrant or Extradition request or other surrender procedure", shall be entitled to legal assistance as from the moment of his/her deprivation of liberty. According to the Court's case-law, Article 6 of the ECHR applies only to proceedings which determine a criminal charge within the autonomous meaning of this provision. Article 6 § 3 (c) will normally require that the accused be allowed to benefit from the assistance of a lawyer already at the initial stages of police interrogation. However, this right, which is not explicitly set out in the Convention, may be subject to restrictions for good cause. The question, in each case, is whether the restriction, in the light of the entirety of the proceedings, has deprived the accused of a fair hearing.²⁶
 - **Article 3** does not mention the right of a person charged with a criminal offence to communicate with his/her advocate out of hearing of a third person, which, according to the Court's established case-law, is part of the basic requirements of a fair trial in a democratic society and follows from Article 6 § 3 (c) of the ECHR.²⁷

²³ See *Imbrioscia v. Switzerland*, 24.11.1993 and the dissenting opinion of Judge De Meyer.

²⁴ "The Convention is intended to guarantee rights that are not theoretical or illusory, but practical and effective" (*Matthews v. UK* [GC], no. 24833/94, 18.2.1999, § 34).

²⁵ Although preamble paragraph (12) states that the provisions on legal assistance would not impose obligations going further than the ECHR.

²⁶ *John Murray v. UK*, 8.2.1996, Reports 1996-I, pp. 54-55, § 63; *Öcalan v. Turkey* [GC], no. 46221/99, 12.5.2005, § 131.

²⁷ *S. v. Switzerland*, A 220, 28.11.1991, § 48; *Öcalan v. Turkey* [GC], no. 46221/99, 12.5.2005, § 133. See also Article 3 § 2 (c) of the European Agreement relating Participating in Proceedings of the European Court of Human Rights (CETS 161, 1996).

The place of domestic law in the framework decision

23. One of the main purposes of the framework decision is to establish "minimum standards to be respected by member States *throughout the European Union*" (Article 1 § 1). Minimum standards shared by several countries pre-suppose by definition a certain degree of uniformity. Yet the framework decision contains a significant number of qualifications and references to domestic legal categories which in their day-to-day implementation have the potential to undermine the degree of uniformity to be reached as a pre-condition to mutual recognition. This appears to be the case in the following provisions:

- **Article 1 § 2:** "The rights referred to in this instrument *shall be interpreted with respect to the different legal systems and traditions of the Member States.*"
- **Article 1 § 4:** "For the purpose of this instrument, "criminal proceedings" and "charged with a criminal offence" *shall be interpreted in accordance with national law* while respecting Article 6 of the European Convention for the protection of Human Rights and Fundamental Freedoms as interpreted by the European Court of Human Rights." Which will be the decisive factor for the application of the framework decision, national law or the scope of application of Article 6? "Criminal charge" is an autonomous concept under the ECHR, for the determination of which domestic law is not conclusive.²⁸ According to the Court's established case-law, the nature of the charge as well as the nature and severity of the penalty are factors of greater import.²⁹

Furthermore, what is the exact meaning of "while respecting Article 6 of the ECHR"? Does it mean that the framework decision will apply to all proceedings qualified by the European Court of Human Rights as "criminal" for the purposes of Article 6? Or is it simply a safeguard clause, recalling member States' obligations under the Convention?³⁰

- **Article 3 § 3:** "Member States shall take the necessary measures to ensure that any person subject to deprivation of liberty prior to trial has the right to legal assistance in order to safeguard the fairness of proceedings, *taking into account the special features of each national system*, the legal relevance attached to such proceedings within the overall procedure, and, in particular for serious offences, the need to protect investigations."
- **Article 4 § 1:** "If the person subject to criminal proceedings is partly or totally unable to meet the costs of legal assistance as a result of his or hers economic situation, these costs shall be borne in whole or in part by the State *according to national law* when the interests of justice so require."

²⁸ E.g. *Malige v. France*, 23.9.1998, § 34: "The Court reiterates that the concept of 'penalty' in Article 7 of the Convention, like the notion of 'criminal charge' in Article 6 § 1 of the Convention, is an autonomous concept. In its analysis it is not bound by the classifications in domestic law, which have only relative value."

²⁹ *Engel v. the Netherlands*, A 22, 8.6.1976; *Ezeh and Connors v. UK* [GC], nos. 39665/98 and 40086/98, 9.10.2003.

³⁰ With Article 31 of the EU Treaty foreseeing only common action in "criminal matters", the former interpretation could raise issues of EU competence, but this is not a matter for the Council of Europe to comment on.

24. In the field of Article 6, the Convention does not allow for domestic law to be taken into account to the same extent. Rather, the autonomous interpretation of some of the key notions appearing in Article 6³¹ is precisely designed to prevent domestic law from restricting the effect of the Convention in an area where member States' 'margin of appreciation' is rather limited.³² So, quite paradoxically, the framework decision might have the effect of introducing a greater amount of flexibility – thus, less uniformity – in the area concerned than the Convention itself. In the end, the application of Article 3 § 1 of the framework decision might reduce this apparent flexibility to the extent allowed under the ECHR, but this raises the question whether such flexibility should be introduced in the first place.

Evaluating the effectiveness of the framework decision (Article 7)

25. Since the framework decision covers important rights guaranteed by the European Convention on Human Rights, the findings by the European Court of Human Rights and other relevant Council of Europe bodies, such as the Commissioner for Human Rights, should be taken into account for the purposes of evaluating the framework decision's effectiveness. Article 7, in particular as regards any problems of compliance with the ECHR that may result from the framework decision, could be complemented as follows:

"1. The effectiveness of this Framework Decision shall be evaluated in accordance with the mechanisms established under the relevant provisions of the Treaty of the European Union, which shall take account of findings and activities of Council of Europe monitoring and control mechanisms as well as of the Council of Europe Commissioner for Human Rights.

2. In order to facilitate an evaluation Member States shall ensure due co-operation and the provision of information."

D. CONCLUDING REMARKS

26. In its present shape, the framework decision would appear to call for further improvements in the definition of its scope and wording, in order for it to reach the level of harmony with the Convention which is needed to avoid confusion and legal uncertainty. It should be borne in mind that depending on the circumstances, domestic judges may find themselves confronted with up to three or four different legal sources of fundamental rights to be applied simultaneously, partly with different standards, structures, terminology and qualifications, being:
- their own domestic law, including the part of it transposing the present framework decision;

³¹ See footnote 28 above.

³² It is only in relation to certain rights and principles developed in the Court's case-law, such as the right of access to a court, that the Court recognised a certain 'margin of appreciation' of national authorities (see e.g. *Osman v. UK* [GC], 28.10.1998, § 147).

- the framework decision itself which, according to the recent *Pupino*-jurisprudence of the European Court of Justice,³³ will have to be taken into account when interpreting the domestic law implementing it;
 - the Convention, which still applies to the domestic implementation of EU law;³⁴
 - possibly also the EU Charter of fundamental rights, which is referred to in the preamble of the framework decision³⁵ and which was recently relied on, for the first time, in a Grand Chamber judgment of the ECJ.³⁶
27. By virtue of Article 35 EU Treaty, the European Court of Justice will have jurisdiction to interpret the framework decision by way of preliminary rulings. However, as the *Pupino*-jurisprudence shows, it falls to the domestic courts to identify in each individual case the applicable standards and accommodate the various applicable legal sources.³⁷ At the end of the day, the more room is left for hesitation as to compliance of a domestic measure with the Convention, the greater the likelihood to see the person concerned file an application to the Strasbourg Court which, under the terms of the *Bosphorus* jurisprudence, has jurisdiction to review the application by member States of secondary Union law. The Council of Europe is ready to cooperate with the EU institutions and member States to ensure that the framework decision will not become a source of legal uncertainty and litigation in Europe.

³³ ECJ 16.6.2005, *Pupino*, C-105/03.

³⁴ See the judgments in the cases of *Cantoni v. France*, *Matthews v. UK* and *Bosphorus v. Ireland*, referred to above.

³⁵ Recital 20.

³⁶ ECJ 27.6.2006, *Parliament v. Council*, C-540/03.

³⁷ See note 14 above.