



**Open Letter
to all Members of the European Parliament
August 2008**

**Council Framework Decision with regard to
in absentia Judgments**

Dear Member of the European Parliament

The European Criminal Bar Association (ECBA) is writing to you as a member of the European Parliament who will be voting on the LIBE-Report on the proposal for a Council Framework Decision with regard to *in absentia* judgments at the beginning of September.

The ECBA was founded in 1997 and has become the pre-eminent independent organisation of specialist defence lawyers in all Council of Europe countries. Our aim is to promote the fundamental rights of persons under investigation, suspects, accused and convicted persons, not only in theory, but also in day-to-day practice in criminal proceedings throughout Europe. More information on the ECBA can be found on our website: www.ecba.org.

The ECBA accepts and appreciates the original good intentions of the Slovenian presidency and other Member States in promoting the initiative to strengthen procedural safeguards in the European Union. However, in our view these good intentions have been misdirected because the current Council proposal simply facilitates the execution of *in absentia* judgments. We were very disappointed to see that the LIBE-Report endorsed the Council's approach. We are also aware that the LIBE-Committee adopted the report by a large majority.

The consequence of this will be that the rights of European citizens will be further undermined because *in absentia* judgments will result in the surrender of European citizens on the basis of a judgment given at a trial in which they never had the chance to participate. For example: It is possible that one Member State issues a European Arrest Warrant and requests surrender on the basis of an *in absentia* judgment, although the accused never knew anything about the criminal proceedings against him and therefore never had the chance to be heard, e.g. after a traffic accident or the use of a credit card in that country. The ECBA is happy to provide information on specific cases to illustrate this reality.

The political signal is dramatically wrong.

Conversely, the point should be made very clearly and forcefully that *in absentia* judgments are by their very nature a violation of the fundamental procedural rights of the accused. The only means of improving the concept of mutual recognition concerning *in absentia* judgments in relation to European Arrest Warrants is not the alternative of either a proper summons or the chance for a genuine re-trial but that **both** of these procedural safeguards are available to the accused. The ECBA is happy to offer its expertise to illustrate where the system of *in absentia* judgments continues to fail in practice.

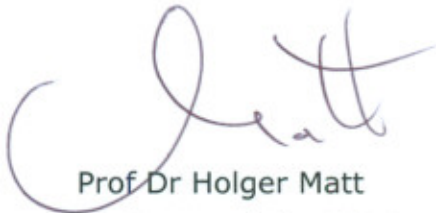
The appropriate way to improve and to strengthen mutual trust and accordingly the principle of mutual recognition in principle has to be the creation of a legally binding instrument on procedural safeguards in criminal proceedings throughout the EU-Member-States. The political failure of (some) national governments as members of the Council in the recent past to adopt such an instrument must be overcome to address this glaring gap in EU's area of freedom, security and justice urgently.

We urge you

- not to support the current Council proposal on *in absentia* judgments, i.e. to disagree with the LIBE-Report,
- to call for a new initiative for a legally binding instrument on procedural rights safeguards in criminal proceedings

Any enquiries should be directed to: h.matt@ecba.org or secretariat@ecba.org.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'H. Matt', with a large, sweeping initial 'H'.

Prof. Dr. Holger Matt
Chairman of the ECBA